

U.S. DEPARTMENT OF COMMERCE
Office of Inspector General



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RELEASE**

***NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION***

*NMFS's Unallied Science Program Awards
Were Not Competitively Selected,
CFDA No. 11.472*

Audit Report No. STL-10947-9-0001 / 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 Science Program, classified as No. 11.472 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 of 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 Science Program, NMFS provides grants and cooperative agreements for biological, socio-economic, and physical science research on fishery stocks and protected resources that will contribute to their optimal management; and to develop innovative approaches and methods for marine and estuarine science. In fiscal year 1997, the program awarded six cooperative agreements, five continuation amendments to existing cooperative agreements, and two grants, totaling \$4.11 million. All 13 awards were made noncompetitively in response to unsolicited proposals. Six of the awards, totaling \$3.22 million, were made on the basis of language contained in the fiscal year 1997 appropriations conference report. The original awards for which continuation amendments were used were also made noncompetitively in response to unsolicited proposals.

We examined NMFS's criteria, procedures and practices for the solicitation, review, and selection of Unallied Science 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 13 noncompetitive awards made in fiscal year 1997 and found them to be inadequate. 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 of 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 forgoing the receipt of research proposals from a broad range of eligible applicants and thus may lose opportunities to increase the effectiveness of the Unallied Science Program.

We also found that the NOAA grants office did not provide adequate oversight of NMFS's administration of the program. (See page 12.)

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 III).

We recommend that the Assistant Administrator for Fisheries ensure that financial assistance awards under the Unallied Science Program are made on 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 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 page 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 Science Program, classified as No. 11.472 in the *Catalog of Federal Domestic Assistance*. The program's objectives are to provide grants and cooperative agreements for biological, socio-economic, and physical science research on fishery stocks and protected resources that will contribute to their optimal management; and for the development of innovative approaches and methods for marine and estuarine science.

The Unallied Science Program does not have specific legislation authorizing a financial assistance program and does 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 \$4,114,623, were funded with NMFS appropriations for its fishery programs and under authorities of the Fish and Wildlife Coordination Act, the Fish and Wildlife Act, the Marine Mammal Protection Act, and the Endangered Species 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 to provide assistance for informational services, economic and technological development, resource conservation, and resource management. The Marine Mammal Protection Act authorizes the Secretary to enter into cooperative agreements or other transactions as may be necessary to carry out the purposes of the Act and to provide financial assistance to any state which has entered into such a cooperative agreement. The Endangered Species Act authorizes the Secretary to enter into cooperative agreements with and provide financial assistance to any state which establishes and maintains an adequate and active program for the conservation of endangered and threatened species.

NMFS made 13 awards under the Unallied Science Program in fiscal year 1997. All 13 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*. Nine 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 six cooperative agreements, five continuation amendments to existing cooperative agreements, and two grants to four states, three universities, a salmon authority, an oceanographic institution, a consortium, and a private organization. The original awards for

which continuation amendments were used were also made noncompetitively in response to unsolicited proposals. NMFS chose the cooperative agreement as its award mechanism for six of the eight new awards because program officials planned to be substantially involved in the projects. For the remaining five cooperative agreements, NMFS chose a continuation amendment to an existing agreement because the projects had been funded in the 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 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:

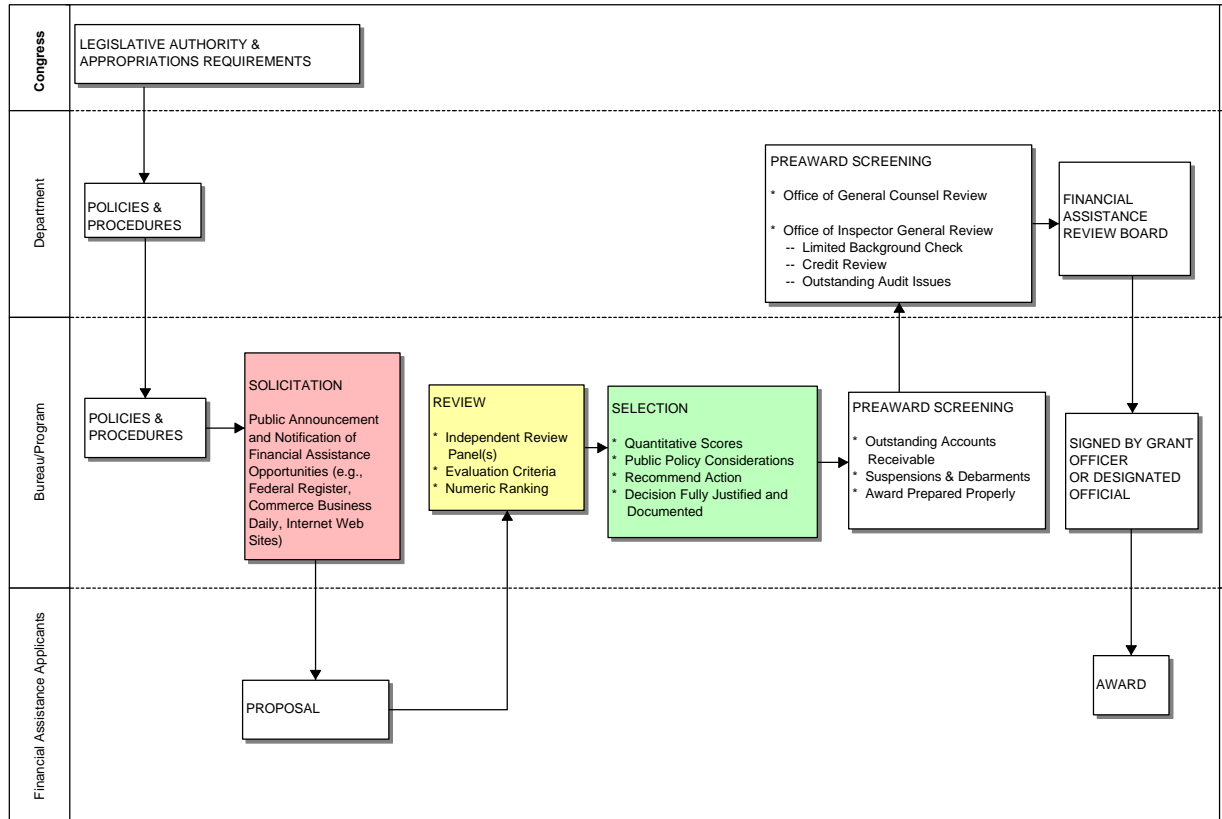
- OMB Circular A-89, *Federal Domestic Program Information*, implements The Federal Program Information Act (P.L. 95-220) requiring agencies to systematically and periodically collect and distribute current information to the public on federal domestic assistance programs, which is accomplished through 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/NMFS 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 application solicitation, review, and selection processes of each program we have classified as a "full discretion" program, including the Unallied Science 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 Science 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 upon 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 NOAA's Grants Management Division in Silver Spring, Maryland and our office in Seattle, Washington from April 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 Science 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 does 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, does not annually announce the program in the *Federal Register*, and makes all awards under this program noncompetitively in response to unsolicited proposals.

