

U.S. DEPARTMENT OF COMMERCE
Office of Inspector General



**PUBLIC
RELEASE**

***NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION***

*NMFS's Unallied Management
Projects Program Awards
Were Not Competitively Selected,
CFDA No. 11.454*

Audit Report No. STL-10952-9-0001 / March 1999

Office of Audits, Seattle Regional Office



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EXECUTIVE SUMMARY

The Office of Inspector General conducted an audit of the fiscal year 1997 procedures and practices for soliciting, reviewing, and selecting applications for financial assistance under the National Oceanic and Atmospheric Administration's National Marine Fisheries Service's (NMFS) Unallied Management Projects Program, classified as No. 11.454 in the *Catalog of Federal Assistance*. The audit was conducted as part of a Department-wide review of Commerce's discretionary financial assistance program initiated at the request the Chairman of the Senate Committee on Commerce, Science, and Transportation.

Discretionary financial assistance programs are those programs for which federal agencies have the authority to independently determine the recipients and funding levels of the awards. These programs involve a significant portion of the Commerce Department's budget and operations, approximately \$1 billion annually. If not properly administered, they are susceptible to fraud, waste, and misuse of funds.

Through the Unallied Management Projects Program, NMFS provides grants and cooperative agreements to furnish economic, sociological, and other information for conserving and managing U.S. fishery resources and protected species and their environment. In fiscal year 1997, the program awarded three cooperative agreements, one continuation amendment to an existing cooperative agreement, three grants, and one amendment to a new grant, totaling \$1.2 million. All eight awards were made noncompetitively in response to unsolicited proposals. Five awards, totaling \$910,000, were made on the basis of language contained in the fiscal year 1997 appropriations conference report. The original cooperative agreement for which the continuation amendment was awarded was also made noncompetitively in response to an unsolicited proposal.

We examined NMFS's criteria, procedures, and practices for the solicitation, review, and selection of Unallied Management Projects Program awards and found that they did not comply with departmental and NOAA requirements and were not adequate to guide agency officials in making merit-based discretionary funding decisions. We found that the program was not administered as a competition-based financial assistance program, as encouraged by federal laws and regulations and mandated by Commerce policies and procedures. In addition, we examined the written justifications prepared for the eight noncompetitive awards made in fiscal year 1997 and found four to be inadequate. The justifications for the remaining four awards adequately explained why competition was not appropriate. Specifically, we found that NMFS:

- Did not comply with the Department's requirement that merit-based evaluation criteria against which program applications for financial assistance could be reviewed, be developed and published. (See page 7.)
- Did not comply with the Department's requirement that a notice be placed in the *Federal Register*, at least annually, announcing the availability or funds and soliciting award applications, and specifying the criteria and the process to be used in reviewing and selecting applications for funding. (See page 7.)

- Did not comply with the Department's requirements that (1) all financial assistance awards be made on the basis of a competitive review process, unless a special waiver is obtained, and (2) the competitive review process meet minimum standards established by the Department. (See page 7.)

As a result of these deficiencies, NMFS cannot provide reasonable assurance that noncompetitive awards made under the program are merit-based and represent the most effective means of achieving program objectives.

Lacking competitive award procedures, there is a greater potential for NMFS to make questionable or even inappropriate noncompetitive program awards in instances where competition from other sources is available. NMFS risks foregoing the receipt of research proposals from a broad range of eligible applicants and thus may lose opportunities to increase the effectiveness of the Unallied Management Projects Program.

We also found that the NOAA grants office did not provide adequate oversight of NMFS's administration of the program. (See page 11.)

In its response to the draft report, NOAA stated that the agency agrees that more awards should be granted competitively for all discretionary funding programs and that a rigorous solicitation process should be used. NOAA also stated that the agency is continuing to look at its current processes and will provide more specific comments and details as part of the audit action plan submitted in response to the final report (see Appendix IV).

We recommend that the Assistant Administrator for Fisheries ensure that financial assistance awards under the Unallied Management Projects Program are made through a competitive merit-based process, unless otherwise mandated by law or adequately justified, and that the award process complies with Department policies and procedures and includes the following four elements:

- (1) Widespread solicitation of eligible applications and disclosure of essential application and program information in written solicitations;
- (2) Independent application reviews that consistently apply written program evaluation criteria.
- (3) Written justifications for award decisions that deviate from recommendations made by application reviewers; and
- (4) Adequate written justifications for noncompetitive awards which document appropriate market search efforts to validate the determination that there is only one source for the anticipated award. The market search should include, at a minimum, a preaward notice in the *Federal Register* stating that the agency expects to make a noncompetitive award and inviting other qualified parties to inquire.

We also recommend that the Chief Financial Officer/Chief Administrative Officer, as the Director of the Office of Finance and Administration, which includes the Grants Management Division, require that grants officer reviews of proposed noncompetitive awards include procedures designed to objectively determine compliance with Department and NOAA competitive requirements.

Our recommendations appear on pages 12 and 13.

INTRODUCTION

The National Oceanic and Atmospheric Administration's (NOAA) mission is to describe and predict changes in the Earth's environment and to conserve and manage wisely the nation's coastal resources. The National Marine Fisheries Service's (NMFS) mission is to provide stewardship of living marine resources for the benefit of the nation through their science-based conservation and management and promotion of the health of their environment. NOAA, through NMFS, administers the Unallied Management Projects Program, classified as No. 11.454 in the *Catalog of Federal Domestic Assistance*. The program's objective is to provide grants and cooperative agreements to furnish economic, sociological, and other information for conserving and managing U.S. fishery resources and protected species and their environment.

The Unallied Management Projects Program did not have legislation authorizing a financial assistance program and did not receive specific annual appropriations or funding allotments. Program awards have always been made noncompetitively in response to unsolicited proposals. The fiscal year 1997 awards, totaling \$1,217,050, were funded with appropriations provided to NMFS for its various fishery programs and under authorities of the Fish and Wildlife Coordination Act, Fish and Wildlife Act, Magnuson Fishery Conservation and Management Act, and Atlantic Tunas Convention Act.

