

**Appendices to Memorandum from Lois Schiffer and Eric Schwaab
Re: OIG Review of NOAA's Enforcement Program**

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**Appendices to Memorandum from Lois Schiffer and Eric Schwaab
Re: OIG Review of NOAA's Enforcement Program**

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APPENDIX 1

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

MEMORANDUM FOR: Lois J. Schiffer
NOAA General Counsel

FEB -3 2010

James Balsiger
Acting Assistant Administrator for Fisheries

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

SUBJECT: Follow-up to January Department of Commerce Inspector
General Report on the National Oceanic and Atmospheric
Administration's Enforcement Programs

On January 21, 2010, the National Oceanic and Atmospheric Administration (NOAA) received the Department of Commerce Inspector General's (IG) Report entitled "*Review of NOAA Fisheries Enforcement Programs and Operations, Final Report No. OIG 19887.*" The IG prepared this Report in response to my June 2, 2009, memorandum requesting a review of the policies and practices of the Office for Law Enforcement within the National Marine Fisheries Service (NMFS), and NOAA's Office of General Counsel for Enforcement and Litigation. I take this Report very seriously, and I am committed to addressing the problems identified. Successfully fulfilling our mission to conserve and manage coastal and marine resources to meet our Nation's economic, social, and environmental needs requires a strong, trusted enforcement program. This memo lays out my orders for some immediate actions and instructs the two of you to work together to develop additional actions to respond to the problems identified in the Report. I request that the NOAA General Counsel take the lead and work with the Acting Assistant Administrator for Fisheries on these assignments.

I recognize that it will take NOAA the full 60 days allowed by the IG to develop a comprehensive plan to address some long standing deficiencies. At the same time, there are a number of immediate actions that would begin to respond effectively to the Report's recommendations and to assist NOAA in improving its enforcement capabilities. Therefore we will proceed as follows. First, I am ordering a number of immediate actions in response to some of the IG's recommendations. Second, during the 60-day review period, under your leadership, NOAA will develop a comprehensive plan that includes long-term strategies and actions that respond to all of the IG's recommendations. This two-pronged approach is outlined below.

A. Immediate actions:

1. ***Subject to compliance with applicable labor relations requirements, the General Counsel shall immediately institute higher level reviews of proposed charging decisions, including proposed penalties and permit sanctions, and proposed***



settlements to ensure consistency and predictability. This action will address the Report's observation that NOAA lacks formal procedures for sufficiently documenting decisions regarding penalty assessments and settlements that result in a process that provides the appearance of arbitrary decision-making.

2. *I have ordered an immediate freeze on the hiring of criminal investigators until NMFS completes an internal work force analysis to address the appropriate mix of enforcement personnel and it is approved by me.* This action will better position the agency to address the Report's observation that the Office of Law Enforcement may not have the appropriate balance of criminal investigators and regulatory inspectors.
3. *I am ordering an immediate shift in oversight of the NMFS Civil Monetary Penalties Fund (also known as the Asset Forfeiture Fund) from NMFS to NOAA's Comptroller.* This intermediate step will begin to address the IG's criticism that internal controls over this fund are lacking, and that efforts are required to ensure proper use and verification of the funds.
4. *NMFS, in consultation with the NOAA Office of Communications, will direct resources to improve communications on enforcement issues, particularly in the Northeast.* This effort should include actions to enhance understanding of fisheries regulations as well as to ensure transparency of enforcement actions. This action is intended to begin to address the perception among the regulated community and the interested public that NOAA's regulatory processes and enforcement actions are arbitrary and lack transparency.
5. *NOAA General Counsel, NMFS, and the NOAA Director of External Affairs will develop specific objectives and detailed plans for a summit on law enforcement practices to be held no later than June 30, 2010.* This effort shall include a list of possible chairs and co-chairs, the identification of possible facilitators, and a communications strategy. The IG provided examples of where the regulated community has expressed dissatisfaction with our enforcement efforts, citing complex, conflicting, and excessive administrative burdens. The summit will provide a venue to develop forward thinking approaches to enforcement efforts within NOAA to address these concerns and to assist leadership in formulating long-range policies for properly executing NOAA's enforcement actions to protect living marine resources.

B. Actions to be completed by March 21, 2010:

In preparing NOAA's comprehensive plan to address the IG Report, I request that you include each of the following items. During your review, I expect you will identify additional actions as well.

1. *NMFS Office of Law Enforcement and NOAA General Counsel, in cooperation with the NOAA Chief Information Officer, will develop a strategy*

and schedule to improve management information systems, including recommendations on actions to take advantage of the internet to increase transparency. This effort is intended to address current system inefficiencies and data integrity issues, and it will enable NOAA to more effectively use information to guide its decision-making and increase transparency in our enforcement efforts.

2. *The Assistant Administrator for Fisheries, with input from NOAA's leadership, will develop a plan and schedule to implement standardized procedures for setting enforcement priorities.* The IG's Report found that NOAA leadership has had minimal involvement in setting enforcement priorities. Implementing standard procedures for setting enforcement priorities will ensure consistency among regions while addressing regional needs.
3. *NOAA General Counsel for Enforcement and Litigation will develop a plan and schedule to strengthen its operating procedures, prosecution of charged cases, and settlement actions.* The IG Report identified a need for NOAA to undertake revisions to applicable procedural regulations and penalty schedules. This effort will provide greater consistency and clarity, and will reduce confusion among affected industry parties.
4. *The Assistant Administrator for Fisheries in collaboration with the NOAA Communications Office and General Counsel for Enforcement and Litigation will develop an outreach strategy to improve engagement with the local fisheries community and the public.* In addition to improving understanding of fishing regulations and NOAA's enforcement activities, this action is intended to increase rapport between NOAA and fishermen, and lead to improved communications and informal problem solving.
5. *The Assistant Administrator for Fisheries in consultation with the Director of the Workforce Management Office will formulate a plan to review the NMFS Office of Law Enforcement's staffing and procedures. This plan will explicitly address both civil and criminal requirements, with specific focus on ensuring that criminal procedures are not applied to civil offenses. Development of the plan should include appropriate independent review.* The IG Report called into question the proportion of law enforcement staff (i.e. criminal investigators versus uniformed enforcement officers), and it suggested that staffing is disproportionate to agency functions and operational need. The plan will be responsive to this concern, and will take into account information and outcomes resulting from the actions outlined above.