In addition, we reviewed the noncompetitive justifications for the 13 awards made in fiscal year 1997 and found them to be inadequate because NMFS did not provide sufficient support for the unique applicant capabilities cited, did not correctly demonstrate that the awards were legislatively mandated, and/or did not demonstrate that cited legislative authorities limited awards to specific recipients. NOAA'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 Science Program Is Not Administered As a Competition-Based Financial Assistance Program

NMFS's Unallied Science Program is 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 are made noncompetitively in response to unsolicited proposals. We examined the written justifications prepared for the 13 noncompetitive awards made in fiscal year 1997 and found them to be inadequate. 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 Science Program for fiscal year 1997. Also, the NMFS Unallied Science Program summary, published in the *Catalog of Federal Domestic Assistance*, does 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 Science 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 Science Program in the *Federal Register*, it still could have placed preaward notices in the *Federal Register* publication 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 13 awards NMFS funded on the basis of noncompetitive justifications. In our opinion, the publishing of 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. Noncompetitive awards under the program lacked adequate justification

In fiscal year 1997, NOAA/NMFS awarded six cooperative agreements, five continuation amendments to existing cooperative agreements, and two grants under the Unallied Science Program totaling \$4,114,623. These awards were made to four states, three universities, a salmon authority, an oceanographic institution, a consortium, and a private organization. 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 6 of the 13 awards on the basis of language contained in the fiscal year 1997 Senate appropriations conference report. However, none of the six 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 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 the awards. A synopsis of all 13 noncompetitive 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 of the proposed recipients possessed unique capabilities that made it either the best or the only organization qualified to do the work. None of the noncompetitive justifications cited general market surveys performed to determine if other institutions were interested or capable of performing similar work. Five of the written justifications also referred to language contained in the fiscal year 1997 appropriations conference report that NMFS believed established the awards as legislative mandates. Program personnel stated that one additional award was made on the basis of fiscal year 1997 appropriations conference report language, but it was not mentioned in that award's written justification.

All 13 awards, totaling \$4,114,623, had inadequate noncompetitive justifications because NMFS did not provide sufficient support for the unique applicant capabilities cited, did not correctly demonstrate that the awards were legislatively mandated, and/or did not demonstrate that the recipients were the only ones who could perform the requested research. Specifically, the awards included \$1,464,000 to the University of Southern Mississippi, \$845,250 to the State of Rhode Island (two awards), \$388,500 to the South Carolina Sea Grant Consortium, \$303,900 to State of South Carolina (two awards), \$293,000 to Waldemar Nelson International, \$245,165 to the Woods Hole Oceanographic Institution, \$205,718 to the Maine Atlantic Salmon Authority, \$172,900 to the State of New York, \$102,000 to the State of Georgia, \$50,000 to the Florida State University, and \$44,190 to the University of California.

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 13 awards, the justifications do not cite any factual basis for the assertions that the applicants possessed unique capabilities. For seven of the awards - to the states of Rhode Island, South Carolina, New York, and Georgia and the Maine Atlantic Salmon Authority - NMFS did provide support for its assertions that the entities had authority for management of the fishery resources applicable to the awards. However, NMFS did not demonstrate how this authority limited who could perform the desired research. 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 Science Program, it lacked support for its claims that the organizations that submitted 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 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.

NMFS sites specific legislative authorities under the Atlantic Coastal Fisheries Cooperative Management Act and the Endangered Species Act as part of the noncompetitive justifications for four awards. Specifically, the awards included \$845,250 (two awards) to the State of Rhode Island, \$102,000 to the State of Georgia, and \$70,000 to the State of South Carolina. The Atlantic Coastal Fisheries Cooperative Management Act requires the Secretary of Commerce to assist in the conservation of Atlantic coastal fisheries, and authorizes the Secretary to provide financial assistance to the states, to carry out provisions of the Act. The Endangered Species Act authorizes the Secretary of Commerce to enter into cooperative agreements with and provide financial assistance to any state which establishes and maintains an adequate and active program for the conservation of endangered and threatened species. The states of Georgia and South Carolina had an established and active program for the conservation of endangered species and had entered into cooperative agreements with NMFS. Therefore, these laws permitted NMFS to provide awards to those states, but did not require NMFS to make those particular noncompetitive awards in that manner, and there was nothing in the acts that precluded NMFS from allowing various states to compete for the awards.