The Fish and Wildlife Coordination Act, as amended, authorizes the Secretary of Commerce to provide assistance to federal, state, and public and private agencies and organizations in the development, protection, rearing, and stocking of species of wildlife, resources thereof, and their habitat, and in controlling losses to the same from disease or other causes. The Fish and Wildlife Act of 1956, as amended, authorizes the Secretary to perform research services on fish matters, and provide assistance for informational services, economic and technological development, resource conservation, and resource management. The Magnuson Fishery and Conservation Act authorizes the Secretary to initiate and maintain a comprehensive program of fishery research designed to acquire knowledge and information on fishery conservation and management and on the economics of fisheries. The Atlantic Tunas Convention Act authorizes the Secretary to administer and enforce all provisions of the International Convention for the Conservation of Atlantic Tunas and to pay expenses of the Advisory Committee to the International Convention for the Conservation of Atlantic Tuna .

NMFS made eight awards under the Unallied Management Projects Program in fiscal year 1997. All eight awards were made noncompetitively to organizations that had submitted unsolicited proposals. Unsolicited proposals are applications for financial assistance that are not submitted in response to a formal solicitation notice published in the *Federal Register*. Three of the proposals were submitted in response to specific requests from NMFS. The projects and the organizations to be funded had been identified by NMFS beforehand.

The awards consisted of three cooperative agreements, one continuation amendment to an existing cooperative agreement, three grants, and one amendment to a new grant. The awards

were made to a state, a marine science institute, a marine laboratory, a fishermen's association, and a corporation. The original award for which the continuation amendment was used was also made noncompetitively in response to an unsolicited proposal. NMFS chose the cooperative agreement as its award mechanism for three of the six new awards because program officials planned to be substantially involved in the projects. For the remaining cooperative agreement, NOAA chose a continuation amendment to an existing agreement because the project had been funded in a previous year.

Discretionary assistance programs are those for which federal agency officials have the authority to decide (1) which eligible applicants will receive awards, and (2) how much financial assistance that will be awarded. Competition is generally recognized as the most effective means of ensuring that financial assistance awards are made on the basis of merit. One of the primary purposes of the Federal Grant and Cooperative Agreement Act (31 U.S.C. §6301) is to encourage competition in the award of federal financial assistance to the maximum extent practicable.

The Office of Management and Budget (OMB) has issued guidelines on administering competition-based financial assistance programs for use by federal agencies. An interagency study group, convened in 1979 by OMB to examine competition in financial assistance programs, determined that financial assistance award processes, to ensure effective competition, should include three basic elements. These elements, which were discussed in OMB's June 1980 report, *Managing Federal Assistance in the 1980's*, are still applicable, and include:

- Widespread solicitation of eligible applicants and disclosure of essential application and program information in written solicitations;
- Independent application reviews that consistently apply written program evaluation criteria; and
- Written justifications for award decisions that deviate from recommendations made by application reviewers.

Also, OMB has issued the following circulars which set forth the policies and procedures to be followed in administering federal financial assistance programs:

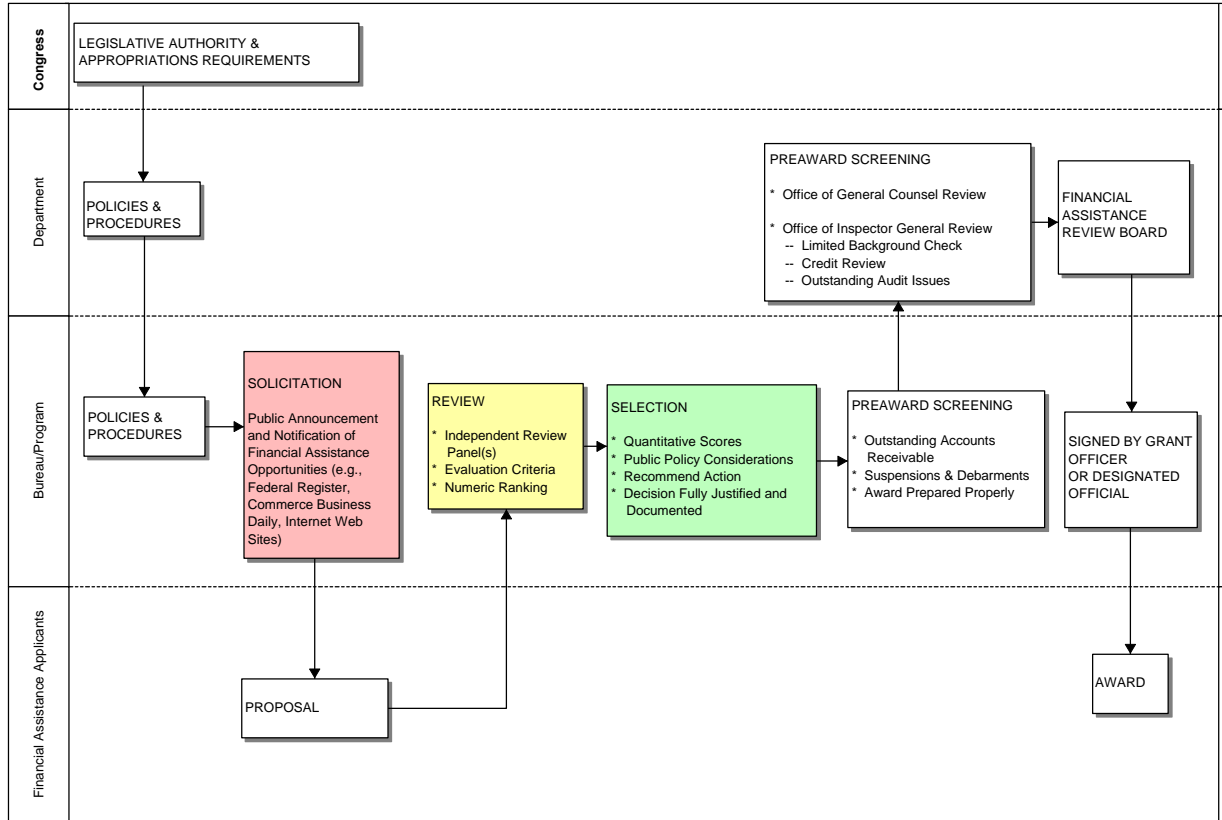
- OMB Circular A-89, *Federal Domestic Program Information*, implements The Federal Program Information Act (P.L. 95-220) requiring agencies to systematically and periodically collect and distribute current information to the public on federal domestic assistance programs, which is accomplished through the semiannual publication of the *Catalog of Federal Domestic Assistance*.

