

*U.S. DEPARTMENT OF COMMERCE*  
*Office of Inspector General*

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**PUBLIC  
RELEASE**

*NATIONAL OCEANIC AND  
ATMOSPHERIC ADMINISTRATION*

*NMFS's Fishermen's Contingency Fund  
Should Be Reexamined*

*Audit Report No. STD-11484-9-0001 / August 1999*

*Office of Audits, Science and Technology Audits Division*

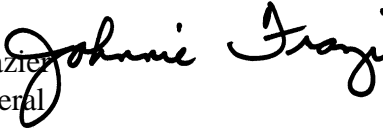




**UNITED STATES DEPARTMENT OF COMMERCE**  
**The Inspector General**  
Washington, D.C. 20230

August 3, 1999

**MEMORANDUM FOR:** Penelope Dalton  
Assistant Administrator  
National Marine Fisheries Service

**FROM:** Johnnie E. Frazier   
Inspector General

**SUBJECT:** NMFS's Fishermen's Contingency Fund  
Should Be Reexamined  
Final Audit Report No. STD-11484-9-0001

The Office of Inspector General has completed a performance audit of the National Marine Fisheries Service's (NMFS) Fishermen's Contingency Fund to evaluate the effectiveness of NMFS's internal controls over the fund and the trend of claims paid from the fund. Our audit of claims processed and paid during fiscal years 1997 and 1998 incorporated the rules and regulations published in the Federal Register, Volume 50, Number 67, dated April 8, 1985, as well as the NMFS's internal control review team's recommendations made in May 1992. We found that the internal controls over the fund were in place and the recommendations made in May 1992 by the NMFS's internal control review team were being adhered to.

We noted, however, that FCF payments declined by nearly 52 percent, from \$671,000 in fiscal year 1988 to \$322,000 in fiscal year 1998. The recent 1998 payout of \$322,000 remains well below the average annual payout of \$494,000 for the 11 years ending in 1998. The fund manager attributed the decline to several reasons, including NMFS's vigorous referral of cases to the Office of Inspector General for fraud investigations, which has served as a deterrent; claimants seeking reimbursement from a state gear compensation program; and the declining number of shrimp vessels. We recommended that NMFS assess the continued need for the FCF program in light of the trend of declining claims. Our complete recommendation can be found on page 5.

In its June 28, 1999 response to our draft report, NOAA agreed with our findings and recommendation and stated that it will assess the continued need for the Fishermen's Contingency Fund program in light of the trend of declining claims. NOAA's response is found in Attachment B and NOAA's action plan is found in Attachment C. We concur with NOAA's response and the action plan provided. We believe that the actions taken or planned to be taken as described in the audit action plan, if properly implemented, will meet the intent of our recommendations. Accordingly, pursuant to Departmental Administrative Order 213-5, we regard the audit report as resolved.

We appreciate the cooperation and courtesies extended to us by NMFS staff during the review.

## **INTRODUCTION**

Title IV of the Outer Continental Shelf Lands Act Amendments of 1978 established the Fishermen's Contingency Fund to compensate U. S. fishermen whose vessels or fishing gear have been lost, damaged, or destroyed by oil and gas obstructions on the U. S. Outer Continental Shelf. Economic as well as property loss is included in the compensation. The Fishermen's Contingency Fund is a revolving fund in the Treasury of the United States, and is funded by fees assessed against oil and gas companies operating mainly in the Gulf of Mexico. For the fiscal year ended September 30, 1998, the fund paid 54 claims totaling \$322,000, and had a balance of \$1.5 million.

The fund is administered by the Financial Services Division (FSD) of the National Marine Fisheries Service. FSD develops filing and reporting requirements for fishermen, adjusts claims including the presumption of causation and the burden of proof, and compensates eligible applicants. NMFS must ensure that the claims are reviewed expeditiously and accurately and that funds are disbursed properly. FSD has published comprehensive rules and regulations in the *Federal Register*, Volume 50, Number 67, dated April 8, 1985.

To address concerns about the fund's internal controls, NMFS conducted a review in May 1992 and made recommendations designed to improve the fund's internal controls and efficiency. Prior to that review, the fund had a history of fraudulent claims paid due to internal control deficiencies. For example, claims were paid even though:

- Receipts submitted for purchases, supplies, and equipment were barely legible or appeared to have been altered.
- Claims did not meet program requirements.
- Claims submitted had conflicting information about dates and times of losses and locations of incidents.

## **PURPOSE AND SCOPE OF AUDIT**

The purpose of this audit was to evaluate the effectiveness of NMFS's internal controls over the Fishermen's Contingency Fund and to assess the trend of paid claims. Our fieldwork was conducted in accordance with generally accepted government auditing standards. The audit was conducted at NMFS's headquarters in Silver Spring, Maryland, from October 1998 to February 1999. The audit included a judgmental sample of claims processed and paid during fiscal years 1997 and 1998.

The scope of our work included:

- Reviewing the fund's policies, procedures, laws, and regulations.
- Following up on previous OIG and NMFS recommendations.
- Reviewing the results of past investigations conducted by OIG investigators.
- Evaluating internal controls to determine if the Financial Services Division has complied with policies and procedures.
- Analyzing the trend of total annual claims paid for the past 11 years.