Although the legislative authorities limited awards to eligible states, the awards still could have been competed. Since NMFS did not comply with the Department's requirement that a notice be published in the *Federal Register* soliciting applications for fiscal year 1997 awards or publish preaward notices prior to making these noncompetitive awards, it lacked support for its claims that these states submitted the best proposals.

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 any of the four awards.

II. NOAA Reviews of Proposed NMFS Awards Are Not Effective

Reviews performed by the NOAA grants office of the 13 proposed noncompetitive awards did not question NMFS's lack of competitive award procedures or the validity of the noncompetitive award justifications. The NMFS regional office or science center forwarded, as required, its 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 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 address one or more of the acceptable reasons for a noncompetitive award, they did *not* verify the information because their 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 Science 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 award of six cooperative agreements, five continuation amendments to existing 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 13 applicants had unique capabilities, did not correctly demonstrate that the awards were legislatively mandated by citing legislative authorities that limited the awards being given noncompetitively to specific recipients. 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 Science 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.

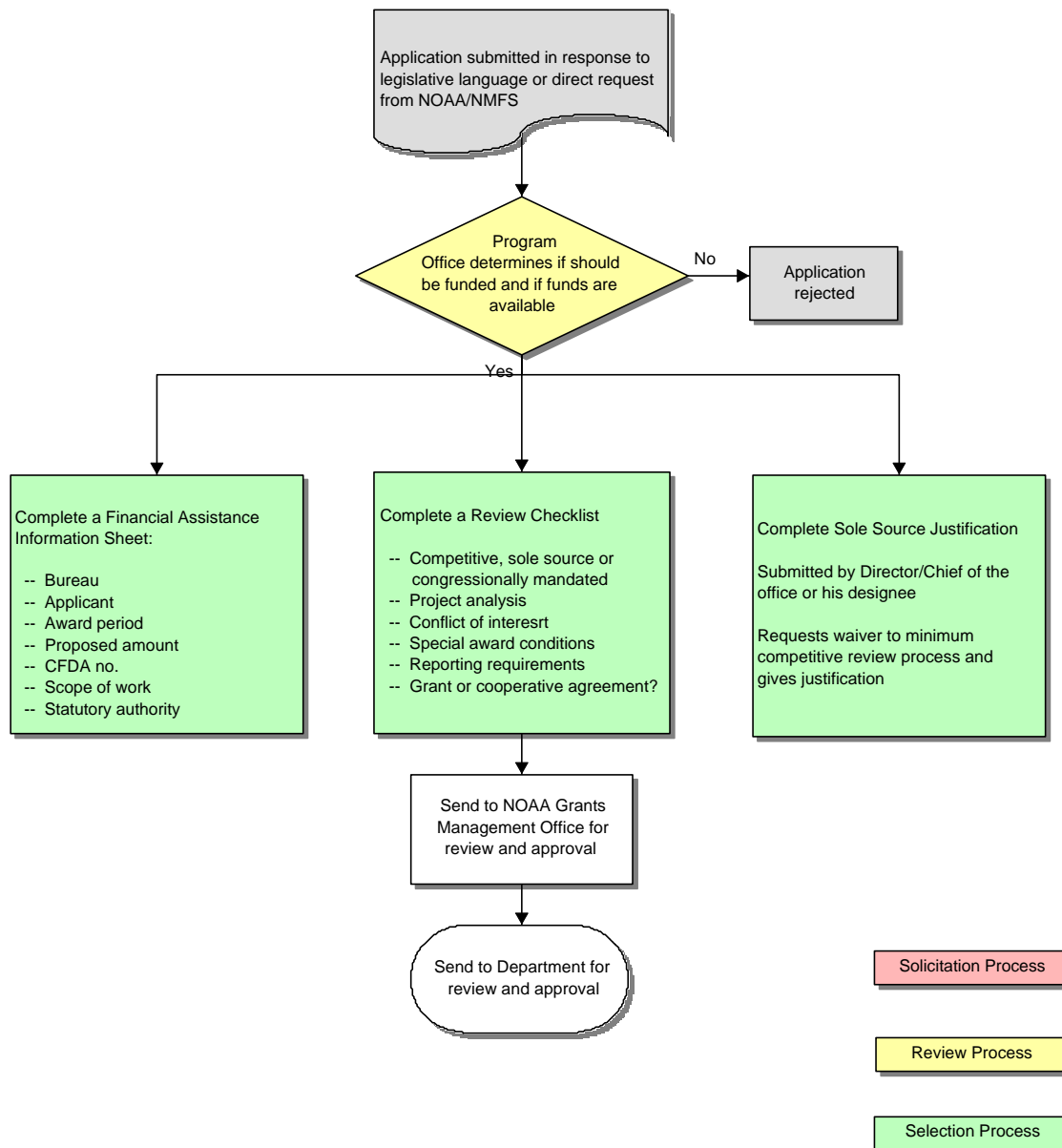
IV. Recommendations

We recommend that the Assistant Administrator for Fisheries ensure that financial assistance awards under the Unallied Science 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



