



JUL 29 2010

MEMORANDUM FOR: Todd J. Zinser
Inspector General

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

SUBJECT: Review of NOAA Fisheries Enforcement Asset
Forfeiture Fund

Thank you for your recent report dated July 1, 2010, on the Review of the National Oceanic and Atmospheric Administration's (NOAA) Fisheries Asset Forfeiture Fund (AFF). I share your concerns on the past handling of the fund and have previously expressed the need for change in the memorandum dated March 18, 2010. In the memorandum, I stated that NOAA is taking a first big step in moving towards a better enforcement program, and we will continue to adapt and refine our approaches so they work more effectively to achieve our goals of resource protection and support for our coastal communities.

I have reviewed the report and support its recommendations. As with your previous report dated January 21, 2010, the recommendations provide additional guidance on what is needed to enable NOAA to move forward on our goals of a more effective, fair, and transparent enforcement program. We have taken some of the actions prior to the issuance of the July 1, 2010, report including developing guidance for the appropriate and prohibited use of the AFF, acquiring the services of an independent Certified Public Accounting (CPA) firm to confirm the balance of the fund, and developing a plan to centralize the AFF within the accounting system of NOAA.

The attached corrective action plans address the observations, findings, and recommendations cited in the July 1, 2010, report. The report brings to light the AFF lacks accountability, transparency, and management oversight. The essence of accountability is taking responsibility for actions, decisions, and policies that impact an organization. Transparency drives accountability. In an open environment, outside stakeholders are freely able to obtain information about an organization and question the organization's actions, decisions, and policies leading to better management oversight, fairness, and everyone working toward a common goal. The corrective action plans provide more detailed information on the steps necessary to rectify the lack of accountability, transparency, and management oversight cited in the report.

Thank you for the opportunity to strengthen NOAA's enforcement program as we continue to adapt and refine our approaches to enable NOAA to achieve our goals of a more accountable and transparent enforcement organization. As I have stated in the past, I am committed to providing strong leadership, management oversight, and providing consistent resource protection with



strong communities, sustainable economies, and improved relations with those affected by regulations. We will provide you with regular reports on our progress towards implementation of the steps provided to you in these corrective action plans and look forward working with you in achieving our goals.

Attachment

NOAA Corrective Action Plans (CAP)
On
IG's Report on Review of NOAA Fisheries Enforcement Asset Forfeiture Fund (AFF)

- **Inspector General's Recommendation:**

1. Precisely define the AFF and comprehensively audit it, initially and annually. To arrive at its findings, KPMG expended significant time attempting to define the AFF since NOAA could not provide a consistent definition. As such, KPMG was unable to assess individual transactions beyond review of available supporting documentation. A comprehensive audit should entail detailed transaction testing and additional data mining.
2. Communicate the results of initial and annual audits of the AFF to NOAA and DOC senior leadership, as well as outside stakeholders (Congress, OMB, etc.).

- **Actions Taken or Planned:**

- a) Independent review and confirmation of the fund balance for the AFF as of March 31, 2010, by an independent certified public accounting firm. The certified public accounting firm is conducting an analysis of the general ledger and subsidiary reports in order to determine the AFF fund balance. Commencement of this review began May 21, 2010.
- b) Based on the legal memorandum obtained in CAP #5, the NOAA Finance Office will define the activities that make up the AFF and fund accounting structure to enable a clear understanding of the AFF and how it functions so AFF activity can be delineated, tracked, and monitored for the receipt and expenditures which comprise the AFF.
- c) Develop procedures and implement routine monitoring and oversight of the fund including benchmarking against other federal agencies with asset forfeiture funds, including Treasury, and the Departments of Justice and the Interior, to determine best accounting and fiscal management practices for the fund.
- d) Using best accounting and fiscal management practices from other federal agencies with asset forfeiture funds, develop format for fund activity statements to allow for routine reporting and monitoring of fund transaction activity and fund balance.
- e) Have contract with an independent certified public accounting firm in place to conduct a comprehensive financial audit on the March 31, 2011, fund activity statements. This work will include detailed AFF transaction testing. The audit will be conducted on the March 31, 2011, fund activity statements in order to determine if actions taken to clearly identify and track AFF monies received and expended are working, and AFF funds are not being commingled with other NOAA funds (See CAP #8).
- f) Provide notification of results of the financial audit (as described in (e) above) to NOAA and DOC senior leadership, and outside stakeholders and make the determination from the result of the audit whether an annual audit is needed or whether alternative procedures would be sufficient.