These ten initial steps will greatly assist us in resolving the issues identified by the IG, and it will build on and enhance our collaborative efforts to work with the fishing industry and other stakeholders in a more constructive manner in the future. I thank you in advance for your efforts. I look forward to working with you both as we address these critical issues and develop a comprehensive plan that responds to all of the IG's recommendations.

cc: COS - Margaret Spring
PDUS - Monica Medina
DUS - Mary Glackin
CFO - Maureen Wylie
FOC - Jon Alexander
CIO - Joe Klimavicz
WFMO - Eduardo J. Ribas
DOC - Jean Toal-Eisen
DOC - Jennifer Costanza




UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of the Chief Financial Officer
Finance Office

February 5, 2010

MEMORANDUM FOR: Lois Schiffer
NOAA General Counsel

James W. Balsinger
Acting Assistant Administrator for Fisheries

FROM: Jon P. Alexander 
Director of Finance/Comptroller

SUBJECT: Oversight of NMFS Civil Monetary Penalties Fund

In response to Dr. Lubchenco's February 3, 2010 directive to shift the oversight of the NMFS Civil Monetary Penalties (CMP) Fund (also known as the Asset Forfeiture Fund) from NMFS to the NOAA Comptroller, this memorandum serves to communicate to you the oversight procedures I will implement effective immediately. I consider these procedures essential to addressing the criticism of the internal controls over the NMFS CMP Fund contained in the Department of Commerce Inspector General's (IG) Report entitled "*Review of NOAA Fisheries Enforcement Programs and Operations, Final Report No. OIG-19987.*"

Effective immediately, all requests for obligation to the NMFS CMP Fund from the NMFS Office of Law Enforcement (OLE) and NOAA General Counsel for Enforcement and Litigation (GCEL) must be reviewed and approved by the NOAA Comptroller prior to initiating any action by OLE or GCEL personnel to execute all obligations of \$1,000 or more to the CMP Fund. Any requests deemed to be an inappropriate use of the NFMS CMP fund will be denied.

Additionally, the following management controls over the NMFS CMP Fund from within NMFS OLE and NOAA GCEL are to be implemented immediately. All requests for obligation to the NMFS CMP Fund of \$1,000 or more from NMFS OLE and NOAA GCEL must be reviewed and approved, as appropriate by organizational boundaries, by the following management officials prior to being submitted to the NOAA Comptroller for final approval:

NMFS CMP obligation requests:

- Dale Jones; Director of NMFS OLE
- Gary Reisner; NMFS Chief Financial Officer

GCEL CMP obligation requests:

- Richard Mannix; NOAA Assistant GCEL
- Mary Beth Ward; NOAA Deputy General Counsel

The oversight required from my office, as well as the additional management controls instituted within NMFS OLE and NOAA GCEL, remain in effect until further notice. The additional oversight from my office and management controls in NMFS OLE and NOAA GCEL implemented as a result of this memorandum are intended to expand upon the existing internal controls within the NMFS Enforcement Programs. I expect all existing internal controls over the NMFS Enforcement Program and Operations to be diligently exercised regardless of the amount of obligation processed to the NMFS CMP.

The additional oversight as detailed in this memorandum will be reevaluated periodically by my office to ensure their effectiveness and monitored for compliance.

cc: Mary Glackin
Jane Chalmers
Mary Beth Ward
Richard Mannix
John Oliver
Gary Reisner
Dale Jones
Mark Paterni
Maureen Wylie
Nancy Gates



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of the Chief Financial Officer
Finance Office

March 2, 2010

MEMORANDUM TO: Eric Schwaab
Assistant Administrator for Fisheries

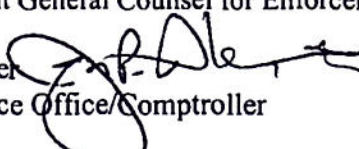
John Oliver
Deputy Assistant Administrator for Fisheries – Operations

Dale Jones
Director, NOAA Office for Law Enforcement

Mary Beth Ward
Deputy General Counsel

Richard Mannix
Assistant General Counsel for Enforcement and Litigation

Charles Green
Deputy Assistant General Counsel for Enforcement and Litigation

FROM: Jon P. Alexander 
Director, Finance Office/Comptroller

SUBJECT: Review Limit for Reviewing Obligations

The purpose of this memorandum is to provide clarification on the February 22, 2010 memorandum previously sent on this subject. First, I would like to clarify that the memorandum of February 5, 2010 was issued by me, rather than the NOAA Administrator. The February 5, 2010 memorandum required all requests for obligations of \$1,000 or more to the National Marine Fisheries Service (NMFS) Civil Monetary Penalties (CMP) Fund from the NMFS Office of Law Enforcement (OLE) and NOAA General Counsel for Enforcement and Litigation (GCEL) be reviewed and approved by me *prior* to initiating any action by OLE or GCEL personnel. The NOAA Administrator's memorandum of February 3, 2010 shifted the oversight of the NMFS Civil Monetary Penalties Fund (also known as the Asset Forfeiture Fund) to the NOAA Comptroller, but did not indicate a review level for obligations.

Secondly, in order to determine if the \$1,000 obligation level should be reduced, my staff explored lowering the threshold to either \$500 or \$750 based on fiscal year 2009 obligation data. The analysis performed showed that the lower thresholds did not significantly increase the percentage of total obligations of the fund to be reviewed. Therefore, the threshold of \$1,000 or more will remain and provide for 76.92% coverage of GCEL obligations and 78.99% coverage of OLE obligations.

If you have any questions concerning this matter, please contact me by phone at (301) 444-2102 or by email at Jon.P.Alexander@noaa.gov.

**List of Existing Contracts – NOAA General Counsel Office for Enforcement and Litigation
Prepared by the NOAA Office of the General Counsel
February 24, 2010**

The following contracts were reviewed at the request of GCEL in order to determine if it is proper to use the Asset Forfeiture/Civil Monetary Penalty (CMP) Fund to pay for the contracts:

Contract: New Dawn Technologies

Type: Fixed Price

Contract Date: 9/19/2008 (Amended on 10/16/2009)

Purpose: To provide services for the Case Management System.

