

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



*NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION*

*NOAA Corps Has Improperly
Handled Confirmation of Officer
Appointments and Promotions*

Final Inspection Report No. IPE-16138/February 2004

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UNITED STATES DEPARTMENT OF COMMERCE
The Inspector General
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FROM:

Johnnie E. Frazier

SUBJECT:

Final Report: *The NOAA Corps Has Improperly Handled
Confirmation of Officer Appointments and Promotions*
(IPE-16138)

As a follow-up to our December 30, 2003, draft report, attached is the final report detailing the results of our review of how the Commissioned Officer Corps of the National Oceanic and Atmospheric Administration (NOAA Corps) has handled Senate confirmations and the other approvals for officer appointments and promotions, as required by Public Law 107-372 and prior statutes. A copy of your response to our draft report is included in its entirety as Appendix A of the report.

We appreciate NOAA's and the Department's concurrence with all but one of our recommendations and the concrete steps taken thus far or planned to implement the recommendations. Regarding the one recommendation with which you did not agree, we concur that this recommendation is not needed and have removed it from the report. Given the serious nature of the issues raised in this report and the continuing Congressional interest in this issue, we ask that you provide an action plan, within 60 calendar days, addressing the status of your planned actions.

We thank the personnel in NOAA, the Office of General Counsel, and the Office of the Secretary for the assistance and courtesies extended to us during our review. If you have any questions or comments about our report, please feel free to contact me on (202) 482-4661, or Jill Gross, Assistant Inspector General for Inspections and Program Evaluations, at (202) 482-2754.

Attachment



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EXECUTIVE SUMMARY

The NOAA Corps is the smallest of the seven uniformed services of the United States and consists of approximately 260 commissioned officers, who are led by a Rear Admiral. Established in 1970, the Corps serves all five NOAA agencies (the National Weather Service, National Marine Fisheries Service, Office of Oceanic and Atmospheric Research, National Environmental Satellite, Data, and Information Service, and National Ocean Service), as well as various other federal agencies.

As with other uniformed services, the NOAA Corps is required by statute to obtain Senate confirmation¹ for its appointments and promotions. However, it came to light in early 2003 that the NOAA Corps had been appointing and promoting officers to permanent positions before and, in some cases without ever receiving the requisite approvals. The NOAA General Counsel issued a report on May 1, 2003, that examined the process of appointments and promotions of Corps officers from the mid-1990s to 2003. In addition, the Department's Office of General Counsel (OGC) developed a list of NOAA Corps officer appointments and promotions that were lacking the required Senate confirmation for the period of October 1, 1999 through February 2003. Subsequent to the work done by NOAA and OGC, the Senate Committee on Commerce, Science, and Transportation and the Senate Subcommittee on Oceans, Fisheries, and Coast Guard asked the Office of Inspector General to conduct an independent review of the NOAA Corps' confirmation process. The House Committee on Resources made a similar request. We began our review in June 2003 and completed our fieldwork in September 2003.

In summary, our review revealed a culture of management indifference toward statutory and procedural detail at the NOAA Corps which dated back at least to the mid-1980s. Our specific findings are as follows:

The NOAA Corps Has Consistently Failed to Follow Requirements for Senate Confirmation for Appointments and Promotions Since at Least 1986. As shown at the top of the next page, 137 of 435 original appointments (31 percent) to the NOAA Corps between 1986 and the present were never confirmed by the Senate. In addition, of the 270 ensigns that were eventually confirmed by the Senate, we found that 65 (24 percent) of the appointments were not confirmed by the close of the next session of Congress. All of these officers remained on their temporary appointments, despite the fact that the appointments should have terminated in accordance with applicable law.

¹ Throughout the report, when a reference is made to "Senate confirmation", it refers to the Presidential nomination and Senate confirmation process.

**Original Officer Appointments Not Properly Confirmed
by the U.S. Senate (1986 to Present)²**

	Number	Percent (%)
Never Confirmed	137 of 435 Appointments	31%
Ensign Appointments Confirmed After Expiration of Timeframe	65 of 270 Appointments	24%

Concerning promotions, the Corps did not obtain proper Senate confirmation for 705 of 938 promotions (75 percent) made between 1986 and the present. Of the 705 promotions, 454 were confirmed after the promotion to a permanent position had already taken place, and 251 were never confirmed at all.

Officer Promotions Not Properly Confirmed by the U.S. Senate (1986 to Present)

	Number	Percent (%)
Never Confirmed	251	27%
Promoted before Confirmation	454	48%
Total Improperly Handled	705	75% of 938 Total Promotions

In reviewing the confirmation lists, we found no discernable pattern, schedule, or routine regarding the Corps' timetable for sending forward lists of nominees for confirmation—sometimes it was timely, many times it was not. Several factors contributed to the Corps' lack of compliance with statutory requirements. These include: (1) responsible Corps officials apparently viewed the confirmation process as more or less pro forma and did not take it seriously; (2) no internal controls were in place to prevent unconfirmed candidates from being appointed or promoted into permanent positions and no operations manual existed to help ensure compliance with the statute; and (3) neither NOAA management nor the Department provided the necessary oversight to ensure that the Corps complied with statutory requirements.

We are aware that some corrective actions are already in process. For instance, OGC has been working closely with the Corps to revise its internal regulations to be consistent with statutory requirements. The two offices are also cooperating on the development of an operations manual, key parts of which they hope to complete in March 2004. We understand that the Department's Office of Human Resources Management (OHRM) will also more actively monitor NOAA Corps' human resource function, and will review and approve future personnel policies and procedures (see page 6).

² Includes interservice transfers and reappointments of former NOAA Corps officers.

NOAA Corps Exceeded its Authority for Reappointing Former Corps Officers and Accepting Interservice Transfers. We found that the Corps exceeded its authority when it (1) reinstated former Corps officers at grades higher than is permitted, and (2) accepted officer transfers from other U.S. uniform services (“interservice transfers”) without the required approval from the President and Secretarial action (see page 12).

On page 13, we offer recommendations to address our concerns.



The Under Secretary for Oceans and Atmosphere, the General Counsel, and the Chief Financial Officer and Assistant Secretary for Administration concurred with all but one of the recommendations made in our draft report. Specifically, they did not agree with our recommendation to add 2 unconfirmed appointments and 15 unconfirmed promotions of officers still in active duty status to the list of appointments and confirmations requiring confirmation that had already been prepared by the Department. Based on an analysis of the legislation pending in the Congress to ratify the prior actions of Corps officers who had problematic appointments and promotions, OGC believes that the 17 officers do not need to be added to the list because they either (1) already have a valid confirmation for a higher grade than the one not confirmed, or (2) they are already on the list to be confirmed at a higher grade than the one we identified as not being confirmed. We concur with this position and have removed the recommendation from the final version of this report.

The Department’s response to our draft report is included as an appendix to this report and outlines specific actions taken or planned to correct the problems identified in our report. We discuss some of these specific actions and the Department’s response to our recommendations on page 14.

BACKGROUND

The NOAA Corps is the smallest of the seven uniformed services of the United States and consists of approximately 260 commissioned officers, who are led by a Rear Admiral. Established in 1970, the Corps traces its roots to the U.S. Coast and Geodetic survey, the oldest scientific agency in the federal government. Corps officers generally operate NOAA's fleet of vessels and aircraft, which are used to conduct research, chart and monitor developments in geodesy, geophysics, metrology, oceanography, meteorology, climatology, marine biology, and marine ecology. The Corps serves all five NOAA agencies (the National Weather Service, National Marine Fisheries Service, Office of Oceanic and Atmospheric Research, National Environmental Satellite, Data, and Information Service, and National Ocean Service), as well as the Department of Defense, U.S. Coast Guard, National Aeronautics and Space Administration, and the Department of State.