- **Projected Completion Dates:**

- a) August 15, 2010
- b) October 31, 2010
- c) October 31, 2010
- d) December 31, 2010
- e) June 30, 2011
- f) Within 15 days of the issuance of the final audit report by the independent certified public accounting firm.

- **Responsible Party:**

Nancy M. Gates,
Chief, Financial Policy & Compliance Division
NOAA Finance Office
(301) 444-2185

**NOAA Corrective Action Plans (CAP)
On
IG's Report on Review of NOAA Fisheries Enforcement Asset Forfeiture Fund (AFF)**

- **Inspector General's Recommendation:**

3. Specifically identify and account for the AFF in NOAA's annual budget submissions

- **Actions Taken or Planned:**

a) Verify that all mandatory (non-fee) accounts appear as their own section in the Congressional Budget Justification.

b) Within the Congressional Justification the AFF, and all necessary mandatory accounts, will appear in the National Marine Fisheries Service (NMFS) section and will have the following exhibits:

- Exhibit 5: Summary of Resource Requirements
- Exhibit 7: Summary of Financing
- Exhibit 12: Base Narrative
- Exhibit 13: Program Summary (if necessary)
- Exhibit 16: Summary of Requirement by Object Class

Exhibits 5, 7 and 16 detail three years of budget data:

- Previous year actual
- Current year currently available
- Budget year estimation

The budget year estimate will be the same as the current year, currently available.

Exhibits 13 and 16 will outline the intended use of funds in the budget year based on the response to IG recommendation 5, which is to determine the appropriate use of funds.

AFF, and all necessary mandatory accounts, will be listed on the NOAA Control Table under Mandatory Accounts.

c) The budget details for AFF, and other identified funds, will be presented in NOAA's Budget Summary (Blue Book).

- **Projected Completion Date:**

a) August 6, 2010

b) January 2011 – FY 2012 President's Budget contingent on the completion of other IG Report recommendations

c) January 2011 – FY 2012 President's Budget Blue Book contingent on the completion of other IG Report recommendations

- **Responsible Party:**

Steve Gallagher, Director
NOAA Budget Office
(202) 482-4600

NOAA Corrective Action Plans (CAP)
On
IG's Report on Review of NOAA Fisheries Enforcement Asset Forfeiture Fund (AFF)

- **Inspector General's Recommendation:**

4. Modify OLE's and GCEL's processes for budgeting and spending AFF proceeds to be comparable to other agencies with similar asset forfeiture funds; and benchmark the asset forfeiture fund programs of the Treasury and Justice Departments for applicable best practices.

- **Actions Taken or Planned:**

- a) Determine the budget and spending processes of the asset forfeiture fund programs of the Treasury and Justice Departments.
- b) Develop process based on determined best practices and implement formal approval of the FY 2011 and future annual AFF budgets, including review and approval of budgets by the National Marine Fisheries Service (NMFS) Chief Financial Officer (CFO) and the National Oceanic and Atmospheric Administration (NOAA) CFO.
- c) Enter AFF approved budget operating plans into the Commerce Business System (CBS) and NOAA's Management Analysis and Reporting System (MARS), an enterprise budget execution and financial reporting application, just as appropriated budgets are, in order to allow comparison between budget and obligations.
- d) Produce AFF monthly reports
 1. Budget Operating Plans vs. Obligations
 2. Collections vs. Obligations

- **Projected Completion Dates:**

- a) August 31, 2010
- b) September 30, 2010
- c) Within 5 days after final FY 2011 apportionments and allotments are entered into CBS
- d) December 31, 2010