Applicable Citation from Magnuson-Steven Act (MSA):

MSA SEC. 3]) -16 USC §1861 Enforcement (1) Notwithstanding any other provision of law, the Secretary or the Secretary of the Treasury may pay from sums received as fines, penalties, and forfeitures of property for violations of any provisions of this chapter or of any other marine resource law enforced by the Secretary, including the Lacey Act Amendments of 1981 (In U.S.C. 3371 et seq.) Section: (C) any expenses directly related to investigations and civil or criminal enforcement proceedings, including any necessary expenses for equipment, training, travel, witnesses, and contracting services directly related to such investigations or proceedings;

Contract: TIGER Personnel Services, Inc.

Type: Fixed Price

Contract Date: 8/14/2009

Purpose: Contractor provides services for a Legal Assistant (Collection) to provide technical, financial, and penalty collections expertise for the processing of debt collection cases.

Applicable Citation from Magnuson-Steven Act (MSA): same as above (MSA SEC. 3]) -16 USC §1861(1) (C))

Contract: TIGER Personnel Services, Inc.

Type: Fixed Price

Contract Date: 4/30/2009 (Amendment 12/30/2009)

Purpose: Contractor provides services for Enforcement and Litigation Legal Assistant to work with case investigators, perform research, organize and maintain case files, etc.

Applicable Citation from Magnuson-Steven Act (MSA): same as above (MSA SEC. 3]) -16 USC §1861(1) (C))

Contract: REMSA, Inc.

Type: Time and Materials

Contract Date: 12/22/2009

Purpose: Contractor provides service for Environmental Specialist (Gloucester, MA) to prepare appropriate cases files for archiving and assist in trial preparation, logging, calendaring and docketing cases, etc.

Applicable Citation from Magnuson-Steven Act (MSA): same as above (MSA SEC. 3]) -16 USC §1861(1) (C))

Contract: Hellerman Associates

Type: Time and Materials

Contract Date: 3/13/2009

Purpose: Contractor provides financial analysis and expert witness services on as needed basis.

Applicable Citation from Magnuson-Steven Act (MSA): same as above (MSA SEC. 3J) -16 USC §1861(1) (C))

Subject: Re: Review of GCEL Contracts

From: "Nancy M. Gates" <Nancy.M.Gates@noaa.gov>

Date: Thu, 25 Feb 2010 10:26:14 -0500

To: "Charles.Green" <Charles.Green@noaa.gov>

CC: Richard Mannix <Richard.Mannix@noaa.gov>, Mary Beth Ward <Mary.Beth.Ward@noaa.gov>, Jon P Alexander <Jon.P.Alexander@noaa.gov>, Sandra A Smoak <Sandra.A.Smoak@noaa.gov>

Chaz,

For the fixed cost contracts - No. The exception would be any new modifications or amendments to the contracts. For the time and materials contracts - Yes. Jon will need to approve an request for services either by a task order or other form of request (i.e. email, etc).

Nancy

Charles.Green wrote:

Nancy,

Thank you for reviewing these contracts.

Next question: do we need to submit to your office requests for use of the CMP Fund prior to incurring costs against these contracts that are greater than \$1,000? For example, the REMSA contracts provide personnel services for which we receive periodic invoices that are greater than \$1,000.

Chaz

Nancy M. Gates wrote:

The following contracts were reviewed at the request of GCEL in order to determine if it is proper to use the Asset Forfeiture/Civil Monetary Penalty (CMP) Fund to pay for the contracts:

Contract: New Dawn Technologies

Type: Fixed Price

Contract Date: 9/19/2008 (Amended on 10/16/2009)

Purpose: To provide services for the Case Management System.

Applicable Citation from Magnuson-Steven Act (MSA):

MSA SEC. 3j) -16 USC §1861 Enforcement (1) Notwithstanding any other provision of law, the Secretary or the Secretary of the Treasury may pay from sums received as fines, penalties, and forfeitures of property for violations of any provisions of this chapter or of any other marine resource law enforced by the Secretary, including the Lacey Act Amendments of 1981 (In U.S.C. 3371 et seq.) Section: (C) any expenses directly related to investigations and civil or criminal enforcement proceedings, including any necessary expenses for equipment, training, travel, witnesses, and contracting services directly related to such investigations or proceedings;

The use of the CMP Fund for the stated purpose of the contract is in accordance with the MSA.

Contract: TIGER Personnel Services, Inc.

Type: Fixed Price

Contract Date: 8/14/2009

Purpose: Contractor provides services for a Legal Assistant (Collection) to provide technical, financial, and penalty collections expertise for the processing of debt collection cases.

Applicable Citation from Magnuson-Steven Act (MSA): same as above (MSA SEC. 3J) -16 USC §1861(1) (C))

The use of the CMP Fund for the stated purpose of the contract is in accordance with the MSA.

Contract: TIGER Personnel Services, Inc.

Type: Fixed Price

Contract Date: 4/30/2009 (Amendment 12/30/2009)

Purpose: Contractor provides services for Enforcement and Litigation Legal Assistant to work with case investigators, perform research, organize and maintain case files, etc.

Applicable Citation from Magnuson-Steven Act (MSA): same as above (MSA SEC. 3J) -16 USC §1861(1) (C))

The use of the CMP Fund for the stated purpose of the contract is in accordance with the MSA.

Contract: REMSA, Inc.

Type: Time and Materials

Contract Date: 12/22/2009

Purpose: Contractor provides service for Environmental Specialist (Gloucester, MA) to prepare appropriate cases files for archiving and assist in trial preparation, logging, calendaring and docketing cases, etc.

Applicable Citation from Magnuson-Steven Act (MSA): same as above (MSA SEC. 3J) -16 USC §1861(1) (C))

The use of the CMP Fund for the stated purpose of the contract is in accordance with the MSA.

Contract: Hellerman Associates

Type: Time and Materials

Contract Date: 3/13/2009

Purpose: Contractor provides financial analysis and expert witness services on as needed basis.

Applicable Citation from Magnuson-Steven Act (MSA): same as above (MSA SEC. 3J) -16 USC §1861(1) (C))

The use of the CMP Fund for the stated purpose of the contract is in accordance with the MSA.

If any contract amendments/modifications are made to the fixed price contracts, please provide Jon Alexander with a copy of the amendments/modifications along with the a request of obligation/transmittal form for his approval. For the time and materials contracts, please provide copies of any additional task orders or informal request for services (i.e. emails requesting services from the contractor) from this point on. Jon will need to review the additional request for services on the time and materials contracts also.