Original Appointments: Appointment of officers in the NOAA Corps is currently governed by Public Law 107-372, 33 United States Code §3001 *et seq.*³ The statute provides that temporary appointments in the grade of ensign may be made by the President alone.⁴ However, such temporary appointments terminate at the close of the next regular session of Congress unless they are approved by the President and confirmed by the Senate within that time frame (33 U.S.C. §3029). Depending on when the officer is appointed, the end of the next regular session of Congress could be anywhere from 1 to 2 years away.

The majority of officers begin their Corps careers as ensigns, selected by the Officer Personnel Board (OPB), which meets at least twice a year to consider new candidates (see Appendix B). If statutory requirements are followed, those selected are granted temporary appointments as ensigns by the Secretary of Commerce and undergo basic officer training. In some instances, the OPB may consider recommending an original appointment at a higher grade than ensign, up to lieutenant, for a candidate because of education, work experience, etc. However, any original appointment at a grade higher than ensign requires prior Senate confirmation before it can be conferred, as must reinstatement of former Corps officers. Pursuant to 10 U.S.C. §716, interservice transfers⁵ are handled differently from original appointments, as they do not require Senate confirmation, but do require Presidential approval.

Promotions: In accordance with Public Law 107-372, promotions to all permanent grades shall be made by the President, by and with the advice and consent of the Senate (33 U.S.C. §3026). According to the NOAA Corps' practice, promotions from ensign to lieutenant (junior grade) and

³ Historically, statutory authority governing NOAA Corps appointments and promotions was set forth in several different sections of the U.S. Code. Public Law 107-372, enacted by Congress on December 19, 2002, updated and consolidated the patchwork of existing authorities governing the NOAA Corps. However, no material changes to the basic authorities governing Corps appointments and promotions were made as part of this update and consolidation.

⁴ This authority has been delegated to the Secretary of Commerce under Executive Order No. 11023.

⁵ The NOAA Corps uses interservice transfers to recruit officers from other services to fill highly specialized positions when the need arises.

lieutenant (junior grade) to lieutenant are made noncompetitively—candidates need only meet a set of stipulated qualifications for coursework, physical, moral, dental, time in grade, etc., before they are promoted (NOAA Corps Regulations 04205, E)⁶ (see Appendix C). However, noncompetitive promotions from lieutenant (junior grade) to lieutenant are not permitted by statute—which requires officers to be selected competitively for such promotions by the OPB. Promotions to grades above lieutenant are also competitive—officers are assessed individually against specific criteria, such as performance evaluations, training, and leadership ability, and are then compared against each other (see Appendix D).

For the competitive promotions, based on the number of vacancies anticipated at each grade, the director of the NOAA Corps estimates the number of promotions to be made. When this has been determined, the director establishes a “promotion zone” from which officers may be selected. The number of officers in the promotion zone is calculated as the number of selections planned, multiplied by a factor that allows for an ample pool of candidates (1.5 for Lieutenant Commander, 1.75 for Commander, and 2.0 for Captain). For example, if 5 officers are to be selected for the grade of Captain, 10 officers would be in the promotion zone. Finally, eligibility to get into the promotion zone is based on each officer’s placement on the Corps’ lineal list. This list contains the names of all active duty officers, arranged by grade, with the Rear Admiral taking precedence over all officers in the Corps. From there, the list is arranged by grade (Captain, then Commander, etc.) and precedence of officers of the same grade is determined by comparing dates of grade. The officers selected for a promotion zone are generally selected from those at the top of the list within their grade. Once established, the list of officers in the promotion zone is provided to the OPB for its consideration. All officers on the list are given equal consideration for promotion and are evaluated by comparison against one another.

For competitive permanent promotions, if the promotion process that was in place during the period of our review is followed, the most qualified candidates are recommended by the OPB, approved by the director of the NOAA Corps, sent forward for Secretarial and Presidential approval and Senate confirmation, and promoted when vacancies become available. The Secretary of Commerce makes official each permanent promotion through a signed commission that is issued after Presidential nomination and Senate confirmation. However, as described in this report, the Corps did not always follow the process set forth in its statute. Many times, it neglected to send names forward for Presidential approval, Senate confirmation, and Secretarial commissioning, and simply promoted officers as vacancies became available.

Confirmation Process: The NOAA Corps’ Commissioned Personnel Center (CPC) is responsible for compiling and submitting to the Senate the names of candidates whose appointments or promotions require confirmation. The CPC is led by a director and deputy director and is comprised of a staff of 13, including two payroll specialists in Topeka, Kansas, who are co-located with the Coast Guard’s payroll center. Both the director and deputy director

⁶ What have been denominated as the “NOAA Corps Regulations” are actually internal authorities, policies, and procedures for the Corps, not published regulations that resulted from a formal rule-making process.

are Corps officers, assigned on a rotating basis to serve one to four-year terms. These officers usually have technical backgrounds with little or no special expertise in human resources management, but are normally supported by civilian staff with background in human resources. Currently, two of these staffers are responsible for processing appointments, promotions, and confirmations, while three other Corps officers work in the center to manage officer assignments, training, and recruitment.

The last list of officer nominees forwarded by the CPC was confirmed by the Senate on October 1, 1999. In November 2002, another list was prepared by the CPC, but was held up when the Department's review of the list identified several instances in which the same officers' names appeared more than once on the list because they were nominated either for an original appointment and a promotion or multiple promotions to progressively higher grades. The Department requested an explanation. The Corps responded in February 2003 that some officers had previously received appointments and promotions without Presidential approval and Senate confirmation, and the new list sought confirmation for those appointments and promotions as well as for additional promotions of those officers. Thus, OGC became concerned about the legality of the Corps' appointment and promotion process and—with the Corps' assistance—OGC's Employment and Labor Law Division undertook a review of officer personnel records to ensure that the November 2002 list included all as yet unconfirmed appointments and promotions since the last Senate confirmation on October 1, 1999. This review netted a list of 104 appointments and 147 promotions, for a total of 251 unconfirmed appointments and promotions. The NOAA Corps certified this list as accurate and complete on March 14, 2003. The list was later reduced to a total of 164 appointments and confirmations that still required Senate confirmation.⁷

Departmental Action and Notification to Congress: In mid-March 2003, the Department advised the Senate Committee on Commerce, Science, and Transportation that some officers were currently serving in grades that had not been confirmed by the Senate. Also in mid-March, the Under Secretary directed NOAA's Office of General Counsel to review the process and report its findings to the committee and subcommittee. Subsequently, on March 19, 2003, the chairman of the full Senate committee and the chairman of the Senate Subcommittee on Oceans, Fisheries, and Coast Guard, in a letter to the Under Secretary of NOAA, raised concerns about the Corps' confirmation process. On May 1, 2003, NOAA's Office of General Counsel completed its report, which offered recommendations to rectify identified problems, and forwarded it to both the Senate commerce committee and Senate subcommittee on oceans. OGC also provided a copy of the report to the Commerce Office of Inspector General, which had been advised of this matter shortly after it came to the attention of OGC. On May 30, 2003, the Department briefed House Resources Committee staff on the situation.

⁷ OGC has opined that Senate confirmation is only needed for those *de facto* officers who are still members of the NOAA Corps and that confirmation is needed only for the most recent promotion for those officers that had more than one unconfirmed promotion. This opinion is based on the legislation (S. 886) which ratifies all actions by a *de facto* officer and all federal agency actions relating to that officer during such time as the officer was not properly appointed or promoted as a member of the NOAA Corps.

