



UNITED STATES DEPARTMENT OF COMMERCE  
The Under Secretary of Commerce  
for Oceans and Atmosphere  
Washington, D.C. 20230

June 17, 2011

Mr. Paul T. Muniz  
Burns & Levinson, LLP  
Partner Business Litigation  
125 Summer Street  
Boston, MA 02110

Dear Mr. Muniz:

Your memorandum to Andrew Winer of May 23, 2011, was referred to Secretary Locke, who has asked me to reply. I have reviewed your memorandum, the Report and Recommendation of the Special Master following his investigation of complaints referred to him, and the Secretary's Decision Memorandum based on that investigation dated May 17, 2011.

With respect to his investigation into the complaints related to your client the Gloucester Seafood Display Auction, the Special Master in his report at p. 61 notes: "I recommend...that the sanction penalty be vacated from the settlement agreement dated March 1, 2010, and that the original [20 day] penalty sanction imposed by ALJ Devine be reinstated as set forth in his decision less any days previously served since the date of that decision." The Secretary in his Response at p. 5 states that "[b]ecause the Magnuson Stevens Act does not give me authority to modify permit sanctions, I am unable to implement [the Special Master's] sanction recommendation. However, I direct NOAA to disregard this permit sanction when assessing penalties for any future violations by this company."

The March 1, 2010 settlement agreement that you entered into on behalf of your client resolved several pending cases and was a final resolution of those cases. It included a waiver of all claims against the government, and NOAA is not reopening that settlement agreement here. However, as to your client's compliance with the terms of the settlement agreement, and to meet the intention of the Secretary's Decision Memorandum, NOAA will forego requiring your client to serve the 15 permit sanction days that were not part of Judge Devine's order reaffirmed by the Special Master. You will continue to be required to serve the remaining 20 days, minus the 5 days you have already served, as recommended by the Special Master.

This forbearance on one of the terms of the March 2010 settlement agreement is limited to this case, the only one of the cases investigated by the Special Master that had unserved permit sanction time.

Sincerely,

Jane Lubchenco, Ph.D.  
Under Secretary of Commerce for  
Oceans and Atmosphere

THE ADMINISTRATOR



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