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UNALLIED SCIENCE 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>
NA77FL0379	New Cooperative Agreement	State of Rhode Island	Narragansett Bay Research	\$ 550,000
NA77FL0380	New Cooperative Agreement	State of Rhode Island	Narragansett Bay Research	295,250
NA77FL0150	New Cooperative Agreement	Waldemar Nelson International	Aquaculture Research	293,000
NA77FL0373	New Cooperative Agreement	Woods Hole Oceanographic Institution	Small Cetaceans Research	245,165
NA77FL0290	New Cooperative Agreement	State of South Carolina	Red Drum Research	233,900
NA77FL0433	New Cooperative Agreement	University of California	Atlantic Salmon Research	44,190
NA57FL0519	Amendment to Cooperative Agreement	South Carolina Sea Grant Consortium	Molecular Biology Research	388,500
NA57FL0149	Amendment to Cooperative Agreement	Maine Atlantic Salmon Authority	Atlantic Salmon Research	205,718
NA57FL0479	Amendment to Cooperative Agreement	State of Georgia	Sea Turtle Research	102,000
NA67FL0388	Amendment to Cooperative Agreement	State of South Carolina	Sea Turtle Research	70,000
NA57FL0122	Amendment to Cooperative Agreement	Florida State University	Atlantic Salmon Research	50,000
NA76FL0446	New Grant	University of Southern Mississippi	Aquaculture Research	1,464,000
NA76FL0389	New Grant	State of New York	Striped Bass Research	172,900
Total				\$4,114,623

UNALLIED SCIENCE PROGRAM

Synopsis of Awards and Amendments for Fiscal Year 1997

I. Awards with Inadequate Noncompetitive Justifications

NA76FL0446 - University of Southern Mississippi

NMFS received an unsolicited proposal from the University of Southern Mississippi in the amount of \$1,464,000. NOAA/NMFS awarded a \$1,464,000 grant (No. NA76FL0446) to the University of Southern Mississippi in July 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 states that, "Within the funds provided, the conference agreement adopts the recommendations included in the Senate report with respect to ... research related to rehabilitation of Gulf Coast fisheries". The Senate committee report states that "\$1,500,000 is to initiate a consortium to develop technologies to enhance, supplement, and rehabilitate marine fishery resources on Mississippi's gulf coast." The grant did not require a matching contribution. The award's purpose was to fund research work on the refinement, field testing, and demonstration of a successful marine fishery stock management program for the U.S. coastal Gulf of Mexico that blends aquaculture technology with traditional fishery management practices. The project period was limited to one year.

The written noncompetitive justification states that the cooperative agreement addresses a key component of the NMFS strategic plan; the fiscal year 1997 full Senate report provides funds to initiate a consortium to develop technologies for marine fishery resources on Mississippi's gulf coast; and the University of Southern Mississippi's Gulf Coast Research Laboratory is in the unique position to successfully complete this award. The noncompetitive justification also states that the Stock Enhancement Consortium, formed by the Gulf Coast Research Laboratory, the Oceanic Institute, and the Mote Marine Laboratory is the sole entity in the northern Gulf of Mexico that offers the expertise and multi-institutional organization needed to provide a comprehensive evaluation of marine stock enhancement in the northern Gulf of Mexico in a timely manner.

The noncompetitive justification was inadequate because the project is not contained in the fiscal year 1997 Appropriations Act and therefore is not legislatively mandated, and NMFS did not provide evidence, such as the results of a published solicitation, that the University of Southern Mississippi was the only entity capable of performing the award.

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NA57FL0519 - South Carolina Sea Grant Consortium

NMFS received an unsolicited proposal in the amount of \$388,500 from the Cooperative Institute for Fisheries Molecular Biology (FISHTEC). NOAA/NMFS awarded a \$388,500 amendment to an existing cooperative agreement (No. NA57FL0519) to the South Carolina Sea Grant Consortium in September 1997 using funds that NMFS allocated for this award based on language contained in the fiscal year 1997 appropriations conference report. The conference report contains a line item to fund the Fisheries Cooperative Institute. The cooperative agreement required a matching contribution of \$38,314. The award's purpose was to administer, coordinate, and implement the research activities of FISHTEC. The proposed work is a continuation of molecular biology research initiated in prior years. The project period was limited to one year.

NMFS personnel stated that the award was a legislatively mandated award because the fiscal year 1997 conference report contained a line item to fund FISHTEC. The written noncompetitive justification states that 1) FISHTEC was established in 1992 to meet the need for technological improvements in the management of U.S. fishery resources through the develop and application of genetic techniques, 2) FISHTEC is a cooperative institute comprised of the University of South Carolina, the South Carolina Department of Natural Resources, the NOAA/NMFS Charleston Lab, and other national and international collaborators, 3) the South Carolina Sea Grant Consortium, as the recipient of the FISHTEC award, includes the aforementioned state institutions and provides the focal point for management, coordination, and communication of all FISHTEC partners, and 4) the South Carolina Sea Grant Consortium provides the administrative and management services to the Institute.

The noncompetitive justification was inadequate because the project is not contained in the fiscal year 1997 Appropriations Act and therefore is not legislatively mandated, and NMFS did not provide evidence, such as the results of a published solicitation, that the South Carolina Sea Grant Consortium was the only entity capable of performing the award.