Also in May, the Senate Committee on Commerce, Science, and Transportation and the Senate Subcommittee on Oceans, Fisheries, and Coast Guard asked the Department of Commerce Office of Inspector General to conduct its own review of NOAA Corps' confirmation process. The House Committee on Resources made a similar request. We began our review in June 2003. On April 10, 2003, the Chairman of the Senate Committee on Commerce, Science, and Transportation, introduced legislation (S.886) in the Senate to ratify the Corps' problematic appointments and promotions. The Senate unanimously passed the bill on July 10, 2003. The legislation was forwarded to the House on July 14, 2003, and the House passed its version of the legislation (H.R. 2584) on November 21, 2003. Once a final version of the legislation is enacted, the Department will submit the list of 164 appointments and promotions to the Senate for confirmation.

OBJECTIVES, SCOPE AND METHODOLOGY

Our purpose was to assess the process by which the NOAA Corps appoints and promotes officers and evaluate whether the corrective actions taken by NOAA in the wake of its own review will correct the internal weaknesses that allowed the Corps to circumvent statutory requirements. In particular, we sought to (1) document in detail the appointment and promotion process as it has functioned over the years; (2) identify where, when, and why the process deviated from statutory requirements; (3) identify any oversight lapses that allowed the Corps to bypass Presidential approval and Senate confirmation; and (4) ascertain whether officers serving in grades for which they were not confirmed meet all the stated requirements for the appointment or promotion at issue.

To meet our objectives, we reviewed pertinent documentation, such as officer personnel files, and minutes of the Officer Personnel Board (OPB). We worked back through the records to 1986, in an effort to identify the "first" appointment or promotion not confirmed in accordance with the governing statute. While we never found that "first" appointment or promotion, we concluded that stopping our review at 1986 was sufficient to show that the problems with NOAA Corps appointments and promotions were systemic for many years and under many management teams.

In addition, we reviewed records of interviews and file reviews conducted by NOAA General Counsel as part of its inquiry. We also interviewed the director of the NOAA Corps, the director and deputy director of the CPC, staff from NOAA's Office of General Counsel and the Department's OGC, and retired CPC staff whom we thought likely to have relevant information about the issues being reviewed. We met with staff of the U.S. Coast Guard and U.S. Public Health Service to learn how those organizations manage their Presidential nomination and confirmation processes, and whether they have any best practices that could be used by the NOAA Corps.

We performed our fieldwork for this inspection from June 10 to September 10, 2003. At the conclusion of our field work, on September 11, 2003, we briefed the Deputy General Counsel, the NOAA Chief of Staff, the Executive Director to NOAA's Deputy Under Secretary, and the NOAA General Counsel on the results of our review. On September 12, 2003, we conducted briefings for the Senate staff that requested our review, specifically staff from the Senate Committee on Commerce, Science, and Transportation and the Senate Subcommittee on Oceans, Fisheries, and Coast Guard. We briefed staff from the House Committee on Resources on September 26, 2003.

OBSERVATIONS AND CONCLUSIONS

I. The NOAA Corps Has Consistently Failed to Follow Requirements for Senate Confirmation of Appointments and Promotions Since at Least 1986

Our review of NOAA Corps' appointments and promotions made since 1986 revealed that the Corps consistently failed to obtain Senate confirmation in accordance with applicable statutory requirements: officers on initial temporary appointments were not always confirmed by the Senate before the temporary appointments ended, and promotions were routinely made before candidates were confirmed or without any confirmation at all. We could not discern any pattern, schedule, or routine regarding the Corps timetable for sending forward lists of candidates to the Senate—sometimes it was done in a timely manner and thus met legislative requirements, but many times it was not. (See Appendixes C and D). Interviews with Corps personnel suggest that the Corps failed to comply with the confirmation requirements primarily because it did not fully understand them and viewed them as simply a formality, and thus did not take them seriously.

Unlike the issues we have identified with the Corps' confirmation process for appointments and promotions, we found that the Corps generally adheres to applicable guidelines and qualification requirements in selecting candidates for appointments and promotions. For instance, officers must complete certain coursework, meet time in grade requirements, and fulfill other requirements before they are eligible for promotion. Our review of 38 out of the 251 (15 percent) appointments or promotions identified by the NOAA Corps to OGC in March 2003 as still requiring Senate confirmation revealed that all the affected candidates met the selection criteria and published qualifications for appointments and promotions. Further, the system for selecting officers for appointments and promotions (e.g., composition of the Officer Personnel Board, lineal list, etc.) generally complied with statutory requirements.

A. More Than 31 Percent of Original Appointments Were Not Confirmed

We found that the NOAA Corps failed to obtain the required Senate confirmation for 137 of 435 original appointments (31 percent) between 1986 and the present. Thirty-three of the 137 unconfirmed appointments were identified by our review of records dating back to 1986 and were in addition to the 104 unconfirmed appointments that were previously documented by OGC in their review dating back to 1999.

In addition, of the 270 ensigns that were eventually confirmed by the Senate, we found that 65 of the appointments (24 percent) were not confirmed by the close of the next session of Congress. Further, all of these officers remained on their temporary appointments, despite the fact that the appointments should have terminated in accordance with the statute. Also since 1986, the Corps permanently appointed 36 officers to the grades of lieutenant (junior grade) and lieutenant without first obtaining Senate confirmation (most of these appointments were confirmed by the Senate after the fact). Unlike appointments at the grade of ensign, original appointments at the

grades of lieutenant (junior grade) and lieutenant generally cannot be made temporarily and must be confirmed by the Senate prior to the officer joining the NOAA Corps.⁸

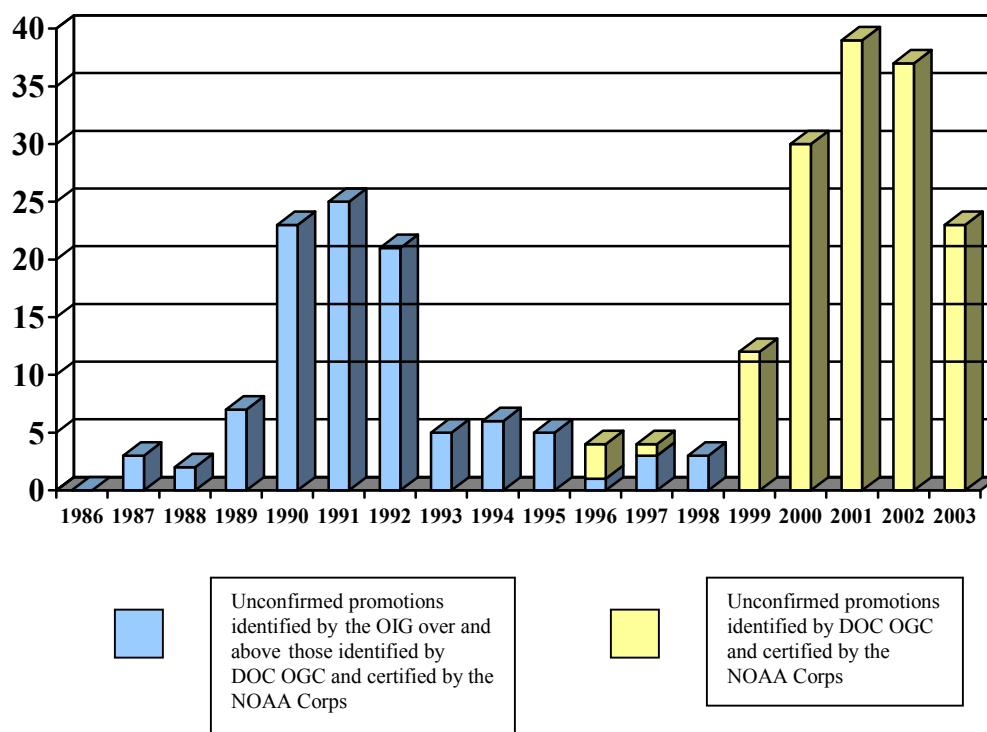
B. Seventy-five Percent of Promotions Were Made Without First Securing Senate Confirmation

We found that the Corps has routinely promoted officers well ahead of receiving the required Senate confirmation.⁹ (see Appendixes C and D). Approximately 75 percent (705 of 938 promotions) of all the Corps' promotions between 1986 and the present were made without first obtaining Senate confirmation—the most extreme example being confirmation obtained over 5 years (1,992 days) after promotion. The Senate eventually confirmed 454 of the 705 promotions. However, we also found 104 officer promotions made during the 1986 to 1999 timeframe that were never confirmed by the Senate—these are in addition to the 147 previously identified by OGC (and certified to by the NOAA Corps) prior to the start of our review (see figure on next page).