- **Responsible Parties:**

Maureen Pulver
Chief, Budget Execution Division
NMFS Office of Management and Budget
(301) 713-2259

Lindsay Fullenkamp
Acting Deputy CFO
NMFS Office of Management and Budget
(301) 713-2259

NOAA Corrective Action Plans (CAP)
On
IG's Report on Review of NOAA Fisheries Enforcement Asset Forfeiture Fund (AFF)

- **Inspector General's Recommendation:**

5. Document a formal interpretation of the statutory language in the Magnuson-Stevens Act as to authorized uses of the AFF; and establish and update formal policy for OLE and GCEL to clearly prescribe both authorized and unauthorized expenditures of AFF monies.

- **Actions Taken or Planned:**

- a) Establish workgroup to document guidelines on the appropriate and inappropriate usage of the AFF monies.
- b) Develop baseline document of the current usage of the AFF monies.
- c) Prepare a legal memorandum that analyzes and sets forth the meaning of the Magnuson-Stevens Act provision that establishes the AFF, including authorized and unauthorized uses of the Fund. The memorandum will be subject to the concurrence of the General Counsel for the Department of Commerce.
- d) Based on legal memorandum set forth in (c) develop a formal policy on the authorized and unauthorized uses of AFF monies, how the Office of Law Enforcement (OLE) and the Office of General Counsel for Enforcement and Litigation (GCEL) split costs between AFF and appropriated funds.

- **Projected Completion Dates:**

- a) May 6, 2010 COMPLETED
- b) August 31, 2010
- c) September 30, 2010
- d) December 15, 2010

- **Responsible Parties:**

Nancy M. Gates,
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(301) 444-2185

Lois J. Schiffer,
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(202) 482-4080

NOAA Corrective Action Plans (CAP)
On
IG's Report on Review of NOAA Fisheries Enforcement Asset Forfeiture Fund (AFF)

- **Inspector General's Recommendation:**

- 6. Take steps to greater centralize AFF approval processes for expenditures.

- **Actions Taken or Planned:**

- a. Document and formalize the current approval process for AFF expenditures.
 - b. Determine the most appropriate office to approve AFF expenditures in the future in order to centralize the process.
 - c. Ensure the appropriate office determined has the staff with the proper skill set and training to review and approve AFF appropriate expenditures, including knowledge of record retention requirements.
 - d. Document and formalize the new approval process through the centralized office determined in (b) for AFF expenditures.

- **Projected Completion Dates:**

- a) August 31, 2010
 - b) September 30, 2010
 - c) September 30, 2010
 - d) October 31, 2010

- **Responsible Party:**

Sandra Smoak, Lead Internal Auditor
Financial Policy & Compliance Division
NOAA Finance Office
(301) 444-2123

NOAA Corrective Action Plans (CAP)
On
IG's Report on Review of NOAA Fisheries Enforcement Asset Forfeiture Fund (AFF)

- **Inspector General's Recommendation:**

7. Ensure that approved Asset Forfeiture Fund (AFF) expenditure transactions have required electronic/hard-copy supporting documentation (a recurring KPMG finding).

- **Actions Taken or Planned:**

The Office of the Chief Administrative Office (OCAO) will work with NMFS to ensure compliance with the following actions:

- a) The Audit, Internal Control and Information Management Office will review relevant financial record and purchase document retention policies listed in the NOAA Records Management Handbook Chapter 200 (specifically, Section 200-6 (*Electronic Budget Tracking Records*)) to update as warranted.
- b) The Audit, Internal Control and Information Management Office, NMFS, and GCEL will promulgate necessary revisions to this section.
- c) NMFS and GCEL will communicate the records retention schedule/policy to appropriate OLE and GCEL officials and staff and will implement procedures to ensure compliance with the disposition schedule.
- d) The Audit, Internal Control and Information Management Office will ensure annual reminders on proper records management practices are disseminated to NOAA employees.