NA77FL0150 - Waldemar Nelson International

NMFS received an unsolicited proposal from Waldemar Nelson International in the amount of \$293,000. NOAA/NMFS awarded a \$293,000 cooperative agreement (No. NA77FL0150) to Waldemar Nelson International in March 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 states that, "Within the funds provided, the conference agreement

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adopts the recommendations included in the Senate report with respect to ... research related to rehabilitation of Gulf Coast fisheries.” The Senate committee report states that “The Committee has provided funding to initiate a mariculture project to increase fisheries production utilizing the existing extensive system of offshore oil and gas production platforms.” The cooperative agreement did not require a matching contribution. The award’s purpose was to develop a cooperative program to investigate the technical, economic, and commercial feasibility of farm raising marine finfish in cages and, possibly, shellfish in trays in an open environment in the northern Gulf of Mexico, utilizing oil and gas production platforms. The project period was limited to one year.

The written noncompetitive justification states that the cooperative agreement addresses a key component of the NMFS strategic plan; the fiscal year 1997 conference report provides funds to initiate a mariculture project to increase fisheries production utilizing offshore oil and gas production platforms; it was the Congressional intent that Waldemar Nelson International conduct the work; and Waldemar Nelson International is in a unique position to complete this award based on their capabilities and experience with production platforms.

The noncompetitive justification is inadequate because the project is not contained in the fiscal year 1997 Appropriations Act and therefore is not legislatively mandated, the conference report provided in support of the legislative mandate does not specifically mention Waldemar Nelson International, and NMFS did not provide evidence, such as the results of a published solicitation, that the Waldemar Nelson Island was the only entity capable of performing the award.

NA77FL0373 - Woods Hole Oceanographic Institution

The NMFS Office of Protected Resources receives funding and selects projects to address NMFS responsibilities under the Marine Mammal Protection Act. The Marine Mammal Protection Act authorizes the Secretary of Commerce to enter into cooperative agreements or other transactions as may be necessary to carry out the purposes of the Act. This project was selected and its funding level established by the NMFS Office of Protected Resources. NMFS then requested that the Woods Hole Oceanographic Institution submit a proposal to NMFS for funding consideration. NMFS received a proposal in the amount of \$245,165. NOAA/NMFS awarded a \$245,165 cooperative agreement (No. NA77FL0373) to the Woods Hole Oceanographic Institution 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 research work into the biology of small cetaceans in the Northwest Atlantic

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Ocean to improve the understanding of the biology of dolphins, porpoises, and small whales that are taken incidentally in commercial operations. The project period was limited to one year.

The written noncompetitive justification states that the Woods Hole Oceanographic Institution is uniquely qualified to address the proposed research needs because personnel involved in the cooperative agreement are recognized world-wide as experts in the field of fisheries-impacted marine mammal populations; another firm would not possess the knowledge or have the capability to conduct the research; the data already collected by the Woods Hole Oceanographic Institution cannot be duplicated by another source; and personnel at the Woods Hole Oceanographic Institution are already active collaborators with Northeast Fisheries Science Center personnel which cannot be duplicated by another institution or firm.

The noncompetitive justification was inadequate because NMFS did not provide evidence, such as the results of a published solicitation, that the Woods Hole Oceanographic Institution was the only entity capable of performing the award.

NA77FL0290 - State of South Carolina

NMFS received an unsolicited proposal from the State of South Carolina in the amount of \$233,900. NOAA/NMFS awarded a \$233,900 cooperative agreement (No. NA77FL0290) to the State of South Carolina in August 1997 using fiscal year 1997 appropriations that NMFS allocated for this award based on fiscal year 1997 appropriations conference report and Senate committee report language. The fiscal year 1997 conference report states that, "Within the funds provided, the conference agreement adopts the recommendations included in the Senate report with respect to ... red drum research...". The Senate committee report states that "the Committee expects that ... with continued funding for the red drum and assessment and tagging effort in South Carolina and for aerial surveys for red drum recapture and age composition study in the Gulf of Mexico." The cooperative agreement did not require a matching contribution. The award's purpose was to hold workshops on tag-return models, analyze and use red drum tag return data, continue tag and recapture studies, and prepare tag-return model and historic data publications. The project period was for three years.

The noncompetitive justification states that the fiscal year 1997 Appropriations Act for the Department of Commerce provided funding at the \$233,900 level to continue to support red drum tagging and assessment efforts in South Carolina, the South Carolina Division of Marine Resources is responsible for the management of marine resources within the jurisdiction of the State of South Carolina, personnel involved in the Cooperative Agreement are recognized as world-wide experts in the field of red drum

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biology, South Carolina Division of Marine Resources personnel have demonstrated through previous awards with NMFS that they are able to meet proposed deadlines, South Carolina Division of Marine Resources personnel have the specialized experience on data collection, the Division of Marine Resources has been conducting the type of work required for a number of years, the Division of Marine Resources already possesses most of the equipment that will be necessary for the successful conduct of the proposed research, and the number of years of data collected by the Division of Marine Resources could not be duplicated by another agency.

The noncompetitive justification was inadequate because the project is not contained in the fiscal year 1997 Appropriations Act and therefore is not legislatively mandated, and NMFS did not provide evidence, such as the results of a published solicitation, that the State of South Carolina was the only entity capable of performing the award.

NA57FL0149 - Maine Atlantic Salmon Authority

The Maine Atlantic Salmon Authority was selected to perform research by the NMFS Northeast Science Center in response to research needs identified by the North Atlantic Salmon Conservation Organization (NASCO). The high seas Atlantic salmon fisheries are managed under the auspices of NASCO to which the United States is a member. In support of the U.S. Commissioners to NASCO and under the obligation of the North Atlantic Salmon Treaty, NMFS supplies scientific advice to the U.S. Commissioners and represents the United States at international Atlantic salmon scientific fora.