⁸ The only exception to this requirement is that during time of war or national emergency, temporary appointments may be made in all grades to which the NOAA Corps is authorized to make original appointments (33 U.S.C. §3030). During the period of our review, 1986 to the present, this exception was never invoked.

⁹ According to 33 U.S.C. §3029(b), the Corps has the ability to temporarily promote officers in the permanent grade of ensign to the grade of lieutenant (junior grade) using the President's authority alone. However, our review of NOAA Corps records indicated that the Corps did not use this authority. Though some records suggested that the Corps considered promotions to lieutenant (junior grade) as temporary, in practice, all promotions to lieutenant (junior grade) were made as permanent promotions by the Corps.

Promotions Which Did Not Receive Confirmation (1986-2003)



C. *In the Past, Confirmations Were Often Obtained Well Ahead of Selection For Promotion*

Prior to the mid-1990s, the Corps also secured some Senate confirmations for officers well ahead of those officers' selection for promotion. (See Appendixes B and C). The most extreme example of this practice was confirmation occurring nearly 2 and a half years (911 days) before the officer was selected for promotion. While we understand that confirmation must always come before promotion to conform with statutory authority, the Corps was sending forward names for confirmation *before* the officers had even been nominated by the OPB for promotion. According to the statute, the OPB makes "selections and recommendations to the Secretary and President" for promotion of officers, which should preclude sending forward lists that included officers who had not yet been selected and approved for promotion (33 U.S.C. §3022(b)(2)). As a result, there are many cases of officers who were confirmed years before they were selected for promotion and officers who were confirmed for promotions that they never received because they either were not selected or left the NOAA Corps. The practice of sending forward officer names for confirmation before they were selected for promotion by the Officer Personnel Board was halted in the mid-1990s, with the list that was confirmed by the Senate on December 22, 1995.

D. Several Reasons for the Improper Handling of Senate Confirmations Were Identified

We identified three primary reasons for the Corps' noncompliance with the confirmation requirement:

(1) Management Culture Supported the Circumvention of Statutory Requirements.

Based on our interviews and review of documentation, it appears that Corps managers knew that Senate confirmation was required for appointments and promotions to permanent grades, but had long believed such confirmation was more or less a formality that should not impede the appointment of new recruits or the promotion of existing officers. Specifically, they did not ensure that candidates for promotions and appointments above the grade of ensign were confirmed by the Senate prior to any personnel action, or that new recruits serving on temporary ensign appointments were nominated and confirmed before the end of the next regular session of Congress. Over the years, these practices became institutionalized in organizational behavior and culture, and a succession of Corps and CPC directors continued to employ an ad hoc approach to appointments and promotions, despite the clear statutory requirements for handling the process otherwise. Interestingly, the Corps never failed to handle the confirmation of its admirals properly, which suggests it understood and took seriously the requirement as it related to those positions. Unfortunately, that practice was not followed for the other grades.

(2) No Documentation or Internal Controls. We found that the process for obtaining Senate confirmation for appointments and promotions was also never documented in any way. CPC—the organization responsible for compiling and submitting the confirmation lists—has no operations manual detailing policies and procedures for appointments and promotions and obtaining Senate confirmation, and center staff were unaware of the mandated timeframes or points in the process during which confirmation for differing grades had to be obtained. Rather, the CPC staff compiled confirmation lists of names at random intervals, kept inadequate records, and made inaccurate assumptions, such as that the Senate confirmation could come after the promotion had already occurred. As a result, the lists often omitted names that should have been included and included names that should not have been presented for confirmation. Records of these lists are either missing or incomplete and staff who were on board during these years have either retired or moved on to other positions. No one currently staffing the center could even explain to us how CPC conducts the process. Based on our interviews with several departmental offices, including the Executive Secretariat, we pieced together a flowchart depicting what we believe the NOAA Corps' practice for obtaining confirmation has been since at least 1986 (see Appendix E).

There were also no internal controls in place to help prevent unconfirmed appointments and promotions from being processed in the payroll system. Memos signed by either the director of NOAA Corps or director of CPC were sent to candidates for appointment and promotion notifying them of the personnel action and its effective date. Copies of these memos were sent to the NOAA Corps Payroll Unit for processing. The unit required no certification of Senate confirmation or other documentation. Had there been some sort of control, such as a request for

personnel action, signed by appropriate officials, which certifies that Senate confirmation, as well as other requisite approvals from NOAA management, the Department, and the President, have been obtained, this problem could have been avoided, or at least minimized.

(3) Insufficient Management Oversight. CPC is headed by officers on rotational assignment, who typically have no expertise in human resources management, and are therefore at a disadvantage in managing the function. Additionally, neither NOAA nor the Department has provided the necessary oversight to ensure compliance with the Corps' statutory requirements. Numerous Under Secretaries of NOAA and their staff as well as the Department's Executive Secretariat and Office of Human Resources Management share the responsibility for failing to properly monitor the appointments and promotions process. While NOAA Corps management has primary responsibility for ensuring compliance with its own statute, both NOAA and Commerce officials have a responsibility for making sure that the law is followed.

E. Some Corrective Actions Are Already Underway

Prompted by their own findings, both NOAA and the Department began to take corrective action before we initiated our review. In March 2003, NOAA suspended all promotions and appointments.¹¹ It also urged potential retirees not to retire until legislation is passed by Congress to make whole all officers not yet confirmed by the Senate. In addition, the NOAA Corps assembled a team of three people in late September and assigned them the task of writing an operations manual for the CPC, which includes checklists and copies of relevant documents needed to implement the NOAA Corps Regulations, which are also being revised. This team is working closely with OGC to complete this task, and anticipates that chapters on appointments and promotions, the two issues of greatest interest, should be completed in March 2004. Procedures for other CPC activities, such as recruiting and assignments, will be completed in turn. Finally, NOAA has informed us that the Corps will be required to document all temporary appointments and promotions by the issuance of a certificate signed and dated by the Secretary and all permanent appointments and promotions by the issuance of a commission signed and dated by the Secretary on behalf of the President.

OGC has taken on the task of reviewing the NOAA Corps Regulations to ensure that they follow statutory requirements. We have also been advised that this process is nearly complete. The regulations covering appointments and promotions have been completely reworked, and the new versions appear to be clearer and consistent with statutory requirements. For example, the

¹¹ According to OGC, as a result of acute staffing needs in the NOAA Corps, the restriction on temporary appointments of ensigns was lifted and new appointments were made in September 2003. Those temporary appointments were properly made by the Secretary and did not require Senate confirmation. In addition, the President approved the interservice transfer of a lieutenant (junior grade) in September 2003.

existing regulations never mention the Presidential nomination and Senate confirmation requirements, whereas the revised regulations reference them explicitly. In addition, OGC informed us that it has drafted new regulations to address issues on which the old regulations were silent, including a new section on reappointments.

Finally, the Department is revising Departmental Organization Order 20-8 to clarify and enhance oversight of Corps personnel matters by the Department's Office of Human Resources Management. Although the current DOO gives OHRM responsibility for oversight of the NOAA Corps' personnel system, in practice, OHRM officials told us that they did not get involved with the NOAA Corps' uniform services resources system, and did not review and clear lists of officer names before they were sent forward for Senate confirmation. The revised order will require OHRM to approve all Corps uniform services resources policies, procedures, promotions, and appointments.