- **Projected Completion Date:**

- a) September 17, 2010
- b) October 15, 2010
- c) October 31, 2010
- d) October 31, 2010

- **Responsible Party:**

Mack Cato
Director, Audit, Internal Control and Information Management Office
NOAA Office of the Chief Administrative Officer
(301) 713-1148

**NOAA Corrective Action Plans (CAP)
On
IG's Report on Review of NOAA Fisheries Enforcement Asset Forfeiture Fund (AFF)**

- **Inspector General's Recommendation:**

8. Develop improved processes to clearly identify and track AFF monies received and expended, and to ensure that AFF funds are not commingled.

- **Actions Taken or Planned:**

In order to improve the ability to identify and track Asset Forfeiture Fund (AFF) monies, NOAA's Finance Office plans to establish a new fund code to be used solely for financial activity related to the AFF. The Finance Office has formed a project work group to plan and execute the tasks necessary to move all AFF budget and financial data to a single new fund code, allowing for visibility and transparent reporting. Actions planned include the following:

- a) Identify and document the approach for establishing the new AFF fund code and communicating the related changes to all affected personnel.
- b) Establish the new AFF fund code and begin recording all new AFF budget and financial transactions to the new AFF fund code at the start of FY 2011. All FY 2011 AFF activity will be recorded in the new fund code starting in October 2010.
- c) Work with budget representatives from the NMFS and the NOAA General Counsel to identify the best approach for tracking each AFF budget and financial transaction. The NOAA Finance Office will document the impact this approach will have on the affected budget and accounting data.
- d) Research and document the best approach for moving all AFF financial data to the new AFF fund. This will include all AFF legacy documents, including obligation and accounts payable documents, cash balances, accounts receivable documents, travel authorizations, etc. since the start of the current accounting system.
- e) Based on the outcome of our research, design and deploy the approach for tracking and reporting all AFF financial transactions from a single new AFF fund code. This will include all AFF legacy documents, including obligation and accounts payable documents, cash balances, accounts receivable documents, travel authorizations, etc. since the start of the current accounting system.

- **Projected Completion Dates:**

- a) August 31, 2010
- b) October 1, 2010
- c) October 31, 2010
- d) December 31, 2010
- e) October 1, 2011

- **Responsible Party:**

Jon Alexander
Director of Finance
(301) 444-2102

NOAA Corrective Action Plans (CAP)
On
IG's Report on Review of NOAA Fisheries Enforcement Asset Forfeiture Fund (AFF)

- **Inspector General's Recommendation:**

9. Implement more stringent internal reviews for improperly split purchase card transactions (i.e., those involving the same card holder, date, vendor, and the same or different amounts) and duplicate purchase transactions. KPMG found evidence of multiple split transactions, which circumvent single purchase limits and competitive procurement procedures, as well as duplicate transactions.

- **Actions Taken or Planned:**

- a) Review the data set generated by KPMG

Acquisition and Grants Office (AGO) will review the data set to validate the findings reported by KPMG. In the event cardholder impropriety is substantiated, the CBC will inform the Approving Official of the findings and take appropriate action depending upon the extent and severity of the impropriety found. Such actions may include reducing the card pending completion of additional training or cancelling the card entirely. In cases of suspected fraud or significant misuse, the CBC will also refer the matter to the Department of Commerce, Office of Inspector General for investigation, as well as the Senior Procurement Executive and OAM Purchase Card Policy Manager. Should duplicate purchases be substantiated during the reviews, NOAA will pursue obtaining refunds from vendors.

- b) AGO provides data and makes recommendations to management on split purchase findings.

NOAA cardholders are subject to disciplinary action under applicable Department Administrative Order (DAO) 202-751, and Government-wide administrative procedures, including suspension and termination of employment. The range of disciplinary actions, which may vary with the severity of the infraction, must be applied in accordance with DOC employee relations, legal, and management guidelines.