- OMB Circulars A-102, *Grants and Cooperative Agreements with State and Local Governments*, requires agencies to provide the public with advance notice in the *Federal Register*, or by other appropriate means, of their intended funding priorities for discretionary assistance programs unless such priorities are established by federal statute. Under A-102, when time permits, an agency must provide the public with an opportunity to comment on funding priorities. Finally, A-102 requires all grant awards over \$25,000 to be review for consistency with agency priorities by a policy level official.
- OMB Circular A-110, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations*, requires agencies to provide the public with advance notice of their intended funding priorities for discretionary assistance programs unless such priorities are established by federal statute.
- OMB Circular A-123, *Management Accountability and Control*, implements the Federal Managers Financial Integrity Act (P.L. 97-255) requiring agencies to establish management controls for federal programs and operations, including financial assistance programs, that provide reasonable assurance that activities are effectively and efficiently managed to achieve agency goals.

Commerce has relied on OMB's guidelines and circulars in developing and issuing policies and procedures for its discretionary funding programs. Department Administrative Order (DAO) 203-26, *Department of Commerce Grants Administration*, requires that (1) all Commerce financial assistance awards be made on the basis of competitive reviews unless a special waiver is obtained, (2) competitive review processes meet minimum standards outlined in the DAO, and (3) all Commerce agencies publish, at least annually, a notice in the *Federal Register* announcing the availability of funding, soliciting award applications, and specifying the criteria and the process to be used in reviewing and selecting applications for funding. In addition, agency-initiated noncompetitive or unsolicited awards should be adequately justified in writing as part of an internal control system defined in OMB Circular A-123 and required by DAO 203-26, Section 4.02 i.

The chart presented on the following page depicts the basic process and controls for the solicitation, evaluation, and selection of financial assistance awards as set forth in DAO 203-26. The processes we reviewed during our audit are color coded for this chart and the NOAA process chart located in Appendix I.

Department of Commerce Financial Assistance Awards Process



PURPOSE AND SCOPE

This audit was conducted as part of a comprehensive review of the Department of Commerce's discretionary funding programs initiated at the request of the Chairman of the Senate Commerce, Science, and Transportation Committee. The Chairman requested that the Inspectors General of the Departments of Commerce and Transportation and the National Science Foundation review the discretionary funding programs of their respective agencies to assess the manner in which discretionary funding decisions are made. More specifically, the Chairman requested that each IG review and report on the criteria developed, either statutorily or administratively, to guide agency officials in making discretionary spending decisions, and on the extent to which the criteria are appropriately applied.

We are conducting our Department-wide review in two phases: a survey phase and an individual program audit phase. During the survey phase, we identified and examined the body of laws, regulations, and other guidance applicable to the administration of federal financial assistance programs. We also examined the authorizing legislation, provided by Department officials, for each Commerce financial assistance program and classified each program as either a "full discretion" program or a "limited discretion" program, based on the extent to which the legislation limits the agency's authority to independently determine the recipients and funding levels of the awards made under the program. Finally, we examined the fiscal year 1997 appropriations legislation to identify legislatively mandated awards and reviewed accompanying conference and committee reports to identify projects recommended for funding. No legislatively mandated awards were found.

During the second phase of our review, we are conducting individual audits of the award solicitation, review, and selection processes of each program we have classified as a "full discretion" program, including the Unallied Management Projects Program. We are evaluating the adequacy of each program's established award procedures and criteria for evaluating individual applications. For those programs with procedures deemed to be adequate, we are ascertaining whether they were followed in making awards in fiscal year 1997. For those programs with procedures considered to be inadequate or lacking, we are reviewing how the fiscal year 1997 award decisions were made. Finally, we are examining the legislatively mandated projects identified for each program and determining their significance and impact on fiscal year 1997 award decisions. We plan to issue individual reports, with any appropriate recommendations, on each program, followed by a capping report summarizing the results of the individual audits and providing recommendations for the Department and/or its bureaus.

On July 21, 1998, the Acting Inspector General and the Chief Financial Officer and Assistant Secretary for Administration testified before the Senate Commerce, Science, and Transportation Committee on the Department's discretionary funding programs. The Acting IG reported on the survey phase of the OIG review, and discussed some of the preliminary observations from the individual program audits.

This performance audit focused on all awards made during fiscal year 1997 under the Unallied Management Projects Program. Specifically, we:

- Reviewed the program authorization and other information published in the CFDA and provided by NOAA's Office of Legislative Affairs to identify criteria for funding decisions.
- Reviewed policies and procedures for soliciting, reviewing and selecting applications for funding (see Appendix I for flowchart of process). We also reviewed NOAA's *Grants and Cooperative Agreements Manual* as it applied to the solicitation, review, and selection process and assessed whether it was adequate and in accordance with DAO 203-26 *Department of Commerce Grants Administration*, and Office of Federal Assistance Financial Assistance Notice No. 17, *Department of Commerce Guidelines for the Preparation of Federal Register Notices Announcing the Availability of Financial Assistance Funds -- Requests for Applications*.
- Compared NOAA/NMFS procedures with its practices to determine if the process contained adequate internal controls to provide for competitive, merit-based awards.
- Examined pertinent documents in individual program award files to determine if Departmental and NOAA policies and procedures were followed.
- Interviewed NOAA/NMFS program office officials concerning NOAA/NMFS's solicitation, review, and selection procedures.
- Examined fiscal year 1997 appropriations legislation to identify legislatively mandated projects and the accompanying committee and conference reports to identify projects recommended for funding under this program.

We did not rely on computer-based data supplied by NOAA and OEAM as a basis for our audit findings and recommendations. We therefore conducted neither tests of the reliability of the data, nor of the controls over the computer-based system that produced the data.

We performed the audit fieldwork at Seattle, Washington and NOAA's Grants Management Division in Silver Spring, Maryland, from May to June 1998. We conducted the audit in accordance with generally accepted government auditing standards, and 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 RECOMMENDATIONS

We found that NMFS's criteria, procedures, and practices for the solicitation, review, and selection of the Unallied Management Projects Program awards did not comply with departmental and NOAA requirements and were not adequate to guide agency officials in making merit-based discretionary funding decisions. NMFS did not administer the program as a competition-based financial assistance program. NMFS has not developed and published merit-based evaluation criteria against which applications for funding could be reviewed, did not annually announce the program in the *Federal Register*, and made all awards under this program noncompetitively in response to unsolicited proposals.