II. NOAA Corps Exceeded its Authority by Reappointing Former Corps Officers and Accepting Interservice Transfers

The NOAA Corps statute limits initial appointment authority to the grades of ensign, lieutenant (junior grade), and lieutenant (33 U.S.C. §3021 (a)(1)), and provides no discrete authority for the reappointment of former Corps officers. On nine occasions between 1986 and the present, the Corps exceeded its authority when it reappointed former Corps officers to their former grades of lieutenant commander and commander. Because the NOAA Corps statute does not include any specific reappointment authority, if a former officer wishes to rejoin the Corps, the officer must go through the Senate confirmation process before the appointment can be made. Moreover, any reappointment must be treated under statute as an original appointment; therefore, an officer may not be reappointed to a grade higher than lieutenant. Other services, such as the U.S. Public Health Service and U.S. Coast Guard, have statutes that provide specifically for such reappointments. In interviews, Corps officials told us they operated under the incorrect assumption that the Corps had the same reappointment authority as other uniformed services.

In addition, the Corps must obtain Presidential approval for interservice transfers (10 U.S.C. §716). However, we found that the NOAA Corps did not obtain necessary Secretarial action and Presidential approval when accepting interservice transfers. Since 1986, seven interservice transfers have taken place, according to the CPC. The Corps indicated that it was not aware that interservice transfers required Presidential approval.

Corrective Actions Are Being Taken

As noted previously, OGC is currently working closely with the NOAA Corps to review its statutory authorities and revise the NOAA Corps Regulations that govern the processes for reappointments and interservice transfers.

RECOMMENDATIONS

We support the actions in progress to correct the confirmation process for the NOAA Corps, and we expect that they will address most of our specific recommendations, as outlined below.

We recommend that the Under Secretary for Oceans and Atmosphere:

- (1) Hold the Director, NOAA Corps accountable for ensuring that all appointments and promotions are handled in accordance with statutory requirements as well as internal regulations and procedures (see page 6).
- (2) As an internal control, require the NOAA Corps payroll office to use a control document, such as a request for personnel action, to:
 - Document and process all temporary and permanent personnel actions; and
 - Certify that all appropriate steps have been followed and approvals or clearances are obtained before processing personnel actions. This should include evidence of Presidential nomination, Senate confirmation, and Secretarial commissioning (see page 6).
- (3) Ensure that CPC management has the requisite expertise to oversee the human resources function (see page 6).
- (4) Complete and implement (1) a detailed operations manual that clearly describes policies and procedures for appointments and promotions, to include guidelines for handling Presidential and Senate approval as well as Secretarial commissioning, and (2) revisions to NOAA Corps Regulations to reflect statutory requirements and authority (see page 6).
- (5) Provide training for CPC staff and other relevant NOAA Corps officials on how appointments and promotions will be handled in the future (see page 6).

We recommend that the Chief Financial Officer and Assistant Secretary for Administration:

- (6) Ensure procedures are put in place to ensure that OHRM exercises oversight of the NOAA Corps by approving all Corps human resources policies, procedures, promotions, and appointments (see page 6).

**SUMMARY OF THE DEPARTMENT'S RESPONSE TO
THE DRAFT REPORT AND OIG COMMENTARY**

- (1) NOAA agreed with our recommendation to hold the Director, NOAA Corps accountable for ensuring that all appointments and promotions are handled in accordance with statutory requirements as well as internal regulations and procedures. The Department's response stated that appropriate administrative action was taken with regard to the responsibility and accountability of the chain of command involved with the improper handling of officer appointments and promotions.
- (2) NOAA also agreed with our recommendation to develop a control document to ensure that all appropriate steps are taken and approvals obtained in processing all temporary and permanent personnel actions. To this end, the Department's response stated that the Corps reinstated the Executive Order requirements to document all temporary appointments and promotions by the issuance of a certificate signed and dated by the Secretary and all permanent appointments and promotions by the issuance of a commission signed and dated by the Secretary on behalf of the President. It further noted that the operations manual being developed by the NOAA Corps will contain a checklist of all necessary steps, approvals, and clearances for appointments and promotions, which must be certified by the CPC Director before an appointment or promotion can be processed. Finally, the response stated that the Corps intends to use a copy of the certificate or commission as the control document for processing all appointments and promotions.
- (3) To ensure that CPC management has the requisite expertise to oversee the human resources function, NOAA stated that it is revising DOO 25-5 (which prescribes the organization, management structure, and assignment of functions within NOAA) to give the NOAA Office of Human Resources oversight of the NOAA Corps. Such oversight will include the review and preliminary approval of all human resource policies and procedures, and clearance of all appointments and promotions before submission to the Department's OHRM. In addition, NOAA informed us that the position of Deputy Director of the CPC will be converted from a NOAA Corps officer billet, as has historically been the arrangement, to a civil service position, and filled by a civilian with experience in human resources management. The position description will explicitly set forth the Deputy Director's responsibilities for administering the appointment and promotion process. Further, NOAA stated that the CPC Director's position description will be modified to require the incumbent to have previously served a tour of duty in the CPC. Both the Corps and NOAA's Office of Human Resources will evaluate the performance of the CPC Director. Finally, the Department's response noted that OGC has assigned an attorney to act as a liaison to the NOAA Corps should any legal questions arise about human resource matters. Our only concern about NOAA's proposed actions in response to this recommendation is that the CPC Director also explicitly be responsible for ensuring that appointments and promotions are handled properly.

- (4) NOAA agreed with our recommendation to complete and implement an operations manual, as well as to make all necessary revisions to the NOAA Corps Regulations. With regard to the operations manual, NOAA informed us that it expects to have completed the first two chapters, dealing with appointments and promotions, by March 2004. Concerning the revisions to the NOAA Corps Regulations, NOAA advised us that the exercise is nearly complete, with only a few issues remaining on which OGC is awaiting guidance from the Department of Justice's Office of Legal Counsel. We would appreciate receiving copies of both the operations manual and the revised NOAA Corps Regulations once they are complete.
- (5) Training for CPC staff, other relevant NOAA Corps officials, and OHRM should be completed in April 2004, according to the agency's response to our draft report. Such training should be updated and provided on a recurring basis to existing and new employees who handle NOAA Corps appointments and promotions. Additionally, as noted previously, the Department has assigned an OGC attorney to act as a liaison to the NOAA Corps and be available to answer questions.
- (6) OGC did not agree with our recommendation to add the 2 unconfirmed appointments and 15 unconfirmed promotions of officers still in active duty status to the list of appointments and promotions still requiring confirmation, as previously prepared by the Department. OGC has concluded that confirmation at an officer's highest grade, together with the legislation's ratification of all actions by these *de facto* officers, will cure any previous lack of confirmation. All of the 17 additional unconfirmed appointments and promotions we identified had a subsequent confirmed appointment or are included on the list for confirmation at a higher grade. Accordingly, we have removed this recommendation from the final report.
- (7) The Chief Financial Officer and Assistant Secretary for Administration agreed with our recommendation to put procedures in place to ensure that OHRM exercises oversight of the NOAA Corps. However, the Department's response did not explicitly state what those procedures are. While the changes to DOO 20-8 are a start, simply stating in a DOO that OHRM will have oversight does not explain to us or to OHRM staff how that oversight will actually be effectuated. We are pleased that OGC will provide training by April 2004 on the NOAA Corps' statute and personnel system to OHRM staff to assist them in conducting their oversight responsibilities, but we would appreciate the Department providing more specific details in its action plan to address the procedures it has put in place, or intends to put in place, to ensure that OHRM exercises oversight of the NOAA Corps.