At the conclusion of the auditing and substantiation process described above, the CBC will provide the results of those activities to OLE and GCEL management for their information. It will be the responsibility of OLE and GCEL management to determine whether to pursue taking any disciplinary or other personnel actions on the basis of the information provided by the CBC.

c) Educate purchase cardholders of split purchase implications

All cardholders will be provided a web link to the CAM 1313.301, Purchase Card Policy, governing the use of the purchase card, and reminded that they are required to take annual refresher training. In the event misuse is identified, cardholders will not be permitted to retain their cards unless they complete the purchase card refresher training identified in CAM 1313.301 dated January 2010, paragraph 2.1.3. A current copy of the policy is located on AGO, CBC website:

<http://www.ago.noaa.gov/ago/acquisition/bankcard.cfm>

d) Improve the split purchase review

Approving Officials will be reminded of their responsibility to monitor transactions for possible split purchases and take action immediately as appropriate.

In addition, DOC, Office of Acquisition Management (OAM) has developed an automated notification tool to identify suspected split purchases. The tool was implemented in July 2010 and now continuously monitors cardholder activity for potential split purchases. When a potential split purchase is identified, the system is generating emails to Cardholders, Approving Officials (AO), and Agency Program Coordinators (APC). When the APC's receive notification of a potential split purchase, they are contacting the AO and cardholder to investigate the action further and determine if the action was in fact a split purchase. When an action is verified as a split purchase, the purchase card is either suspended or terminated depending on the circumstances. Prior to reinstating any accounts, the cardholders are being required to complete remedial training and the cardholder's management is required to approve the reinstatement.

- **Projected Completion Dates:**

- a) August 31, 2010
- b) October 31, 2010
- c) October 31, 2010
- d) October 31, 2010, and ongoing

- **Responsible Party:**

Michael T. McConnell, Chief
Commerce Bankcard Center
(816) 823-3851

**NOAA Corrective Action Plans (CAP)
On
IG's Report on Review of NOAA Fisheries Enforcement Asset Forfeiture Fund (AFF)**

- **Inspector General's Recommendation:**

10. Determine the cost-effectiveness of General Services Administration-leased vs. purchased vehicles; establish formal policy for vehicle acquisition and management, based on operational need; and apply appropriate disposition procedures for excess vehicles.

- **Actions Taken or Planned:**

Real Property, Facilities, and Logistics Division will work with NMFS to ensure compliance with the following actions:

- a) Logistics Division will provide NMFS with GSA and other Government-wide policy (Federal Management Regulations, Department of Commerce Personal Property Management Manual, and EPA Guidance) for lease versus purchase of vehicles and vehicle management and disposition procedures.
- b) The Logistics Division will prepare a paper, based on GSA and Government-wide policy, to develop NOAA guidance for the lease versus purchase of vehicles. The Guidance will be provided to all NOAA offices so that program-level policies can be developed or updated.
- c) The Logistics Division will review Sunflower property records to determine if OLE vehicle acquisitions and disposals have been properly reported.
- d) If the review in 10c determines some vehicle disposal is needed, the Logistics Division will provide OLE with specific guidance based on existing excess and disposal policy.
- e) NMFS will use the criteria to update their existing criteria and policy for vehicle acquisition management and disposition based on operational need and mission.
- f) NMFS Headquarters will communicate the revised procedures and criteria to Office of Law Enforcement personnel through mandatory training for any personnel responsible for acquiring or using vehicles.

- **Projected Completion Dates:**

- a) August 31, 2010
- b) September 30, 2010
- c) October 1, 2010
- d) November 15, 2010
- e) October 31, 2010
- f) November 15, 2010

- **Responsible Party:**

Karl Calvo
Director, Real Property, Facilities and Logistics Division
NOAA Office of the Chief Administrative Officer
(301) 713-2215

**NOAA Corrective Action Plans (CAP)
On
IG's Report on Review of NOAA Fisheries Enforcement Asset Forfeiture Fund**

- **Inspector General's Recommendation:**

11. Establish formal policy for which OLE personnel should be authorized used of daily take-home vehicles; and review and determine the number of "pool" vehicles per locale based on justified need.