In addition, we reviewed the noncompetitive justifications for the eight awards made in fiscal year 1997 and found four of them to be inadequate because NMFS did not provide sufficient support for the unique applicant capabilities cited and/or did not correctly demonstrate that the awards were legislatively mandated. NMFS's practices do not comply with Department and NOAA requirements to seek maximum program competition. We also found that reviews performed by the NOAA grants office of the proposed awards did not question NMFS's lack of competitive award procedures or the validity of the noncompetitive award justifications. As a result, NOAA/NMFS cannot provide reasonable assurance that noncompetitive awards made under the program are merit-based and represent the most effective means of achieving program objectives

I. Unallied Management Projects Program Was Not Administered As a Competition-Based Financial Assistance Program

NMFS's Unallied Management Projects Program was not administered as a competition-based financial assistance program, as encouraged by federal laws and regulations and mandated by Department of Commerce policies and procedures. All of the awards made under the program were made noncompetitively in response to unsolicited proposals. We examined the written justifications prepared for the eight noncompetitive awards made in fiscal year 1997 and found four to be inadequate. Competition for the remaining four awards was not appropriate because NMFS provided evidence of the legislative authorities supporting NMFS's decision to make awards to specific applicants. Specifically, we found that NMFS:

- Did not comply with the Department's requirement that merit-based evaluation criteria against which program applications for financial assistance could be reviewed, be developed and published.
- Did not comply with the Department's requirement that a notice be placed in the *Federal Register*, at least annually, announcing the availability of funds and soliciting award applications, and specifying the criteria and the process to be used in reviewing and selecting applications for funding.

- Did not comply with the Department's requirements that (1) all financial assistance awards be made on the basis of a competitive review process, unless a special waiver is obtained, and (2) the competitive review process meet minimum standards established by the Department.

As a result of these deficiencies, NMFS cannot provide reasonable assurance that noncompetitive awards made under the program are merit-based and represent the most effective means of achieving program objectives.

A. NMFS did not develop and publish merit-based evaluation criteria

The NOAA *Grants and Cooperative Agreements Policy Manual*, Chapter 1, Section A.4., requires that applications for financial assistance be reviewed by a panel of independent reviewers in accordance with published criteria. The manual states that the criteria used for evaluating applications must be published as part of the request for applications and prohibits scoring against unpublished criteria. However, NMFS did not develop and publish merit-based evaluation criteria against which competing program applications could be reviewed.

In particular, the agency did not place a notice in the *Federal Register* announcing the availability of funding, soliciting competing applications for funding, and specifying the criteria and the process to be used in reviewing and selecting applications for funding under the Unallied Management Projects Program for fiscal year 1997. Also, the NMFS Unallied Management Projects Program summary, published in the *Catalog of Federal Domestic Assistance*, did not cite program-specific evaluation criteria. The summary simply states that proposals will be initially evaluated by the pertinent NMFS Office, and are subject to review for technical merit, soundness of design, competency of the applicant to perform the proposed work, potential contribution of the project to national or regional goals, and appropriateness and reasonableness of proposed costs. In order to be adequate to facilitate a merit-based evaluation process, criteria used to evaluate applications for federal financial assistance must not be general in nature, but as specific as possible with weights assigned to each criterion.

B. Solicitation and review process did not comply with competitive requirements

Department Administrative Order 203-26, Section 4.02.b., requires Department bureaus to publish an annual notice in the *Federal Register* for each financial assistance program announcing the availability of funding, soliciting applications for funding, and specifying the criteria and the process to be used in reviewing and selecting applications for funding. Section 4.02.f. also encourage the bureaus to publish notices in other widely distributed publications, such as the *Commerce Business Daily*, to ensure widespread notice of funding opportunities. Bureaus can also prepare and send requests for proposals directly to organizations known or believed to be qualified. Also, NOAA's *Grants and Cooperative Agreements Policy Manual*, Chapter 1, Section A.4., states that it is NOAA's policy to seek maximum competition for its

discretionary grants and cooperative agreements. To accomplish this, the manual states that when appropriate, program offices should publish requests for applications in the *Federal Register* or otherwise solicit applications from all eligible organizations.

In addition, Department Administrative Order 203-26, Section 4.02.a., requires the establishment of selection criteria for use in evaluating applications submitted for new awards. Section 4.02.h. requires awards be made on the basis of competitive review, and Section 4.02.h.1.(e) requires the use of the selection criteria in evaluating individual applications. Unless a program receives a waiver of competitive review requirements, awards under the program are generally required to be made on the basis of competitive review.

However, despite the Department and NOAA policies, NMFS did not announce the Unallied Management Projects Program in the *Federal Register* or *Commerce Business Daily*, and did not establish merit-based criteria for evaluating proposals. By not announcing the program and establishing award selection criteria as required, NMFS did not comply with Department as well as its own policies and missed an important opportunity to seek potential program competition. In addition, NMFS may have encouraged the use of noncompetitive awards by not developing selection criteria for use in making awards for program needs when the anticipated awards cannot be properly exempted from competitive review requirements.

Although NMFS did not announce the Unallied Management Projects Program in the *Federal Register*, it still could have placed preaward notices in the *Federal Register* announcing its intent to fund specific program projects and requesting proposals or inviting inquiries from interested organizations. However, NMFS did not publish individual preaward notices in the *Federal Register* for any of the eight awards it funded on the basis of noncompetitive justifications. In our opinion, publishing preaward notices would have provided (1) the public with an opportunity to comment on proposed projects, (2) other qualified recipients an opportunity to submit proposals for funding, and (3) NMFS officials with independent support for determining whether a recipient is uniquely qualified to perform proposed projects.

C. Four noncompetitive awards under the program lacked adequate justification

In fiscal year 1997, NOAA/NMFS awarded three cooperative agreements, one continuation amendment to an existing cooperative agreement, three grants, and one amendment to a new grant under the Unallied Management Projects Program, totaling \$1,217,050. These awards were made to a state, a marine science institute, a marine laboratory, a fishermen's association, and a corporation. A list of the awards is provided as Appendix II. The awards were made noncompetitively to organizations that had submitted unsolicited proposals for NMFS funding consideration. Also, we noted that NMFS made five of the eight awards on the basis of language contained in the fiscal year 1997 Senate appropriations conference report. However, none of the five awards were specifically contained in the fiscal year 1997 Appropriations Act and were, therefore, not legislatively mandated. We understand that NMFS would want to consider

conference report language as it is an expression of congressional interest and intent. However, NMFS was not required to make the awards without any consideration of competition or other merit-based criteria. We also concluded that NMFS had no basis for not competing four of the eight awards. A synopsis of all eight awards is provided in Appendix III.