The NE Science Center allocates funding for an Atlantic Salmon research program that is in part designed to meet informational needs identified by NASCO. At its annual meeting, NASCO agrees on scientific terms of reference which are forwarded to the International Council for the Exploration of the Seas (ICES). ICES serves as a scientific secretariat for organizations such as NASCO by forming international working groups on specific subjects. The ICES North Atlantic Salmon Working Group is convened annually and produces a report from material provided from member nations. NASCO then uses this data to formulate management measures for salmon in the North Atlantic.

The research to be performed by the NE Science Center was identified in the then recent terms of reference for the North Atlantic Salmon Working Group. The NE Science Center identified the Maine Atlantic Salmon Authority as being funded to perform this research in the NE Science Center's Spending Plan for Atlantic Salmon.

NMFS requested that the Maine Atlantic Salmon Authority submit a proposal for funding consideration. NMFS received a proposal for \$205,718. NOAA/NMFS awarded a \$205,718 continuation to a cooperative agreement (No. NA77FL0433) to the Maine

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Atlantic Salmon Authority in May 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 data collection efforts in Maine rivers on adult Atlantic salmon. The project period was limited to one year.

The written noncompetitive justification states that in support of the U.S. Commissioners to the North Atlantic Salmon Conservation Organization and under obligation of the North Atlantic Salmon Treaty, NMFS supplies scientific advice to the Commissioners, the Maine Atlantic Salmon Authority is the agency designed as the official collection agency for Maine Atlantic salmon fishery data and is responsible for the management for the state's salmon resource, personnel involved in the Cooperative Agreement are recognized world-wide as experts in the field of salmon fishery biology, have specialized experience, and have been conducting the type of work required in the cooperative agreement for a number of years, the Maine Atlantic Salmon Authority has much of the equipment necessary for the successful conduct of the proposed research, and the number of years of data already collected by the Maine Atlantic Salmon Authority can not be duplicated by another agency.

The noncompetitive justification was inadequate because NMFS did not provide evidence, such as the results of a published solicitation, that the Maine Atlantic Salmon Authority was the only entity capable of performing the award; and neither the North Atlantic Salmon Conservation Organization nor the North Atlantic Salmon Treaty limit NMFS to providing assistance only to the Maine Atlantic Salmon Authority.

NA76FL0389 - State of New York

The State of New York was selected to perform research by the NMFS Northeast Science Center in response to research needs identified by the Atlantic States Marine Fisheries Commission. The NE Science Center identified the State of New York as being funded to perform this research in the NE Science Center's Spending Plan for striped bass. NMFS requested that the State of New York submit a proposal for funding consideration. NMFS received a proposal for \$172,900. NOAA/NMFS awarded a \$172,900 grant (No. NA77FL0389) to the State of New York in August 1997 using funds provided in its fiscal year 1997 appropriations and allocated for striped bass research. The cooperative agreement required a \$19,211 matching contribution from the state, bringing the project budget to \$192,111. The award's purpose was to fund research of striped bass in the marine district of New York State through an ocean haul seine study. The project period was limited to one year.

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The written noncompetitive justification states that the Atlantic striped bass are managed under the auspices of the Atlantic States Marine Fisheries Commission to which NMFS is a member, the commission coordinates the development of fishery management plans through its member states which are responsible for implementing the plans, the commission published a plan for striped bass, an ocean haul seine study along New York's eastern Long Island has been identified as the highest priority information needed to monitor the success of the plan, the New York Department of Environmental Conservation is the designated agency in New York to manage fish populations and is responsible for the management of the state's Atlantic striped bass resource, personnel involved in the project are recognized as experts in the field of striped bass fishery biology, have specialized experience, and have been conducting the type of work required in the grant for a number of years, another firm would not possess the detailed knowledge of collection sites and techniques nor have the capability to access the data that have already been collected, the Department of Environmental Conservation already has much of the necessary equipment, and the number of years of data that already have been collected by the Department of Environmental Conservation can not be duplicated by another agency.

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

NA57FL0122 - Florida State University

Florida State University was selected to perform research by the NMFS Northeast Science Center in response to research needs identified by the North Atlantic Salmon Conservation Organization (NASCO). The high seas Atlantic salmon fisheries are managed under the auspices of NASCO to which the United States is a member. In support of the U.S. Commissioners to NASCO and under the obligation of the North Atlantic Salmon Treaty, NMFS supplies scientific advice to the U.S. Commissioners and represents the United States at international Atlantic salmon scientific fora.

The NE Science Center allocates funding for an Atlantic Salmon research program that is in part designed to meet informational needs identified by NASCO. At its annual meeting, NASCO agrees on scientific terms of reference which are forwarded to the International Council for the Exploration of the Seas (ICES). ICES serves as a scientific secretariat for organizations such as NASCO by forming international working groups on specific subjects. The ICES North Atlantic Salmon Working Group is convened annually and produces a report from material provided from member nations. NASCO then uses this data to formulate management measures for salmon in the North Atlantic.

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The research to be performed by the NE Science Center was identified in the then recent terms of reference for the North Atlantic Salmon Working Group. The NE Science Center identified Florida State University as being funded to perform this research in the NE Science Center's Spending Plan for Atlantic Salmon.

NMFS requested that Florida State University submit an unsolicited proposal for funding consideration. NMFS received an unsolicited proposal in the amount of \$50,000. NOAA/NMFS awarded a \$50,000 continuation amendment to cooperative agreement (No. NA57FL0122) to Florida State University in May 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 research work related to developing a historical time series of ocean surface current data for the North Atlantic and use it in a migration model of Atlantic Salmon. The project period was limited to one year.