APPENDIX A


Agency Comments on Draft Report




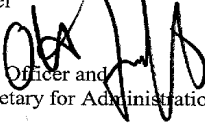
UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary of Commerce
for Oceans and Atmosphere
Washington, D.C. 20230

FEB 10 2004

MEMORANDUM FOR: Johnnie Frazier
Inspector General

FROM: Vice Admiral Conrad C. Lautenbacher, Jr. 
Under Secretary for Oceans and Atmosphere

Theodore W. Kassinger 
General Counsel

Otto J. Wolff 
Chief Financial Officer and
Assistant Secretary for Administration

SUBJECT: Responses to Recommendations in Draft IG Report on NOAA
Corps Appointments and Promotions

We are in receipt of your office's Draft Inspection Report No. IPE-16138/December 2003. This report details your office's review of how the Commissioned Officer Corps of the National Oceanic and Atmospheric Administration (NOAA Corps) has handled Senate confirmations and the other approvals for officer appointments and promotions, as required by Public Law No. 107-372 (33 United States Code 3026) and prior statutes.

We have carefully reviewed your report and its recommendations. Your report concludes the NOAA Corps has consistently failed to follow requirements for Presidential nominations and Senate confirmation of appointments and promotions since at least 1986 and that the NOAA Corps exceeded its authority by reappointing former Corps officers without going through the nomination and confirmation process. Your report supports the actions in progress to correct the confirmation process, and notes that these actions will address most of the specific recommendations outlined in the report.

We offer the following responses to your specific recommendations and set forth the actions we have taken or will take in response to those recommendations.

Recommendations For The Under Secretary for Oceans and Atmosphere:

- (1) **Hold the Director, NOAA Corps, accountable for ensuring that all appointments and promotions are handled in accordance with statutory requirements as well as internal regulations and procedures.**



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We agree with this recommendation.

Pursuant to the NOAA Corps' statute and internal regulations, the Director, NOAA Corps, is responsible for the administration of the commissioned officer corps. Therefore, the Director, NOAA Corps, is and always will be accountable for ensuring statutory and regulatory requirements are followed in making appointments and promotions. Appropriate administrative action was taken with regard to the responsibility and accountability of the chain of command involved with the improper handling of officer appointments and promotions.

- (2) **As an internal control, require the NOAA Corps payroll office use a control document, such as a request for personnel action, to:**
- **Document and process all temporary and permanent personnel actions; and**
 - **Certify that all appropriate steps have been followed and approvals or clearances are obtained before processing personnel actions. This should include evidence of Presidential nomination, Senate confirmation, and Secretarial commissioning.**

We agree with this recommendation.

NOAA Corps has reinstated the Executive Order requirements that the Secretary issue a signed and dated certificate for each temporary appointment and promotion and a commission for each permanent appointment and promotion. In its revised operations manual, NOAA Corps has a checklist of all necessary steps, approvals and clearances for appointments and promotions, which must be certified by the Director, Commissioned Personnel Center, before an appointment or promotion can be effected. NOAA Corps proposes to use a copy of the certificate or commission as the control document for processing all appointments and promotions.

- (3) **Ensure that CPC has the requisite expertise to oversee the human resources function.**

We agree with this recommendation.

NOAA is revising DOO 25-5 to provide oversight of the NOAA Commissioned Corps by the NOAA Office of Human Resources. That oversight will include the review and preliminary approval of all human resources policies and procedures and clearance of all promotions and appointments before submission to the Departmental Office of Human Resources Management (OHRM).

The Deputy Director, Commissioned Personnel Center, position will be converted to a

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civil service position and filled by a civilian, knowledgeable in human resources. The position description will explicitly set forth the Deputy Director's responsibilities for administering the appointment and promotion process. Henceforth, the position description for the Director, CPC, will include a requirement that the incumbent have served previously in a CPC position. The performance of the Director, CPC, will be evaluated by both the Corps and NOAA's Human Resources Manager. In addition, OGC has assigned an attorney to act as a liaison to the Corps should any legal questions arise about human resources matters.

We believe these changes will provide the requisite human resources oversight, expertise, and continuity within the CPC.

- (4) **Complete and implement (1) a detailed operations manual that clearly describes policies and procedures for appointments and promotions, to include guidelines on handling Presidential and Senate approval as well as Secretarial commissioning and (2) revisions to NOAA Corps procedures to reflect statutory requirements and authority.**

We agree with this recommendation.

As part of the effort to provide a new management culture within the Corps, the Corps and OGC conducted an extensive legal and policy review of all of the internal regulations governing the Corps. This revision is almost complete, with only a few issues remaining on which OGC is awaiting guidance from the Department of Justice's Office of Legal Counsel. OGC's revisions included drafting new regulations to address issues on which the old regulations were silent, including a new section on reappointments and a new chapter on recalls. Once the regulations were revised, NOAA Corps began its development of an operations manual detailing the steps that need to be followed to implement the regulatory requirements and including copies of relevant documents. NOAA Corps expects to have completed the first two chapters of its new operations manual, dealing with appointments and promotions, by the end of February 2004.

- (5) **Provide training for CPC staff and other relevant NOAA Corps officials on how appointments and promotions will be handled in the future.**

We agree with this recommendation.

As soon as revisions to the NOAA Corps regulations are finalized and the first two chapters of the operations manual are published, NOAA Corps, together with OGC, will conduct training sessions for CPC staff and other relevant NOAA Corps officials. It is anticipated that the training will occur by April 2004. In addition, an OGC attorney has been assigned to act as a liaison to the Corps to address any legal questions about human resources which might arise.

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Recommendation for the Department's General Counsel:

- (6) **Add the 2 unconfirmed appointments and 15 unconfirmed promotions of officers still in active duty status to the list of appointments and confirmation requiring confirmation that was already prepared by the Department.**

We do not agree with this recommendation.

The 17 additional unconfirmed appointments and promotions of active officers to which this recommendation refers occurred between 1986 and 1999. The question is whether those personnel actions should be added to the list to be sent forward to the President for nomination and the Senate for confirmation. Based on OGC's analysis of the proposed legislation, OGC included on the list only the highest grade for which an officer needed confirmation, because confirmation at the officer's highest grade, together with the wording of the legislation which ratifies all actions by these *de facto* officers, would cure any previous lack of confirmation. In addition, OGC did not include any unconfirmed appointments that preceded a valid confirmation for the same reason. OGC's review of the additional appointments and promotions that the IG would add to the nomination list indicates that all of the officers either had a subsequent confirmed appointment or are included on the list for confirmation at a higher grade. OGC's list thus will only include 164 officers.

Recommendation for the Chief Financial Officer and Assistant Secretary for Administration:

- (7) **Ensure procedures are put in place to ensure that OHRM exercises oversight of the NOAA Corps by approving all Corps human resources policies, procedures, promotions, and appointments.**

We agree with this recommendation.

As noted in your report, DOO 20-8 is being revised to clarify and enhance oversight by OHRM, to include the review and preliminary approval of all human resources policies and procedures, as well as clearance of all appointments and promotions. To assist OHRM in exercising its oversight responsibility, OGC will provide training on the NOAA Corps' statute and personnel system to relevant OHRM staff. It is anticipated the training will occur by April 2004.