We examined the written justifications for the noncompetitive awards and noted that NMFS justified all of the awards on the basis that each proposed recipient possessed unique capabilities that made it either the best or the only organization qualified to do the work. However, none of the noncompetitive justifications cited general market surveys performed to determine if other institutions were interested or capable of performing similar work.

Four awards, totaling \$592,050, had inadequate noncompetitive justifications because NMFS either did not provide sufficient support for the unique applicant capabilities cited or did not correctly demonstrate that the awards were legislatively mandated. Specifically, the awards included \$285,000 to the Bering Sea Fisherman's Association, \$150,000 to the Mote Marine Laboratory, \$100,000 to the New England Aquarium Corporation, and \$57,050 to the Virginia Institute of Marine Science.

Competition for the remaining four awards was not appropriate because NMFS provided evidence of the legislative authority supporting NMFS's decision to make awards to specific applicants. For two awards to the State of Alaska, competition was not appropriate because NMFS provided evidence that it was providing funds to the State as a result of the Department of Commerce transferring federal rockfish and crab fishery management responsibilities to the State of Alaska under authority of the Magnuson Fishery Conservation and Management Act. For two awards to the Virginia Institute of Marine Science, competition was not appropriate because NMFS provided evidence of the legislative authority authorizing the Secretary of Commerce to pay expenses of the Advisory Committee to the International Convention for the Conservation of Atlantic Tuna.

Unsolicited proposals are applications for financial assistance that are not submitted in response to a formal solicitation notice published in the *Federal Register*. Because unsolicited proposals are a means by which unique or innovative ideas can be made available to accomplish specific projects, scientific organizations like NOAA and NMFS encourage their submission. DAO 203-26, Section 4.02.i., allows the receipt of unsolicited proposals, but states that no unsolicited proposal may be funded outside the competitive process if that proposal falls within the program goals of a competitive program. In addition, the receipt of a technically acceptable unsolicited proposal does not, in itself, justify a noncompetitive award. DAO 203-26, Section 4.02.i., also states that the decision to fund an unsolicited proposal must be fully justified and included in the official grant file.

While NMFS wrote noncompetitive justifications for the eight awards, the justifications do not cite any factual basis for the assertions that four applicants possessed unique capabilities. Since NMFS also did not comply with the Department's requirement that a notice be published in the *Federal Register* soliciting applications for fiscal year 1997 awards under the Unallied

Management Projects Program, it lacked support for its claims that the organizations that submitted the unsolicited proposals were the only ones that could perform the work. Instead, the justifications contain statements by program office officials that are based on knowledge accumulated through their past working relationships with the recipients. Without documented support, a belief that an organization possesses unique qualifications does not justify making a noncompetitive award because there may be other qualified applicants unknown to program officials. Such a belief should still be tested through a competitive review process that includes widespread solicitation of eligible applicants, through announcement in the *Federal Register* and other means.

We believe the justification for a noncompetitive award should include a documented market search to verify or confirm that there is only one source. The market search should include, at a minimum, a preaward notice in the *Federal Register* stating that the agency expects to make a noncompetitive award and inviting other interested and qualified parties to inquire. Such a practice would be similar to the requirements in the *Federal Acquisition Regulation* (FAR) for contracting, (see 48 FAR, Part 6.302). In addition, the review process for a noncompetitive award should ensure that the proposal meets program goals. NMFS did not publish individual preaward notices for the four awards.

II. NOAA Reviews Of Proposed NMFS Awards Were Not Effective

Reviews performed by the NOAA grants office of the eight proposed noncompetitive awards did not question NMFS's lack of competitive award procedures or the validity of the noncompetitive award justifications. The NMFS's Office of Sustainable Fisheries and NMFS regional offices forwarded, as required, their justifications and related documents for the proposed noncompetitive awards to the grants office for review and approval. However, the grants office's review of the proposed awards did not ensure the NMFS program office's compliance with applicable Department and NOAA competitive requirements.

DAO 203-26, Section 4.01., requires that each organization unit establish a central liaison to ensure that its programs comply with federal, departmental, and organization grant requirements and to review grant documents for compliance. The NOAA Office of Finance and Administration, which includes the NOAA Grants Management Division, fulfills that responsibility for NOAA.

The grant files do not indicate whether the Grants Management Division questioned why the NMFS program office did not prepare and submit the required annual *Federal Register* program announcement. The files also do not show whether the grants office determined if the noncompetitive justifications were factually based or if the program office had made any attempt to identify other qualified sources before submitting the noncompetitive awards. Grants Management Division personnel stated that they relied on and accepted as valid the technical descriptions of perceived unique capabilities presented in the program office's award justifications. They further stated that while they reviewed the justifications to determine if they addressed one or more of the acceptable reasons for a noncompetitive award, they did not verify

the information because the office has no authority over the offices submitting the justifications, they can not make field trips to verify information, and scientists involved would not consider them qualified to make the type of scientific determinations included in the noncompetitive justifications. Therefore, we believe the reviews were not effective in ensuring the program office's compliance with Department and NOAA policies on competition.

III. Conclusions

We concluded that NMFS's fiscal year 1997 award process under the Unallied Management Projects Program was not adequate to guide officials in making merit-based discretionary funding decisions because NMFS did not develop and publish merit-based evaluation criteria and the noncompetitive awards of two cooperative agreements and two grants did not comply with Department and NOAA policies of seeking maximum competition. Also, NMFS's written justifications for the awards did not cite any factual basis for its claims that the four applicants had unique capabilities and did not correctly demonstrate that the awards were legislatively mandated. Despite these facts, the NOAA grants office did not question the awards. By not following competitive procedures, NOAA/NMFS could make questionable or even inappropriate noncompetitive program awards in instances where competition is available. In addition, by not seeking competition, NMFS misses the opportunity to consider proposals containing the ideas, designs, technology, or services that other qualified organizations can produce and thus lose an opportunity to increase program quality.

NOAA Response

In its response to the draft report, NOAA stated that the agency agrees that more awards should be granted competitively for all discretionary funding programs and that a rigorous solicitation process should be used. NOAA also stated that the agency is continuing to look at its current processes and will provide more specific comments and details as part of the audit action plan submitted in response to the final report.