The written noncompetitive justification states that in support of the U.S. Commissioners to the North Atlantic Salmon Conservation Organization and under obligation of the North Atlantic Salmon Treaty, NMFS supplies scientific advice to the Commissioners; personnel involved in the Cooperative Agreement are recognized world-wide as experts in the field of oceanographic modeling and are uniquely qualified; another firm would not possess the knowledge or have the capability to conduct the research; the university has the necessary equipment to conduct the proposed research; and the number of years of data already analyzed cannot be duplicated by another agency.

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

NA77FL0433 - The Regents of the University of California

The NMFS Northeast Science Center selected the University of California to perform research in response to research needs identified by the North Atlantic Salmon Conservation Organization (NASCO). The high seas Atlantic salmon fisheries are managed under the auspices of NASCO to which the United States is a member. In support of the U.S. Commissioners to NASCO and under the obligation of the North Atlantic Salmon Treaty, NMFS supplies scientific advice to the U.S. Commissioners and represents the United States at international Atlantic salmon scientific fora.

The NE Science Center allocates funding for an Atlantic Salmon research program that is in part designed to meet informational needs identified by NASCO. At its annual meeting, NASCO agrees on scientific terms of reference which are forwarded to the International Council for the Exploration of the Seas (ICES). ICES serves as a scientific

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secretariat for organizations such as NASCO by forming international working groups on specific subjects. The ICES North Atlantic Salmon Working Group is convened annually and produces a report from material provided from member nations. NASCO then uses this data to formulate management measures for salmon in the North Atlantic.

The research to be performed by the NE Science Center was identified in the then recent terms of reference for the North Atlantic Salmon Working Group. The NE Science Center identified the University of California as being funded to perform this research in the NE Science Center's Spending Plan for Atlantic Salmon.

NMFS requested that the University of California submit a proposal to NMFS for funding consideration. NMFS received a proposal for \$44,190. NOAA/NMFS awarded a \$44,190 cooperative agreement (No. NA77FL0433) to the University of California in August 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 research to implement and test a model for the effects or environmental factors on smolting and maturation in Atlantic salmon. The project period was limited to one year.

The written noncompetitive justification states that in support of the U.S. Commissioners to the North Atlantic Salmon Conservation Organization and under obligation of the North Atlantic Salmon Treaty, NMFS supplies scientific advice to the Commissioners; personnel involved in the Cooperative Agreement are recognized world-wide as experts in the field of salmon life history, have specialized experience, and have been conducting the type of work required in the cooperative agreement for over a decade; and that the University of California has the equipment necessary for the successful conduct of the proposed research.

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

II. Awards with Limiting Legislation

NA77FL0379 - State of Rhode Island

The fiscal year 1997 appropriations conference report states that, "Within the funds provided, the conference agreement adopts the recommendations included in the Senate report with respect to pollution and depletion of stocks in Narragansett Bay." The Senate committee report states that "\$1,500,000 is provided to establish a joint federal-state partnership for critical studies regarding pollution and depletion of stocks in Narragansett Bay". Based on the conference report and Senate committee report

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language, NMFS allocated funds for this purpose, coordinated with the State of Rhode Island, and requested that the state submit a project proposal to NMFS for funding consideration. NMFS received a proposal in the amount of \$550,000. NOAA/NMFS awarded a \$550,000 cooperative agreement (No. NA77FL0379) to the State of Rhode Island in September 1997. The cooperative agreement did not require a matching contribution. The award's purpose was to fund contractual services to design, construct, outfit, and place in service a new research vessel for the State of Rhode Island. The project period was limited to one year.

The written noncompetitive justification states that, "PL 104-208, the FY 1997 Omnibus Appropriations Act, provides the legislative and Congressional authorization to establish a joint federal-state partnership for critical studies regarding pollution and depletion of fishery resources in Narragansett Bay" and with collaboration between NMFS and the state, a water quality and fisheries monitoring program was developed in response to this authorization. The construction of a marine research vessel accommodates enhanced collaborative capabilities for monitoring and management of coastal and estuarine fisheries. The justification also states that NMFS has jurisdiction over fisheries within the Exclusive Economic Zone, the Atlantic Coastal Fisheries Cooperative Management Act requires the Secretary of Commerce to assist in the conservation of Atlantic coastal fisheries, the Secretary is authorized to provide financial assistance to the Atlantic States Marine Fisheries Commission and the states, including Rhode Island, to carry out provisions of the Act, the responsibility of managing Atlantic coastal fisheries in the Territorial Sea rests with the states, and as such projects must be conducted by or coordinated through state agencies having management authority over concerned fisheries, the Rhode Department of Environmental Management is designated as the official agency in Rhode Island to manage marine and estuarine resources, and the state personnel have demonstrated through previous grants that they can meet proposed deadlines.

The noncompetitive justification was inadequate because the project is not contained in the fiscal year 1997 Appropriations Act and therefore is not legislatively mandated; NMFS did not provide evidence, such as the results of a published solicitation, that the State of Rhode Island was the only entity capable of performing the award; and the Atlantic Coastal Fisheries Cooperative Act does not limit NMFS to providing assistance only to the State of Rhode Island.