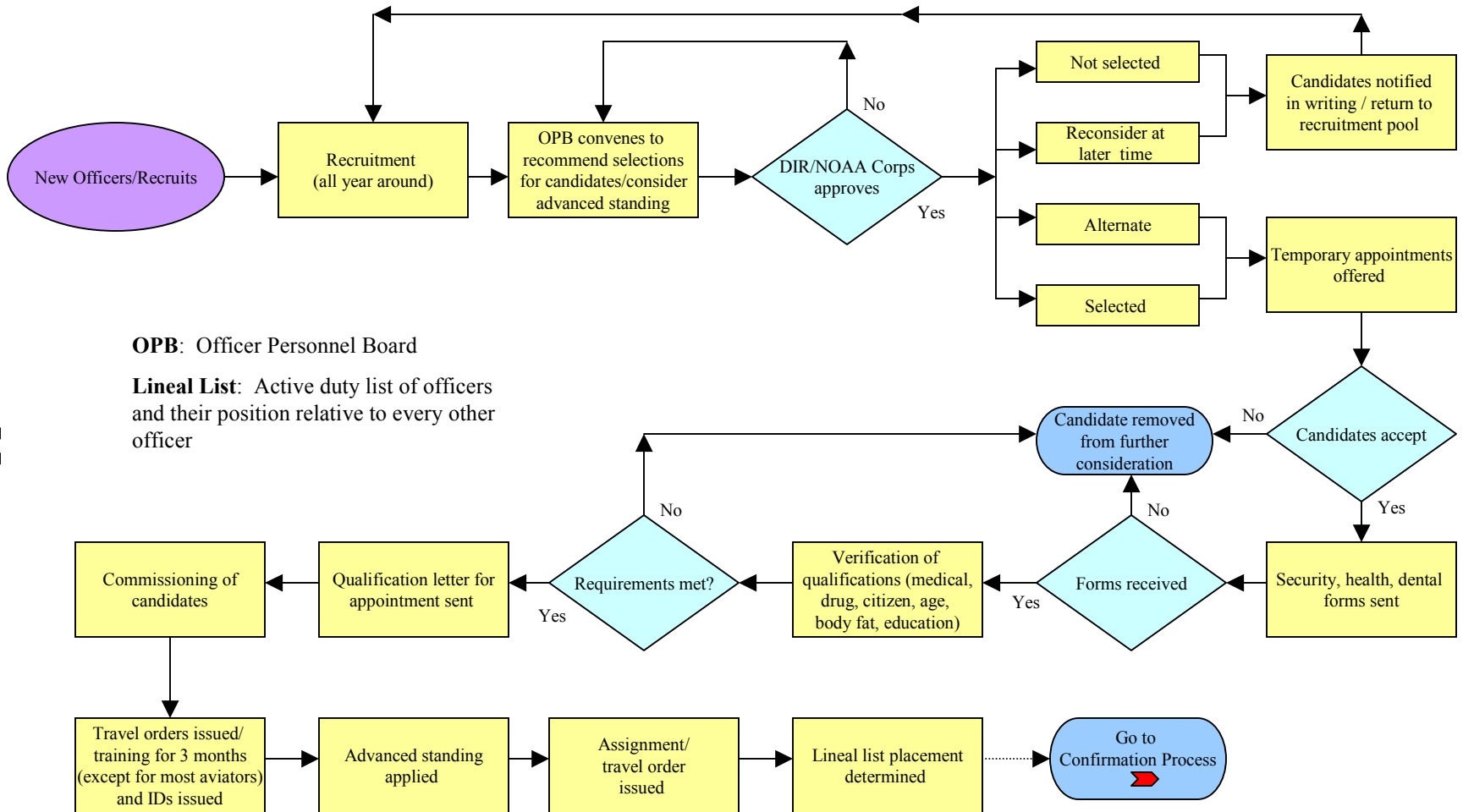
We believe that the corrective actions being taken by both NOAA and the Department, in conjunction with the passage of the pending legislation, will not only address your specific recommendations but also will chart a new course for leadership of the Corps.



NOAA Corps Original Appointments (1986 to September 2003)



Appendix B



Note: Confirmations for original appointments did not always take place from 1986 to present. Interservice transfers need Secretarial approval, but not Senate confirmation.

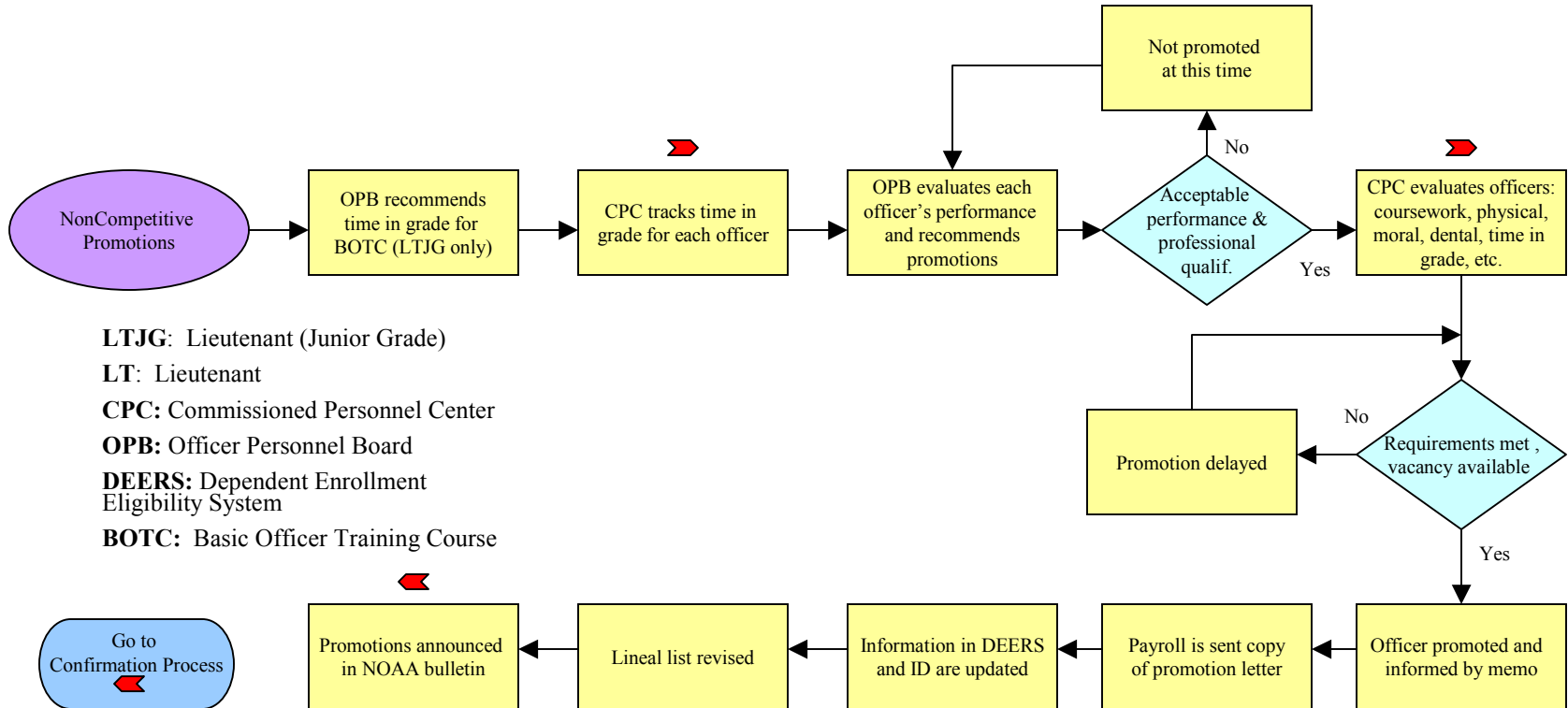
Source: OIG depiction of the process NOAA Corps has followed since 1986



NOAA Corps Noncompetitive Promotions* to LTJG, LT (1986 to September 2003)



Appendix C



➡ The timing of the start of the confirmation process has varied from year to year (1986 to present). The red arrow indicates points at which it has occurred in the past.