OIG Comments

NOAA's concurrence that more awards should be competitively awarded is a positive reaction to this report. We look forward to the Unallied Management Projects Program moving in that direction. We have modified our recommendations in response to discussions with NOAA officials regarding the draft report to clarify that we did not intend to suggest that *all* awards must be made competitively. We understand that an unsolicited research proposal may very well be justified for noncompetitive funding on an exception basis. However, we are emphasizing that an entire program should not be administered on a noncompetitive basis, as this one is, unless mandated by law.

IV. Recommendations

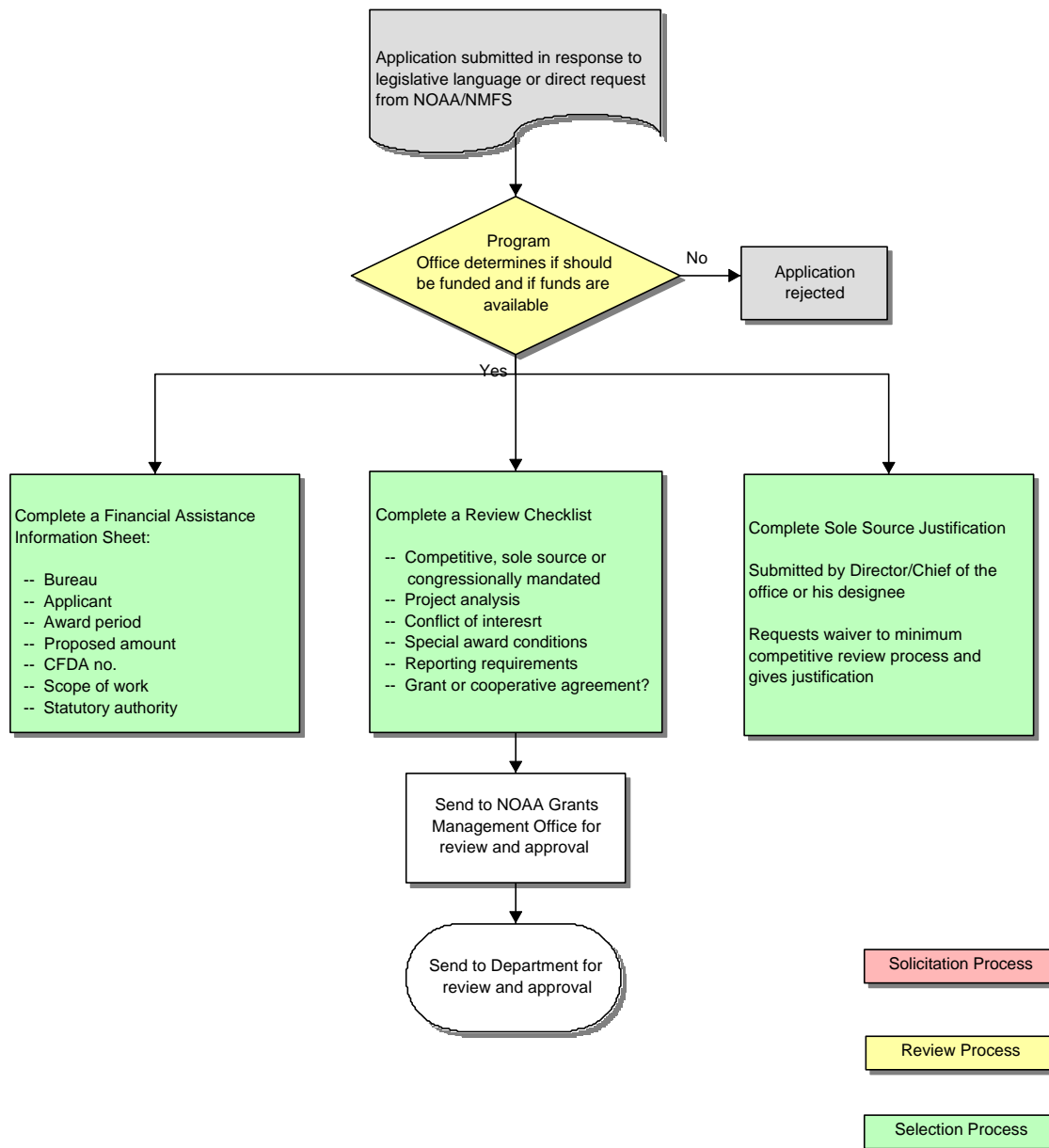
We recommend that the Assistant Administrator for Fisheries ensure that financial assistance awards under the Unallied Management Projects Program are made through a competitive

merit-based process, unless otherwise mandated by law or adequately justified, and that the award process complies with Department policies and procedures and includes the following four elements:

- (1) Widespread solicitation of eligible applications and disclosure of essential application and program information in written solicitations;
- (2) Independent application reviews that consistently apply written program evaluation criteria.
- (3) Written justifications for award decisions that deviate from recommendations made by application reviewers; and
- (4) Adequate written justifications for noncompetitive awards which document appropriate market search efforts to validate the determination that there is only one source for the anticipated award. The market search should include, at a minimum, a preaward notice in the *Federal Register* stating that the agency expects to make a noncompetitive award and inviting other qualified parties to inquire.

We also recommend that the Chief Financial Officer/Chief Administrative Officer, as the Director of the Office of Finance and Administration, which includes the Grants Management Division, require that grants officer reviews of proposed noncompetitive awards include procedures designed to objectively determine compliance with Department and NOAA competitive requirements.

NOAA/NMFS Procedures for Review and Selection of Awards



UNALLIED MANAGEMENT PROJECTS PROGRAM

Awards and Amendments for Fiscal Year 1997

<i>Number</i>	<i>Type</i>	<i>Recipient</i>	<i>Type of Work</i>	<i>Amount</i>
NA77FM0209	New Cooperative Agreement	State of Alaska	Rockfish research	\$ 237,500
NA77FM0281	New Cooperative Agreement	Mote Marine Laboratory	Shark Research	150,000
NA77FM0533	New Cooperative Agreement	New England Aquarium Corporation	Bluefin Tuna Research	100,000
NA67FM0212	Amendment to Cooperative Agreement	State of Alaska	King & Tanner Crab Research	237,500
NA76FM0565	New Grant	Bering Sea Fishermen's Association	Community Development Quota Support	285,000
NA76FM0155	New Grant	Virginia Institute of Marine Science	Atlantic Tuna Advisory Committee Support	125,000
NA76FM0270	New Grant	Virginia Institute of Marine Science	Marlin Research	57,050
NA76FM0155 Amendment 1	Amendment to New Grant	Virginia Institute of Marine Science	Atlantic Tuna Advisory Committee Support	25,000
Total				\$1,217,050