If you have any questions I can be contacted on 301-444-2185 or by email at Nancy.M.Gates@noaa.gov.

Nancy

| |

Nancy M. Gates <Nancy.M.Gates@noaa.gov>
Chief, Financial Policy and Compliance Division
NOAA Finance Office

Communications Plan
Prepared by the NOAA Office of Communications and External Affairs
March 17, 2010

Purpose:

Improve NOAA's relationship and communications with fishermen and enhance their understanding of fisheries regulations and enforcement activities.

Objectives:

1. Increase NOAA's transparency and rapport with fishermen.
2. Increase the frequency and improve the quality of interactions between fishermen and NOAA enforcement officers and attorney-advisors.
3. Increase public knowledge and understanding of fisheries regulations.
4. Promote the biological and financial benefits of sustainable fishing.

Tools:

Outlined below are several communications and outreach tools that will deliver a service oriented enforcement operation and reinforce a more productive rapport between NOAA and its regulated constituencies. Currently these strategies are used in limited capacity in one or more of NOAA Fisheries regions, however, the tools can be modified to address specific communications needs and management capacities unique to each region.

The tools create capacity for receiving input from constituents so that NOAA can better address their needs. They are dynamic and can be adapted over time. To be effective, they require extensive coordination and content management between regional fisheries management, enforcement, general counsel staff, and agency scientists. Tools must be designed for easy access from technology platforms readily available and frequently used by the targeted fishermen community.

Integrated development and implementation of these enhanced communication strategies and products can be accomplished through the establishment of a Tiger team under the direction of NOAA's Office of Communications and External Affairs and comprised of representation from NOAA's fisheries management, enforcement, science, general counsel and communication personnel, from both headquarters and the regions, as well as other appropriate line office representation with an enforcement component (i.e., National Ocean Service's Office of National Marine Sanctuaries).

The Tiger team will develop an initial draft plan to serve as the basis of a discussion on NOAA's communications at the upcoming Enforcement Summit with the intent to gain input and guidance for a final plan of action on enhanced communications.

Listed below is a menu of tools to be considered for constructing an initial plan to enhance regulatory and enforcement communications from NOAA.

1. **Fishermen's Forums:** In conjunction with regularly held Fishery Management Council (FMC) meetings, hold a question and answer forum hosted by the NOAA Fisheries regional leaders (regional administrator, special-agent-in-charge, GC attorney-advisor, science director, FMC executive director and chair). Such forums are currently conducted in South Atlantic, Gulf of Mexico, and Western Pacific, and have helped to establish a dialogue with the fishing community there. Typically informal and without agenda, they focus on responding to questions, but they also provide an opportunity for proactive outreach. NOAA Fisheries regional offices would be responsible for coordinating with the councils and conducting advance marketing and notification to constituents. In addition to FMCs, NOAA should explore how it could utilize other NOAA outreach networks to help organize forums, such as National Marine Sanctuaries and Sea Grant Extension agents. NOAA plans a pilot forum in New England for April 20, 2010.
2. **Web-Portal and Repository:** NOAA will initiate a pilot project for the design of a webpage to facilitate easy public access to the regulatory compliance criteria for each region. Housed off the OLE national web site, this page would serve as a portal to the regulations and compliance criteria unique to each region. The web page would feature enhanced versions of such ad-hoc tools such as "Ask an Agent" (detailed below) as well as compliance guides (detailed below) that are provided in varying formats throughout the regions. This platform will allow NOAA to offer a consistent look and feel for the public and regulated constituencies to interact with NOAA and leverage these communications to broader public audiences to further the public's knowledge of science-based management. In this process, NOAA should strive to visualize the regulations for any given location spatially on a website. Modeled after the NWS "point and click" weather forecasts, fishermen and the public could "point and click" to areas where they fish or enjoy marine recreation to access the appropriate regulations in that region.
3. **Compliance Guides:** NOAA should undertake a formal communications initiative to design and develop a process for producing easy-to-read compliance guides across all regions. Required under the Regulatory Flexibility Act, NOAA produces compliance guides to accompany each regulation. However, they often rely on the same complex legal language utilized in the regulation itself, and are not produced or made available in a consistent manner. Currently, the Pacific Islands Regional Office produces easy-to-read compliance guidelines that are accessible on the web as well as available by hard-copy. These have become valuable communication commodities for Enforcement Agents. Some FMCs have also expressed their desire for these outreach tools to assist their constituents in complying with the increasing complexity of regulations.
4. **Ask-An-Agent and Frequently Asked Questions:** Modeled after a web link on Florida Sportsmen entitled "Ask the Law," each NOAA Fisheries regional

website would start a link where questions are answered and cataloged in a running FAQ. Implementation would be web based and require a regional structure with access to OLE's national web page, serving as a two-way portal to the regional "Ask-An-Agent" e-mail boxes. The OLE web page would also serve as a platform for FAQ and answers to be archived and utilized for other communication products. This tool can also help inform managers and communication specialists about the potential negative issues and successes within their region. Regional communications and national OLE staff would be required for development, implementation and maintenance.

5. **Additional compliance assistance measures:** NOAA will look at programs conducted by several other agencies to provide compliance assistance to their regulated communities to determine what ideas may be useful to NOAA in helping to aid fishermen to understand and meet legal requirements.
6. **Dockside Communications:** We will consider a variety of cost-effective measures commensurate with the unique regional resources and needs for which they are required. Beyond employment of additional personnel, such strategies could include establishment of a dockside presence through the use of Sea Grant Extension Agents, a group of knowledgeable individuals skilled in personal communications and dedicated to improving public understanding who act as third party liaisons of information between the agency and fishermen. We will also consider enhanced and more strategic utilization of NOAA Fisheries dockside Port Agents, who assist the agency with the collection of data from coastal areas. In addition, contractual arrangements with retired NOAA personnel or retired fishermen familiar with fisheries regulatory complexities could also be tapped as a cost-effective resource for improving communications and relationships. In consultation with NOAA's constituencies, Sea Grant, state partners and the fishery management councils, NOAA could launch a pilot initiative in the Northeast to examine the effectiveness of one or more of these strategies to determine their usefulness and guide further action.
7. **Ombudsman:** As the complexity of regulations accumulates over time, the need for easy access to the agency and facilitated communications with regulated constituencies has gained importance. The IG report has noted that NOAA may consider reestablishing the position of "ombudsman." NOAA has determined that some years ago a person was appointed in either NOAA or the Department of Commerce to act as Ombudsman including outreach to the fishing community, and it was not a particularly successful program. We note that an Ombudsman is a person who acts as a trusted intermediary between an organization and some internal or external constituency while representing the broad scope of constituent interests. We also note that in each charging document NOAA notes that the person charged may talk to the Ombudsman provided by the Small Business Administration. In response to the IG's suggestion, NOAA will evaluate whether re-establishment of an Ombudsman to facilitate enhanced access and more strategic communications with regulated stakeholders and the public would be

useful. We will consider as part of that evaluation what other agencies have used an Ombudsman, for what purpose, and whether the approach has been effective.