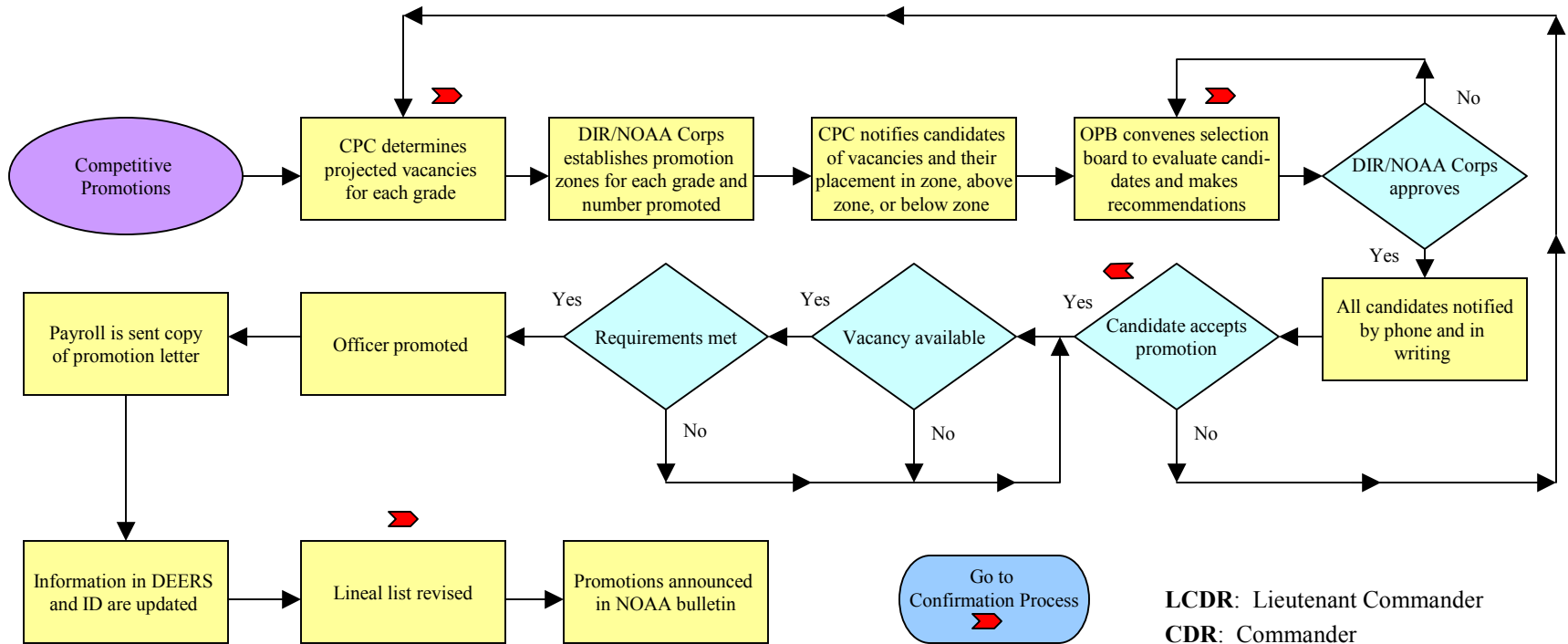
* Promotions to LTJG became noncompetitive in December 1993 while promotions to LT became noncompetitive in March 1999.



NOAA Corps Competitive Promotions to LCDR, CDR, CAPT (1986 to September 2003)



Appendix D



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➤ The timing of the start of the confirmation process has varied from year to year (1986 to present). The red arrow indicates points at which it has occurred in the past.

- LCDR:** Lieutenant Commander
- CDR:** Commander
- CAPT:** Captain
- CPC:** Commissioned Personnel Center
- OPB:** Officer Personnel Board
- DEERS:** Dependent Enrollment Eligibility System
- Lineal List:** Active duty list of officers and their position relative to every other officer

Source: OIG depiction of the process NOAA Corps has followed since 1986



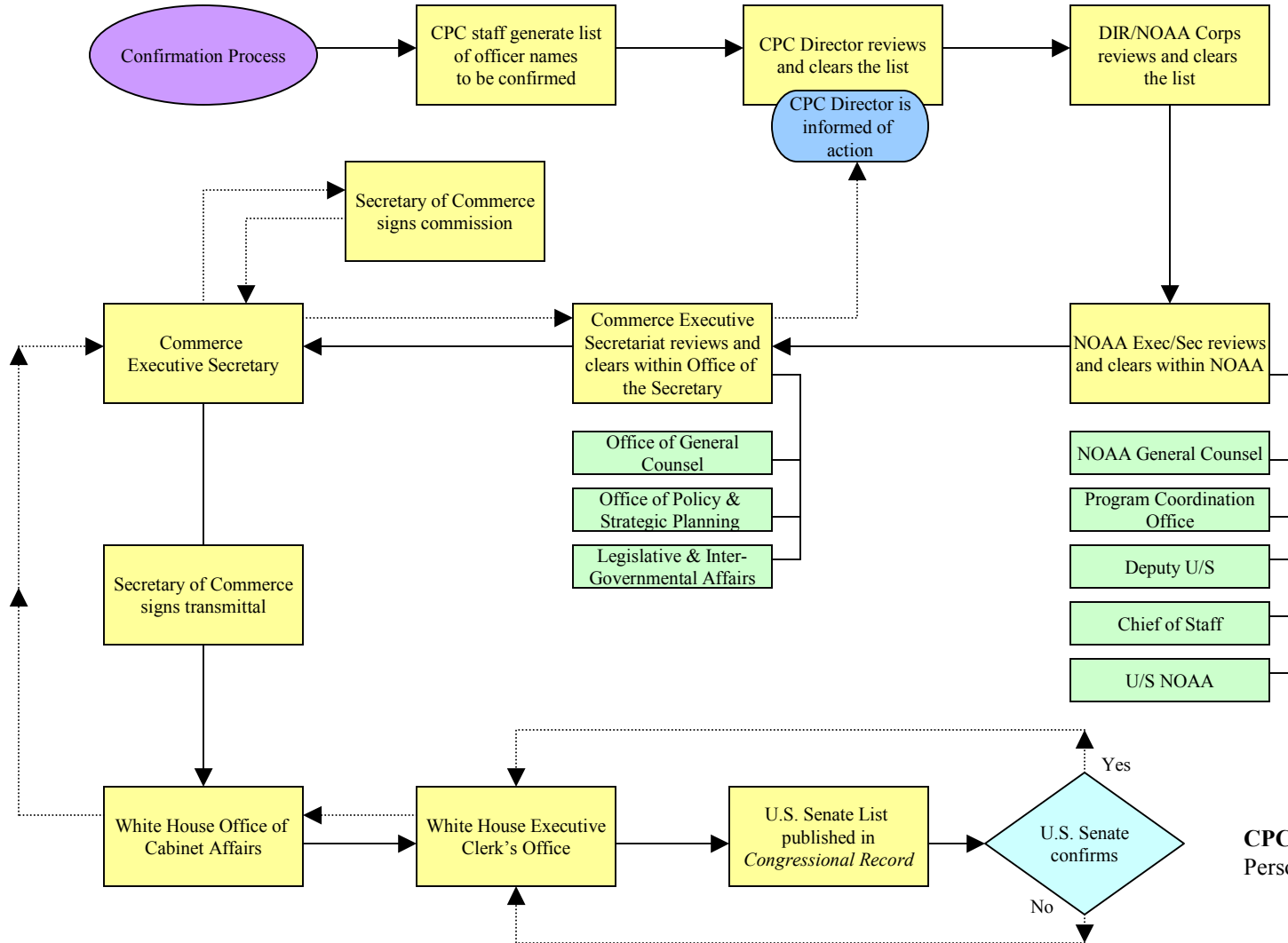
NOAA Corps

Confirmation Process Since 1986



Appendix E

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CPC: Commissioned Personnel Center

Source: OIG depiction of the process NOAA Corps has followed since 1986