In conducting our audit, we did not rely on computer generated data and, therefore, did not need to evaluate controls over such data. The audit was performed under the authority of the Inspector General Act of 1978, as amended, and Department Organization Order 10-13, dated May 22, 1980, as amended.

## **FINDINGS AND RECOMMENDATION**

We recognize the significant effort that FSD has undertaken to improve the internal controls over the Fishermen's Contingency Fund. We also noted that there has been a significant decline in the total annual claims paid over the past 11 years. In response to this decline, FSD has reduced the number of full-time equivalent personnel required to administer the fund. We believe that NMFS should reexamine whether there is sufficient need for maintaining the fund within NMFS.

### **Past Problems Have Been Corrected and Internal Controls Are In Place**

NMFS conducted an internal control review in May 1992. As a result, the review team made 12 recommendations designed to improve the fund's internal controls and efficiency as shown in Attachment A. Based on a judgmental sample of processed and paid claims, we found that the team's recommendations had been implemented satisfactorily.

Our judgmental sample included a review of claims processed and paid during fiscal years 1997 and 1998. Our sample for fiscal year 1997 was comprised of 12 claims paid out of a universe of 41 claims paid, and totaling \$132,067 out of a universe of \$239,804. For fiscal year 1998, our sample was comprised of 12 claims paid out of a universe of 54 claims paid, and totaling \$111,337 out of a universe of \$321,704.

Our prior OIG audit<sup>1</sup> of the Fishermen's Contingency Fund reported that NMFS did not maintain sufficient funds on hand to pay all claims and administrative costs in fiscal year 1984. However, the current fund balance of \$1.5 million for the fiscal year ended September 30, 1998 was more than sufficient to cover the \$322,000 in claims paid and the corresponding administrative expenses of \$87,000.

During our review, we prepared an audit checklist that incorporated the rules and regulations published in the *Federal Register*, Volume 50, Number 67, dated April 8, 1985, as well as the recommendations made by the NMFS's review team. The audit checklist for each claim in our sample was used to determine the following items: eligibility of the claim; timeliness of the claim; completeness of the claim; necessary documentation for the claim; and implementation of the 12 recommendations made by the NMFS's review team.

Results of our audit sample showed that the 24 claims paid in fiscal years 1997 and 1998 were in compliance with applicable rules and regulations, as well as the recommendations made by the NMFS review team. We found that of the claims we evaluated, all required documentation was submitted timely. Also, there was no evidence of: illegible or altered receipts for purchases, supplies and equipment; claims that did not meet program requirements and regulations; or conflicting dates and times of losses, and locations of incidents. In summary, we believe that FSD actions to correct past control deficiencies have been effective, and we commend FSD for its improved internal controls over the FCF.

### **FCF Program Needs To Be Reassessed**

During the past 11 years, the amount of FCF paid claims has declined. Specifically, paid claims declined from \$671,000 in fiscal year 1988 to \$322,000 in fiscal year 1998, a decline of nearly 52 percent. Also, paid claims peaked from a high of \$844,000 in fiscal year 1991 to \$322,000 in fiscal year 1998, a decline of nearly 62 percent. Although we note that the amount of FCF paid claims have varied over the years, the paid claims from FY 1995 through 1998 remain well below those paid from FY 1988 through 1994. The recent 1998 payout of \$322,000 remains well below the average annual payout of \$494,000 for the 11 years ending in 1998, as shown in Figure 1.

We discussed the decline in claims with the fund's program manager and he attributed the decline to several reasons. First, FSD has vigorously referred cases to the OIG for fraud investigations and feels that the investigations have served as a deterrent. Second, claimants are

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<sup>1</sup> *Opportunities Exist for NOAA to Strengthen Its Administration of the Fishermen's Contingency Fund*, Report Number F-762-5-011, September 1985.

seeking reimbursement from Louisiana, the only state government which has its own gear compensation program, because it is viewed by some vessel owners as less stringent than the federal government. Finally, since the early 1990s, the number of shrimp vessels has continued to decline because of overfishing and declining profits.