- **Actions Taken or Planned:**

Real Property, Facilities and Logistics Division will work with NMFS to ensure compliance with the following actions:

- a) The Logistics Division will revise existing NOAA policy to clarify authorized use of government law enforcement vehicles incorporating GSA and other Government-wide policy.
- b) The Logistics Division will work with NMFS OLE to determine the appropriate inventory level for law enforcement vehicles.
- c) NMFS will implement procedures to ensure compliance with the internal policy.
- d) NMFS will ensure personnel are aware of the appropriate use of a vehicle before OLE personnel use a government vehicle.

- **Projected Completion Dates:**

- a) September 15, 2010
- b) October 31, 2010
- c) November 15, 2010
- d) November 15, 2010, ongoing

- **Responsible Party:**

Karl Calvo
Director, Real Property, Facilities and Logistics Division
NOAA Office of the Chief Administrative Officer
(301) 713-2215

**NOAA Corrective Action Plans (CAP)
On
IG's Report on Review of NOAA Fisheries Enforcement Asset Forfeiture Fund (AFF)**

- **Inspector General's Recommendation:**

12. Review and set policy for which OLE positions and personnel should be authorized use of purchase credit cards, based on operational need. Presently, nearly every OLE special agent and enforcement officer is issued a purchase card. This is not consistent with current government-wide policy for internal controls to limit the risk of misuse of purchase cards.

- **Actions Taken or Planned:**

- a) The IG/KPMG report noted that almost every OLE agent has a Government purchase card. It is the responsibility of individual program offices to determine the number of cardholders required to support their mission activities. To assist OLE and GCEL in conducting a review of the current number of cardholders with an overall goal of reducing the total number of purchase cards to the appropriate level relative to their mission requirements, the Commerce BankCard Center (CBC) will generate and provide the following reports:
 - 1. Cardholder Report: The report will provide the following information for each OLE and GCEL cardholder: 1) cardholder name, 2) approving official name; 3) geographical location; 4) number of transactions in FY 2009; 5) number of transactions in FY 2010 through June 30, 2010.
 - 2. Approving Official Report: The report will identify the names of the cardholders assigned to each Approving Official and highlight those Approving Officials whose Approving Official to Cardholder ratio exceeds the limitations set forth in Commerce Acquisition Manual 1313.301.
- b) In cases where cardholders have low transactional activity, the CBC will recommend to OLE/GCEL management cancellation of those purchase cards. OLE and GCEL will make the determination as to which cardholder accounts are to be cancelled, and the CBC will take immediate action to cancel those accounts upon receipt of notification from OLE and GCEL.

Commerce Acquisition Manual 1313.301, Purchase Card Policy, dated January 2010, paragraph 2.2.3 Span of Control, states that approving officials shall have a maximum of seven (7) cardholders unless authorization to exceed that maximum is received in writing from the Head of Contracting Office. The CBC will work with OLE/GCEL management to either establish additional Approving Officials to eliminate any ratios over 7:1 or

obtain the necessary Head of Contracting Office approvals if allowing higher ratios for certain Approving Officials is appropriate.

- **Projected Completion Dates:**

- a) July 31, 2010.
- b) September 15, 2010

Responsible Party:

Michael T. McConnell, Chief
Commerce Bankcard Center
(816) 823-3851

NOAA Corrective Action Plans (CAP)
On
IG's Report on Review of NOAA Fisheries Enforcement Asset Forfeiture Fund (AFF)

- **Inspector General's Recommendation:**

13. Determine whether NOAA's inability to adequately track AFF expenditures constitutes violation of any federal financial management law or standard. For example, while the Magnuson-Stevens Act requires that fines and penalties imposed for violations of the Northeast Multispecies Fishery Management Plan are to be specifically used to enforce that Plan, NOAA has not tracked the use of these funds. The then-Director was unfamiliar with this requirement when we initially addressed it with him.

- **Actions Taken or Planned:**

The Assistant General Counsel for Administration will prepare a legal memorandum addressing whether NOAA's use of the AFF may have given rise to violations of any federal financial management law or standard. This review will address NOAA's use of the AFF subsequent to January 1, 2005.

- **Projected Completion Dates:**

a) October 31, 2010

- **Responsible Party:**

Lois J. Schiffer,
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