8. **Other tools for regular communications with communities:** NOAA seeks to build strong coastal communities, and to achieve that goal along with its programs for protecting living marine resources through regulation. We will explore other possible tools for establishing regular communications in communities that NOAA's work affects. We will talk to the Coast Guard about approaches it uses that may provide good models.
9. **Fisheries Enforcement E-mail ListServ:** A listserv is an effective way to either "push" information out to constituents or if moderated, can serve as a discussion forum or a means to answer questions. NMFS already has FishNews, which is an automated, e-mail-based national weekly that provides electronic notification of important actions, rules, policies and programs. Regional e-mailed newsletters also exist and could be utilized to enhance enforcement communications.
10. **Social Media Tools:** As the use of social media tools become approved and integrated into NOAA's communications operations, the use of *Twitter* and other push technologies could be used to communicate with fishermen about quick regulatory and enforcement updates, including provisioning any dock-side agent with the technology and training to implement these tools. Blogs could also be incorporated as another platform for Ask-an-Agent and generating FAQs for general communications use.
11. **Cooperative Research Programs:** We will examine how cooperative research programs have worked as a means to enhance cooperation and communication between NOAA and those it regulates.
12. **Training NOAA enforcers in tools to defuse difficult situations:** NOAA enforcers may confront difficult and strained situations in carrying out their work. Providing training in effective ways to handle those situations may enhance communications between NOAA enforcers and those NOAA regulates.

Implementation:

Through establishment of a NOAA Communications Tiger team, a strategy focused on enhancing communications between NOAA's enforcement operations, regulated constituents and the public will be developed for consideration and action by NOAA and through the Enforcement Summit process.

In addition to developing strategies and tools, the Tiger team will also consider the needs and methods for conducting a competency assessment of OLE's current communication needs. These findings, along with strategies and resource needs will be prepared in advance of the Enforcement Summit for full consideration and input.

Measurable Matrix:

To provide feedback on the effectiveness of NOAA's enhanced communication strategies, NOAA proposes a number of measurability factors to be employed and has listed these below.

Third Party Review:

To provide a baseline of performance from which to compare change-over-time, NOAA proposes to engage third-party partnerships with key representative groups from each regulatory region to develop and deploy a standardized survey of current perceptions of its communications and to repeat this survey in intervals to determine the effectiveness and guide necessary improvements. The basis for these third-party regional reviews is anticipated to be one of the deliverable objectives of the Enforcement Summit.

Measurability Tools:

- Attendance and participation at Fishermen Forums
- Web page interactions, including unique visits, to web-page materials and submitted FAQs
- Routine reports submitted from dock-side agents (per acquisition of this capacity)
- Measurability recommendations to be developed at the Summit – TBD

POTENTIAL APPROACH
NOAA Fisheries Enforcement Summit

The U.S. Institute for Environmental Conflict Resolution (U.S. Institute) presents the following approach to coordinate and facilitate the NOAA Fisheries Enforcement Summit (Summit). Included are approximate durations for each task.

TASK 1: Select Summit facilitator (1 to 5 weeks) The U.S. Institute will identify and contract with an experienced member(s) of the National Roster of Dispute Resolution and Consensus Building Practitioners to provide the services outlined below. The U.S. Institute would offer ongoing oversight, coordination, consultation, and project management in connection with contracted services in support of this project. The U.S. Institute would also serve as a supplementary facilitator at the Summit.

The U.S. Institute and NOAA will collaboratively evaluate and select a facilitator, with consultation as needed with specific stakeholder groups. NOAA may also work informally with other stakeholders to provide additional insight into the process. The criteria for selection of the facilitator include: credibility with fishing stakeholders, experience with executive level consultation processes, and availability for a planned June summit date.

TASK 2: Assess and design the Summit (3- 5 weeks). The U.S. Institute team will work with NOAA, in consultation with Summit participants, to plan the Summit. In developing an appropriate design for this planning process, the U.S. Institute team will contact up to 20 key persons, organizations, and agencies that have been involved in past fisheries enforcement issues, in order to better understand the needs, goals, stakeholder relationships, and potential challenges in convening the summit. Based on insights and recommendations from these initial discussions, the U.S. Institute team would offer a suggested structure for the planning process – including key events, milestones, schedule, Summit duration, agenda outline/topics, participants, and communication strategy.

This process design will serve as a common reference point for shared expectations in working together as Summit planning proceeds. The U.S. Institute team will continue to work with participants to adjust the design as appropriate over the course of the planning process.

TASK 3: Plan and coordinate Summit (8 weeks). Based on the approved process design for the planning effort, the U.S. Institute team will contact participants representing key stakeholder groups to ascertain their interest and willingness to participate in a planning process. Some of the primary stakeholder groups will most likely include NOAA representatives, other impacted federal agency representatives, state agencies, commercial and recreational fisherman, environmental organizations, and academics. U.S. Institute team will work with the planning group to complete and finalize summit plans, including summit objectives, a final agenda, event logistics, Summit duration, communication strategy, and a list of invited participants. It is expected that the summit will be approximately 2 days in duration (potentially two half-day sessions over the two days), and will be held in a venue within proximity of Washington D.C.

The U.S. Institute team will plan and arrange all logistics associated with the Summit, including location and venue, travel arrangements if provided, and other logistical tasks.

TASK 4: Facilitate and document the Summit. The U.S. Institute team will facilitate and document all discussions at the Summit. It is assumed that the summit will include between 80-100 participants. The Summit will likely include plenary sessions and multiple breakout sessions. A facilitation approach will be devised to accommodate the anticipated need for facilitation of multiple breakout sessions.