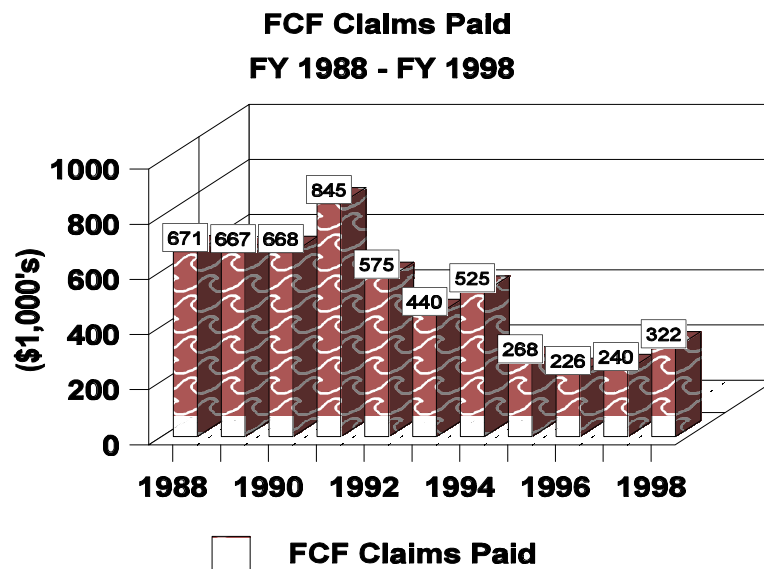


Figure 1

As a result of the overall decline in the volume of claims paid, FSD recently made certain adjustments to its personnel involved in administering the fund. In fiscal year 1997 there were two claims examiners, in fiscal year 1998 there was only one examiner, and in fiscal year 1999 the examiner will only work about 60 percent of the time administering the fund. The other 40 percent of the examiner's time will be spent working on the Financial Reporting System and the Foreign Fishing Observer Program.

In summary, NMFS should be commended for its responsiveness to reduce its FCF personnel based on the decline in fund activity. However, we believe that NMFS should conduct a study to assess the long-term need for the fund. If the assessment shows that the fund may eventually be eliminated, then NMFS should present its assessment results and recommendations to Congress.

## RECOMMENDATION

We recommend that the NMFS Assistant Administrator assess the continued need for the FCF program in light of the trend of declining claims.

**AGENCY RESPONSE**

In its June 28, 1999 response to our draft audit report, NOAA's Chief Financial Officer stated that NMFS will assess the continued need for the Fishermen's Contingency Fund program in light of the trend of declining claims.

**AGENCY ACTION PLAN**

NOAA's audit action plan stated NMFS would implement the OIG's recommendation by commencing a study regarding the continued need for the FCF program and reporting on its completion by October 15, 1999.

**OIG COMMENT**

We concur with NOAA's response and the audit action plan to implement our recommendation.

Attachments

cc: Paul F. Roberts, Chief Financial Officer,  
National Oceanic and Atmospheric Administration  
Barbara Martin, NOAA Audit Liaison

**Attachment A**  
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Recommendations From NMFS Internal Control Review dated May 1992

1. The examiner should record in the file the extenuating circumstances which allow late filing if that claim is approved.
2. If the postmark is illegible, the examiner should check the FSD's date received stamp to see if the claim arrived within the 90 day period.
3. The examiner should record in the file any instance where the casualty occurred within a 1/4 mile radius of charted obstructions.
4. The wording of the Claim Brief should be revised to clarify that a casualty can occur in an area affected by OCS energy activities and nonetheless not be caused by OCS energy activities.
5. Subrogation agreement is to be signed as part of the original claim application rather than after the claim has been processed.
6. The examiner should include a note in the file whenever a correction is made to the claim file.
7. The examiner should always place copies of the automated spreadsheets and supporting documents in the case file.
8. The examiner should record in the case file the reasons why an initial determination was late.
9. Whenever they are available, statements from all listed witnesses should be included in the file; if they are not available, the examiner should include in the file a written explanation of why they could not be obtained.
10. The examiner should complete and include a comprehensive Fraud Indicator Checklist in each case file.



**Attachment A  
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11. The examiner should record in the case file all verbal communications with fishermen, fish houses, gear suppliers or vessel repair facilities, witnesses, etc. which occurred in connection with any investigation of suspected fraud.
12. The examiner should base economic loss compensation only on trip tickets recording the sale of catch to a fish house, unless the fisherman acts as his own distributor or broker and this is recorded in the file. The examiner should not accept the vessel's crew settlement sheets for this purpose without recording the reasons in the file.



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
CHIEF FINANCIAL OFFICER/CHIEF ADMINISTRATIVE OFFICER

JUN 28 1999

MEMORANDUM FOR: Johnnie Frazier  
Acting Inspector General

FROM: Paul F. Roberts *Paul F. Roberts*

SUBJECT: NOAA Response to the Draft Audit OIG Report  
"NMFS Fishermen's Contingency Fund Should Be  
Reexamined, No. STD-11484-9-XXXX, June 1999

Thank you for the opportunity to review and comment on the subject draft report. We generally agree with the findings, and agree with the recommendation. The National Marine Fisheries Service will assess the continued need for the Fishermen's Contingency Fund program in light of the trend of declining claims. An anticipated completion date is October 15, 1999. Since we agree with the recommendation, we have included our action plan in response to your draft report.

Attachment



**NOAA AUDIT ACTION PLAN**

**Audit Report Title:** NMFS Fishermen's Contingency Fund Should Be Reexamined

**Audit Report Number:** STD-11484-9-XXXX

**Audit Entity:** NOAA National Marine Fisheries Service

**TITLE OF FINDING:** FCF Program Needs To Be Reassessed

**OIG's RECOMMENDATION:**

1. We recommend that the NMFS Assistant Administrator assess the continued need for the FCF program in light of the trend of declining claims.

**ACTIONS TAKEN OR PLANNED:**

We agree to implement the OIG's recommendation by commencing a study regarding the continued need for the FCF program. We will report the results of this study by October 15, 1999.