UNALLIED MANAGEMENT PROGRAM

Synopsis of Awards and Amendments for Fiscal Year 1997

I. Awards with Inadequate Noncompetitive Justifications

NA76FM0565 - Bering Sea Fisherman's Association

The fiscal year 1997 appropriations conference report states that "In addition, \$300,000 shall be made available to the Bering Sea Fishermen's Association for community development quota implementation work in Western Alaska." Based on the conference report language NMFS allocated funds for this purpose and requested that the Bering Sea Fishermen's Association submit a project proposal to NMFS for funding consideration. NMFS received a proposal in the amount of \$285,000. NOAA/NMFS awarded a \$285,000 grant (No. NA76FM0565) to the Bering Sea Fishermen's Association in September 1997 using funds contained in its fiscal year 1997 appropriations. The grant did not require a matching contribution. The award's purpose was to provide independent program guidance and administrative resources support to communities, corporations, and agencies involved in the Community Development Quota program in Alaska. The proposed work is a continuation of the provision of Community Development Quota administrative services to rural western Alaska initiated in prior years. The project period was limited to one year.

The written noncompetitive justification states that the Bering Sea Fishermen's Association has unique qualifications to address the proposed award, and the non-discretionary funding of this program is directed by Congress, and, as such, is deemed prudent and necessary to fulfill the Federal Government's responsibility with regard to the administration of the CDQ program in Alaska.

The noncompetitive justification was inadequate because the project is not contained in the Fiscal Year 1997 Appropriation Act, and, therefore, is not a legislatively mandated earmark. Also, NMFS did not provide evidence, such as the results of a published solicitation, that the Bering Sea Fishermen's Association was the only entity capable of performing the award.

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NA77FM0281 - Mote Marine Laboratory

NMFS received an unsolicited proposal from the Mote Marine Laboratory in the amount of \$150,000. NOAA/NMFS awarded a \$150,000 cooperative agreement (No. NA77FM0281) to the laboratory in July 1997 using funds contained in its fiscal year 1997 appropriations. The cooperative agreement required a \$16,667 matching contribution, bringing the total project budget to \$166,667. The award's purpose was to tag juvenile sharks along the Gulf of Mexico to determine primary nursery areas, recruitment, and movements. The project period was limited to one year.

The written noncompetitive justification states that the laboratory has unique qualifications to complete this research because of staff expertise and experience; no other entity has the capability to continue this research; the laboratory is the only source available to provide required biological information; and the laboratory's expertise in shark research was previously recognized by funding through special Congressional authorization in 1992 and 1994.

The noncompetitive justification was inadequate because NMFS did not provide evidence, such as the results of a published solicitation, that the Mote Marine Laboratory was the only entity capable of performing the award.

NA77FM0533 - New England Aquarium Corporation

NMFS received an unsolicited proposal from the New England Aquarium Corporation in the amount of \$100,000. NOAA/NMFS awarded a \$100,000 cooperative agreement (No. NA77FM0533) to the aquarium in September 1997 using funds provided in its fiscal year 1997 appropriations. The cooperative agreement did not require a matching contribution. The award's purpose was to fund a bluefin tuna aerial survey and hydro-acoustic tracking study to continue research on the distribution, size, and biomass of juvenile bluefin tuna schools off the coast of New York through Virginia. The project period was limited to one year.

The written noncompetitive justification states that the New England Aquarium is uniquely qualified to complete this research; personnel have conducted other aerial surveys of bluefin tuna; the aquarium is a recognized leader in marine science and education; and the cost will be significantly lower than if performed by the federal government.

The noncompetitive justification was inadequate because NMFS did not provide evidence, such as the results of a published solicitation, that the New England Aquarium was the only entity capable of performing the award.

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NA76FM0270 - Virginia Institute of Marine Science

NMFS received an unsolicited proposal from the Virginia Institute of Marine Science in the amount of \$57,050. NOAA/NMFS awarded a \$57,050 grant (No. NA76FM0270) to the institute in May 1997 using funds provided in its fiscal year 1997 appropriations. The grant agreement required a \$12,204 matching contribution, bringing the total project budget to \$69,254. The award's purpose was to investigate the genetics of white and striped marlin to determine if a genetic character exists which can discriminate between the two species. The project period was limited to one year.

The written noncompetitive justification states that the previous substantial investment of the institute, its specialized facilities and database, and the skills of the scientists involved justifies a noncompetitive award.

The noncompetitive justification was inadequate because NMFS did not provide evidence, such as the results of a published solicitation, that the Virginia Institute of Marine Science was the only entity capable of performing the award.

II. Awards with Adequate Noncompetitive Justifications

NA77FM0209 - State of Alaska

The fiscal year 1997 appropriations conference report states that "the Committee directs that \$600,000 of the total provided be used for rockfish research, of which \$250,000 shall be provided to the Alaska Department of Fish and Game." Based on the conference report language NMFS allocated funds for this project and requested that the State of Alaska submit a project proposal for funding consideration. NMFS received a proposal in the amount of \$237,500. NOAA/NMFS awarded a \$237,500 cooperative agreement (No. NA77FM0209) to the Alaska Department of Fish and Game in July 1997. The cooperative agreement did not require a matching contribution. The award's purpose was to fund continuing research to gain better stock assessment of the biomass of Demersal Shelf rockfish in order to determine the abundance of rockfish which is harvested commercially, and thus improve the management of these species, and reduce the chances of over-harvest. The award was provided to the State of Alaska to carry out federal fishery management responsibilities transferred to the State under authority of the Magnuson Fishery Conservation and Management Act. The project period was limited to one year.

The written noncompetitive justification states that each year since 1994, Congress has appropriated funds to the Alaska Department of Fish and Game to continue research on the Demersal Shelf Rockfish in the Eastern Gulf of Alaska, immediate responsibility for management of the Demersal Shelf Rockfish was given to the State of Alaska under the

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North Pacific Fishery Management Council's Fishery Management Plan for Groundfish of the Gulf of Alaska, the State of Alaska has collected information and has both equipment and data at its disposal to continue the research, Congress has earmarked funds to the state for the support of these Federally delegated management activities, and there is no other entity or organization designated or capable of being designated for this role.