TASK 5: Prepare final report and debrief process (3-4 weeks). The U. S. Institute team will prepare a draft summary report of all activities and recommendations resulting from the planning process. The draft summary will be shared for review and comment with all participants. As far as practicable, participant feedback will be incorporated into the initial draft prior to final release and distribution. The U. S. Institute will also meet with NOAA, and any other relevant participants to de-brief the process, identify lessons learned, and discuss the follow-up plan for the actions identified in the summit.

**Crosswalk of Inspector General's Recommendations with Action Items in Dr. Lubchenco's
February 3, 2010, Memorandum
Prepared by the NOAA Office of the General Counsel
March 17, 2010**

OIG Recommendation #1: Ensure that NOAA leadership regularly addresses and provides input to enforcement priorities and strategies with regional management, including formal reporting protocols.

- Dr. Lubchenco memo long term action #2: The Assistant Administrator for Fisheries, with input from NOAA's leadership, will develop a plan and schedule to implement standardized procedures for setting enforcement priorities.
- Ombudsman response

OIG Recommendation #2: Determine whether NOAA should continue to approach fisheries enforcement from a criminal-investigative standpoint, and, if another approach is determined to be more appropriate, align OLE's workforce composition accordingly.

- Dr. Lubchenco memo short term action #2: Institute immediate freeze on the hiring of criminal investigators until NMFS completes an internal work force analysis to address the correct mix of enforcement personnel and it is approved by the NOAA Administrator.
- Dr. Lubchenco memo long term action #5: The Assistant Administrator for Fisheries in consultation with the Director of the Workforce Management Office will formulate a plan to review the NMFS Office of Law Enforcement's staffing and procedures. This plan will explicitly address both civil and criminal requirements, with specific focus on ensuring that criminal procedures are not applied to civil offenses. Development of the plan should include appropriate independent review.

OIG Recommendation #3: To promote greater transparency, consistency, and oversight in NOAA's enforcement processes and operations, (a) ensure that GCEL develops, implements, and follows an internal operating procedures manual that includes comprehensive processes, methods, and justification for determining civil penalty assessments and fine settlement amounts; (b) institute a mechanism for higher-level review of civil penalty assessment determinations by GCEL attorneys in advance (e.g., by panel established within NOAA headquarters); and (c) ensure that OLE's National Enforcement Operations Manual is current, including providing sufficient policy guidance on regulatory and criminal authorities and procedures.

- Dr. Lubchenco memo short term action #1: Subject to compliance with applicable labor relations requirements, the General Counsel shall immediately institute higher level reviews of proposed charging decisions, including proposed penalties and permit sanctions, and proposed settlements to ensure consistency and predictability.

- Dr. Lubchenco memo long term action #3: NOAA General Counsel for Enforcement and Litigation will develop a plan and schedule to strengthen its operating procedures, prosecution of charged cases, and settlement actions.

OIG Recommendation #4: Ensure follow-through on the GCEL initiatives outlined in its December 1, 2009, memorandum, intended to foster greater industry understanding of and compliance with complex fishing regulations. These include (a) reviewing and making appropriate revisions to applicable procedural regulations, civil penalty schedules, and associated guidance; and (b) developing an internal operating procedures manual.

Dr. Lubchenco memo long term action #3: NOAA General Counsel Office of Enforcement and Litigation will develop a plan and schedule to strengthen its operating procedures, prosecution of charged cases, and settlement actions.

OIG Recommendation #5: Ensure that GCEL and OLE develop, implement, and effectively utilize reliable, integrated case management information systems.

Dr. Lubchenco memo long term action #1: NMFS Office of Law Enforcement and NOAA General Counsel, in cooperation with the NOAA Chief Information Officer, will develop a strategy and schedule to improve management information systems, including recommendations on actions to take advantage of the internet to increase transparency.

OTHER ISSUES:

Dr. Lubchenco memo short term action #3: Institute immediate shift in oversight of the NMFS Civil Monetary Penalties Fund (also known as the Asset Forfeiture Fund) from NMFS to NOAA's Comptroller.

Dr. Lubchenco memo short term action #4: NMFS, in consultation with the NOAA Office of Communications, will direct resources to improve communications on enforcement issues, particularly in the Northeast.

Dr. Lubchenco memo long term action #4: The Assistant Administrator for Fisheries in collaboration with the NOAA Communications Office and General Counsel Office of Enforcement and Litigation will develop an outreach strategy to improve engagement with the local fisheries community and the public.

Dr. Lubchenco memo short term action #5: NOAA General Counsel, NMFS, and the NOAA Director of External Affairs will develop specific objectives and detailed plans for a summit on law enforcement practices to be held no later than June 30, 2010.

**Plan and Schedule for Developing
Procedure for Identifying Enforcement Priorities
Prepared by the NOAA Fisheries Service and NOAA Office of the General Counsel
March 17, 2010**

The purpose of most enforcement programs is to assure effective compliance with the law so that the purposes of the laws can be met. For NOAA that means assuring that people comply with a number of laws designed to protect such natural resources as fisheries, ocean ecosystems, sanctuaries, threatened and endangered species, and marine mammals. NOAA carries out its enforcement obligations with tools to provide compliance, deterrence, and punishment, all with a goal of encouraging people to meet their legal obligations under these laws. NOAA's enforcers – agents and officers in the Office for Law Enforcement, and attorneys in the Office of General Counsel of Environment and Litigation, along with our partners and colleagues from the Coast Guard, the Fish and Wildlife Service, the U.S. Attorneys offices across the country, other federal agencies, and from States, work together. Our goal is a fair enforcement program that achieves results. We are mindful that NOAA's programs affect lives, livelihoods, and natural resources and inform our actions with those considerations in mind. Fairness means assuring a level playing field—that those who comply with the law are not at a disadvantage compared to those who do not—and also assuring that all people, even those who may have broken the law, are treated fairly and with respect.

Setting priorities is a means of allocating resources to help assure an effective enforcement program. Any process for setting priorities must take into account that the goal is to assure compliance with all the laws NOAA has responsibility for implementing, and that those who are regulated must know and expect that if they break the law they may well face an enforcement action. Thus, priority areas of emphasis are a basis for targeting resources along with resource allocation for more general enforcement in addition to the priority areas.