NA77FL0380 - State of Rhode Island

The fiscal year 1997 appropriations conference report states that, "Within the funds provided, the conference agreement adopts the recommendations included in the Senate report with respect to ... pollution and depletion of stocks in Narragansett Bay. The

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Senate committee report states that “\$1,500,000 is provided to establish a joint federal-state partnership for critical studies regarding pollution and depletion of stocks in Narragansett Bay.” Based on the conference report and Senate committee report language NMFS allocated funds for this purpose, coordinated with the State of Rhode Island, and requested that the state submit a project proposal to NMFS for funding consideration. NMFS received a proposal in the amount of \$295,250. NOAA/NMFS awarded a \$295,250 cooperative agreement (No. NA77FL0380) to the State of Rhode Island in September 1997 using funds contained in its fiscal year 1997 appropriations. The cooperative agreement did not require a matching contribution. The award’s purpose was to initiate Phase 1 of a long-term water quality and fishery management initiative. Specifically, the award will be used to install automated monitoring equipment in Narragansett Bay, establish a data management system, and provide scientific fishery assessment data. The project period was for two years.

The written noncompetitive justification states that, “PL 104-208, the FY 1997 Omnibus Appropriations Act, provides the legislative and Congressional authorization to establish a joint federal-state partnership for critical studies regarding pollution and depletion of fishery resources in Narragansett Bay” and with collaboration between NMFS and the state, a water quality and fisheries monitoring program was developed in response to this authorization. This cooperative agreement accommodates enhanced collaborative capabilities for monitoring and management of coastal and estuarine fisheries by supporting Phase I implementation of a marine research agenda for Rhode Island. The justification also states that NMFS has jurisdiction over fisheries within the Exclusive Economic Zone, the Atlantic Coastal Fisheries Cooperative Management Act requires the Secretary of Commerce to assist in the conservation of Atlantic coastal fisheries, the Secretary is authorized to provide financial assistance to the Atlantic States Marine Fisheries Commission and the states, including Rhode Island, to carry out provisions of the Act, the responsibility of managing Atlantic coastal fisheries in the Territorial Sea rests with the states, and as such projects must be conducted by or coordinated through state agencies having management authority over concerned fisheries, the Rhode Department of Environmental Management is designated as the official agency in Rhode Island to manage marine and estuarine resources, and the state personnel have demonstrated through previous grants that they can meet proposed deadlines.

The noncompetitive justification was inadequate because the project is not contained in the fiscal year 1997 Appropriations Act and therefore is not legislatively mandated; NMFS did not provide evidence, such as the results of a published solicitation, that the State of Rhode Island was the only entity capable of performing the award; and the Atlantic Coastal Fisheries Cooperative Act does not limit NMFS to providing assistance only to the State of Rhode Island.

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NA57FL0479 - State of Georgia

The NMFS Office of Protected Resources allocates funding and selects projects to address NMFS responsibilities under the Endangered Species Act. The Endangered Species Act authorizes the Secretary of Commerce to enter into cooperative agreements with and provide financial assistance to any state which establishes and maintains an adequate and active program for the conservation of endangered and threatened species. This project was selected and its funding level established by the NMFS Office of Protected Resources. NMFS then requested that the State of Georgia submit a proposal to NMFS for funding consideration. NMFS received a proposal in the amount of \$102,000. NOAA/NMFS awarded a \$102,000 continuation amendment to an existing cooperative agreement (No. NA57FL0479) to the State of Georgia in September 1997 using funds provided in its fiscal year 1997 appropriations. The cooperative agreement required a \$34,000 matching contribution from the state, bringing the project budget to \$136,000. The award's purpose was to fund research work into loggerhead sea turtle genetic samples. The project period was limited to one year.

The written noncompetitive justification states that by regulation the Endangered Species Act authorizes the Secretary to cooperate to the maximum extent practicable with the states and enter into cooperative agreements with any state which establishes and maintains an adequate and active program for the conservation of endangered and threatened species, the State of Georgia has met the criteria and operates an approved conservation program, and the State of Georgia has management authority over the threatened and endangered species to which the subject project applies.

The noncompetitive justification was inadequate because the Endangered Species Act does not limit NMFS to providing assistance only to the State of Georgia.

NA67FL0388 - State of South Carolina

The NMFS Office of Protected Resources allocates funding and selects projects to address NMFS responsibilities under the Endangered Species Act. The Endangered Species Act authorizes the Secretary of Commerce to enter into cooperative agreements with and provide financial assistance to any state which establishes and maintains an adequate and active program for the conservation of endangered and threatened species. This project was selected and its funding level established by the NMFS Office of Protected Resources. NMFS then requested that the State of South Carolina submit a proposal to NMFS for funding consideration. NMFS received a proposal in the amount of \$70,000. NOAA/NMFS awarded a \$70,000 continuation amendment to an existing cooperative agreement (No. NA67FL0388) to the State of South Carolina in September

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1997 using funds provided in its fiscal year 1997 appropriations. The cooperative agreement required a \$25,131 matching contribution from the state, bringing the project budget to \$95,131. The award's purpose was to implement portions of recovery plans for U.S. populations of endangered sea turtles in South Carolina. The project period was limited to one year.

The written noncompetitive justification states that by regulation the Endanger Species Act authorizes the Secretary to cooperate to the maximum extent practicable with the states and enter into cooperative agreements with any state which establishes and maintains an adequate and active program for the conservation of endangered and threatened species, the State of South Carolina has met the criteria and operates an approved conservation program, and the State of South Carolina has management authority over the threatened and endangered species to which the subject project applies.

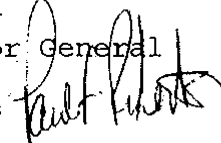
The noncompetitive justification was inadequate because the Endangered Species Act does not limit NMFS to providing assistance only to the State of South Carolina.



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.