The project is not contained in the fiscal year 1997 Appropriation Act, and, therefore, is not a legislatively mandated earmark. However, competition was not appropriate because NMFS provided evidence that the Department of Commerce transferred federal rockfish fishery management responsibilities to the State of Alaska under authority of the Magnuson Fishery Conservation and Management Act.

NA67FM0212 - State of Alaska

The fiscal year 1997 appropriations conference report states that "the Committee recommends \$5,400,000 for Alaska groundfish monitoring, of which \$1,100,000 is for crab management and research...the remaining \$850,000 shall be used for a crab research program to be jointly developed by the State of Alaska and NMFS." Based on the conference report language NMFS allocated funds for this project and requested that the State of Alaska submit a project proposal for funding consideration. NMFS received a proposal in the amount of \$237,500. NOAA/NMFS awarded a \$237,500 amendment to an existing cooperative agreement (No. NA67FM0212) to the Alaska Department of Fish and Game in July 1997. The grant did not require a matching contribution. The award's purpose was to provide funding for research relevant to management strategies for King and Tanner crab fisheries in the waters off Alaska. The award was provided to the State of Alaska to carry out federal fishery management responsibilities transferred to the State under authority of the Magnuson Fishery Conservation and Management Act. The project period was limited to one year.

The written noncompetitive justification states that each year since 1993, Congress has appropriated funds to the Alaska Department of Fish and Game to continue research on crab stock, the State of Alaska has collected information and has both the equipment and data at its disposal to continue the research, the North Pacific Fishery Management Council has recommended, and the Secretary of Commerce has concurred, that management of the King and Tanner Crab fisheries in the waters of the Bering Sea be delegated to the State of Alaska, Congress has earmarked funds to the state for the support of these Federally delegated management activities, and there is no other entity or organization designated or capable of being designated for this role.

The project is not contained in the Fiscal Year 1997 Appropriation Act, and, therefore, is not a legislatively mandated earmark. However, competition was not appropriate because NMFS provided evidence that the Department of Commerce transferred federal

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King and Tanner Crab fishery management responsibilities to the State of Alaska under authority of the Magnuson Fishery Conservation and Management Act.

NA76FM0155 - Virginia Institute of Marine Science

NMFS received an unsolicited proposal from the Virginia Institute of Marine Science in the amount of \$125,000. NOAA/NMFS awarded a \$125,000 grant (No. NA76FM0155) to the institute in April 1997 using fiscal year 1997 appropriations that NMFS allocated for this award based on language contained in the fiscal year 1997 appropriations conference report and Senate committee report. The conference report adopted funding recommendations in the Senate committee report including "\$150,000 provided for operations of the Advisory Committee to the International Convention for the Conservation of Atlantic Tuna." The Senate committee report states that "\$150,000 is provided for operations of the Advisory Committee to the International Convention for the Conservation of Atlantic Tuna." The Atlantic Tunas Convention Act authorizes the Secretary of Commerce to pay expenses of the advisory committee. The grant did not require a matching contribution. The award's purpose was to provide support for an advisory committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tuna. The project period was limited to one year.

The written noncompetitive justification states that the chairperson of the advisory committee is elected by the Committee and NMFS has no control over the election process; therefore, the administration of the grant to support Committee activities depends upon the professional position of the Chairperson. In this case, the Chairperson is a researcher at the Virginia Institute of Marine Science. Therefore, upon election of the Chairperson, the VIMS becomes the logical responsible party to receive the grant and to administer the funds for Advisory Committee activities.

The project is not contained in the Fiscal Year 1997 Appropriation Act, and, therefore, is not a legislatively mandated earmark. However, competition was not appropriate because NMFS provided evidence that the Secretary of Commerce was authorized to pay expenses of the Advisory Committee to the International Convention for the Conservation of Atlantic Tuna.

NA76FM0155, Amendment 1 - Virginia Institute of Marine Science

NMFS received an unsolicited proposal from the Virginia Institute of Marine Science in the amount of \$25,000. NOAA/NMFS awarded a \$25,000 amendment to an existing grant (No. NA76FM0155) to the institute in September 1997 using fiscal year 1997 appropriations that NMFS allocated for this award based on language contained in the fiscal year 1997 appropriations conference report and Senate committee report. The conference report adopted funding recommendations in the Senate committee report

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including “\$150,000 provided for operations of the Advisory Committee to the International Convention for the Conservation of Atlantic Tuna.” The Senate committee report states that “\$150,000 is provided for operations of the Advisory Committee to the International Convention for the Conservation of Atlantic Tuna.” The Atlantic Tunas Convention Act authorizes the Secretary of Commerce to pay expenses of the advisory committee. The grant did not require a matching contribution. The grant did not require a matching contribution. The award’s purpose was to add supplemental funding for the project titled “Administrative and Travel Management Support for International Commission for the Conservation of Atlantic Tuna.” The project period was limited to one year.

The written noncompetitive justification states that the chairperson of the Advisory Committee is elected by the Committee and NMFS has no control over the election process; therefore, the administration of the grant to support Committee activities depends upon the professional position of the Chairperson. In this case, the Chairperson is a researcher at the Virginia Institute of Marine Science. Therefore, upon election of the Chairperson, the VIMS becomes the logical responsible party to receive the grant and to administer the funds for Advisory Committee activities.

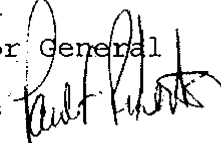
The project is not contained in the Fiscal Year 1997 Appropriation Act, and, therefore, is not a legislatively mandated earmark. However, competition was not appropriate because NMFS provided evidence that the Secretary of Commerce was authorized to pay expenses of the Advisory Committee to the International Convention for the Conservation of Atlantic Tuna.



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

MAR 25 1999

MEMORANDUM FOR: Johnnie Frazier
Acting Inspector General

FROM: Paul F. Roberts 

SUBJECT: Office of Inspector General Draft Reports -
NOAA's Discretionary Funding Programs

Thank you for the opportunity to review and comment on the draft audits reports prepared by the Office of the Inspector General relating to NOAA's discretionary funding programs.

NOAA agrees that more awards should be granted competitively for all discretionary funding programs and that a rigorous solicitation process should be used. NOAA is committed to ensuring an awards program that is consistent with Department of Commerce policies and responsive to our research needs. We will continue to look at our current processes and I will provide more specific comments and details as part of the audit action plans submitted in response to the final reports.