NOAA's Office for Law Enforcement, in consultation with NOAA's Office of General Counsel, will develop a process for setting enforcement priorities at the regional and at the national level. The goal will be establishment of two priority areas for each region annually, and two national priority areas to last two years, with reassessment at the end of one year. For each priority identified, the offices will develop a plan to characterize the problem to be addressed (e.g., fishing for a particular stock when the fishery is closed; harassment of a particular marine mammal) and an approach to address it that will include both compliance guidance and enforcement tools. At the end of the priority time (one year for regional priorities, two years for national priorities) the offices will identify an internal team to assess the effectiveness of the approach in addressing the problem and obtaining better compliance and resource protection.

We will seek input and feedback on this proposed plan for setting enforcement priorities at the planned Enforcement Summit on June 22, 2010, in Washington, D.C., and as part of the additional outreach surrounding the Summit, and finalize the plan by July 29, 2010.

Overall priority-setting approach

The Assistant Administrator for Fisheries and the NOAA General Counsel will convene a meeting during January of each year to start the priority-setting process. Each will have

consulted with appropriate stakeholders before the meeting, including Fishery Management Councils, other NOAA offices, and affected federal and state agencies. The purpose of the meeting is to assess the effectiveness of enforcement actions over the previous year and to develop proposed areas of priority for use in the coming fiscal year. At the end of the meeting the group will develop a paper setting forth a process for a priority-setting approach for each Region and for selection of two national priorities, criteria for selecting priorities, and a timeline. Priority setting will look across all NOAA statutory authorities and obligations and help to assure a comprehensive program.

Criteria may include: areas of emphasis in the Department of Commerce and NOAA strategic plans; extent of non-compliance; risks to the resource of non-compliance; whether people are intentionally choosing not to comply with the laws because of economic or other motivation; the likelihood that a targeted enforcement program will succeed in protecting the resource; interests, concerns, and actions of other federal and state partners; whether the statutes emphasized have been given sufficient enforcement focus in the past.

We are aware that certain enforcement -- such as undercover operations -- must be kept confidential and enforcement targeting must include a means to assure that such approaches may be used and may be kept confidential.

Regional priority setting

Using the procedures, criteria, and timeline above, the Special Agent-in-Charge (SAC) in each Region will conduct a meeting, with outreach both inside and outside the federal government before the meeting, to identify two priority enforcement areas for the coming fiscal year for that Region. The priority-setting process will evaluate resources available to implement the priority approaches. A tentative list of priority areas will be developed and made public. The SAC will provide an opportunity for public input (through posting on the website, public meeting, or otherwise as appropriate) on possible priorities. No later than May, the SAC will develop a draft plan that identifies two priority areas of enforcement for the coming fiscal year, and a plan for implementing those priorities. The draft will be provided to the Director of OLE no later than June 1. The Director will review and, if appropriate, revise the draft priority approach. A final priority plan for each region must be approved by the Assistant Administrator for Fisheries, with a goal of such approval by July 31 of each year. The Director of OLE will then work with the Region to assure implementation of the plan as of the beginning of the coming fiscal year.

National priority setting

Using the procedures, criteria, and timeline above, the Director of OLE, in consultation with the Assistant Administrator for Fisheries and the General Counsel, will conduct a meeting, with outreach both inside and outside the federal government before the meeting, to identify for proposal several national priority enforcement areas that will apply during the coming two fiscal years. Identification should take into account those areas identified for the Regions and any national goals. After the first year, the process may result in identification of one additional area of priority for the coming year. The priority-setting process will evaluate resources available to implement the proposed priority approaches. A tentative list of national priority areas will be developed and made public. The Director of OLE will provide an opportunity for public input (through posting on the website, public meeting, or otherwise as appropriate) on proposed

national priorities. No later than June, the Director of OLE will develop a draft plan that identifies up to two national priority areas of enforcement for the coming fiscal year, and a plan for implementing those priorities. The draft will be provided to the Assistant Administrator for Fisheries no later than July 15. The Assistant Administrator for Fisheries will review, consult with the General Counsel, evaluate available resources, and if appropriate, revise the draft priority approach. A final priority plan for national priorities must be approved by the Assistant Administrator for Fisheries, with a goal of such approval by July 31 of each year. The Director of OLE will then work with the General Counsel's office and the regions to assure implementation of the plan as of the beginning of the coming fiscal year.

Evaluation

At an established time during each fiscal year, the Assistant Administrator for Fisheries and the General Counsel will provide for an evaluation of the effectiveness of implementing the enforcement priorities for that year and provide input to the Regional and National processes based on that evaluation.


Conclusion

To assure a fair and effective enforcement program, establishing targeted priorities to be implemented at the same time as a more general enforcement program should help improve effectiveness. After the priority-setting and implementing approach set forth here has been used for two years, the Assistant Administrator for Fisheries and the General Counsel will convene a meeting to assess whether it has improved compliance and made enforcement, and as a result protection of the nation's marine resources more effective and will make adjustments as appropriate.



MEMORANDUM

TO: Mary Beth Ward
Deputy General Counsel

FROM: Richard Mannix 
Assistant General Counsel for Enforcement and Litigation (AGCEL)

DATE: December 1, 2009

SUBJECT: Measures Currently Being Undertake to Address Preliminary Findings of the Office of Inspector General and to Further Improve Transparency

Based on discussions with representatives of the Office of Inspector General (OIG), and in light of the barriers to communication that have apparently developed in the Northeast between enforcement and some segments of the regulated community, the Office of General Counsel for Enforcement and Litigation (GCEL) has undertaken the following initiatives. The goal of these efforts is to promote transparency, to further ensure fairness in the charging and prosecution of cases, to open lines of communication where appropriate and to promote mutual understanding between GCEL and the regulated community, while at the same time providing full and vigorous support to the Agency's mission and priorities.

As indicated below, each initiative has been assigned to specific GCEL attorneys and staff who will provide bi-weekly progress reports and will shepherd the effort to completion.

1. **Availability of GCEL Attorneys to the Councils** – GCEL attorneys currently prepare written reports to Fishery Management Councils which provide information on the status of cases referred for prosecution, penalties and permit sanctions assessed, hearings that have been held, and cases that have been resolved. GCEL attorneys also routinely attend Council meetings to make themselves available in the event that enforcement issues arise in the context of Council deliberations. In the Southeast, where state and federal interaction has become so critical to the success of enforcement efforts, GCEL's Senior Enforcement Attorney is, in addition, a member of the Law Enforcement Advisory Panels that have been established by both the South Atlantic and Gulf of Mexico Councils.

In calendar year 2009, GCEL increased its outreach to the Councils by seeking time on Council agendas not only to provide information on



enforcement activities, but also to address specific issues of concern. In March 2009, GCEL attorneys from the Southwest and Northwest Regions coordinated with the Office for Law Enforcement (OLE) in a presentation to the Pacific Fishery Management Council on vessel monitoring systems (VMS), in response to increased interest in the use of VMS in connection with enforcement operations in the federal groundfish conservation and essential fish habitat areas off Washington, Oregon and California. In September 2009, those attorneys were again on the Council's agenda to provide a more detailed review of enforcement activities in 2009 and to answer questions.

Efforts of this type are now being extended to the Northeast, where controversies have recently arisen regarding the conduct of enforcement. As a trial initiative in the Northeast, beginning with Council meetings scheduled for 2010, GCEL attorneys will request time at meetings of the New England and Mid-Atlantic Council to discuss some of the initial decisions made by Administrative Law Judges (ALJs) in the preceding months, to discuss legal issues that have arisen in cases before the ALJs and to relate these cases and issues to specific fisheries regulations. If this initiative proves useful to the Councils and helpful in providing perspective on implementation of the regulations which the Councils deliberate and propose, it will be reproduced in other regions beginning in calendar year 2011. **Lead Person: Mitch MacDonald, GCEL/NE.**

2. **Fishermen's Forum (Northeast)** – GCEL attorneys will also offer to schedule and host a series of meetings -- a "Fishermen's Forum" -- in order to open lines of communication between GCEL and the regulated community. While not a forum to discuss specific case decisions, these meetings will provide the opportunity, on an ongoing basis, for fishermen, dealers and other interested parties to meet with GCEL attorneys, to voice their concerns, to share with GCEL their perception of how the enforcement process is working and to resolve any misunderstandings. If some fishermen are, indeed, hampered by fears of taking a misstep, GCEL would like to have the opportunity to understand the source of those concerns. At the same time, the forum will provide GCEL with an opportunity to answer questions and convey its strong desire to operate in a fair and open manner.

A draft has been prepared that identifies the goals of the forum and the policies, practices and processes that will be addressed. It also proposes a structure for encouraging discussion and public input. OLE has been invited to participate. The structure of the forum and the full extent of topics to be covered will be finalized with OLE input. The first forum has been scheduled for February 10, 2010, at the Northeast Regional Center. The region's public affairs professional, Marjorie Mooney-Seus, will arrange to publicize the event and has offered to moderate. If this event proves useful, it will be

reproduced at other locations, including New Bedford and Portland, and at locations in Rhode Island, New Jersey and Virginia.

In order to facilitate participation by interested parties, whose schedules or employment may not permit physical attendance at the Gloucester facility, consideration is also being given to conducting these forums as “Webinars” or web-based seminars. A webinar offers a presentation, a workshop or a seminar that is transmitted over the web, but the transmission is not in one direction alone. The webinar permits interactive participation by interested persons. Attendees will both receive information and have the ability to respond, to ask questions and receive answers in real time, and to discuss issues over the web without the burden and expense of having to travel to a central location. **Lead Persons: Mitch MacDonald, Charles Juliand, Deirdre Casey, GCEL/NE.**

3. **Revisions to Penalty Schedules and Adoption of Penalty Assessment Guidance** – GCEL has begun a review of its published penalty schedules with a view toward making initial penalty assessments more consistent and predictable. For example, the schedules do not currently prescribe an exact penalty amount for each offense, but offer a wide range of amounts within which the attorney may exercise discretion based on his assessment of other factors that must enter into the calculation of a penalty besides the nature of the offense. GCEL’s review will likely result, for many offenses, in a narrowing the published dollar ranges within which an initial assessment may be made.

At the same time, GCEL attorneys have begun a research effort to examine approaches to the assessment of penalties in other contexts. Cases, sentencing guidelines, the policies of other agencies, and other appropriate sources of information are being consulted. Consideration will then be given to providing GCEL attorneys with more specific guidance on the exercise of their discretion. Penalty schedule revisions and appropriate guidance materials are scheduled for completion by May 1, 2010. **Lead Persons: Robert Hogan, GCEL/SS; Karen Raine, GCEL/SE; Mitch MacDonald, GCEL/NE.**

4. **Revisions to Procedural Regulations** – GCEL has completed a review of its procedural regulations (15 C.F.R. Part 904) to identify changes that will further ensure that respondents have a full and fair opportunity to defend against charges brought by the Agency. Among the contemplated changes is one that relates to hearings before an ALJ. That change would eliminate the regulatory presumption that the penalty proposed by GCEL in the charging document is an appropriate one and that it provides a reasonable starting point

for the judge's consideration. The revision requires, instead, that GCEL, as the prosecutor, prove at hearing that the proposed penalty is appropriate.

An initial draft proposal has been prepared that identifies specific issues or concerns with current regulatory language, proposes new language to address those concerns, and provides an analysis of the effect of the new language. That draft has received an initial review by the Deputy Assistant General Counsel for Enforcement and Litigation and has been returned for response to comments. A complete version of the proposal will be reviewed, discussed and finalized at the GCEL Training Conference in the last week of January 2010. **Lead Persons: Frank Sprtel, GCEL/SS; Susan Auer, GCEL/AK; Mitch MacDonald, GCEL/NE.**

5. **Providing Explanatory Notes to the Case File** – In most instances, GCEL attorneys currently prepare notes for their case files indicating the considerations that went into making a specific charging decision (e.g., whether to take enforcement action in a case and, if so, what kind of enforcement action and what penalty or permit sanction to propose). However, this is not always done and, even when such notes are included, they may not be in a form that is easily understood by someone other than the attorney who prepared the notes.

GCEL will undertake to make this practice uniform and will develop a template for recording this information in each case file, a template which each attorney will be encouraged to adopt. Three model one-page forms that are currently in use by individual attorneys have been proposed for general use. In addition, the model format for a more detailed penalty justification memo has been offered. Such a memo was once in general use by GCEL and was part of the preparation of every case, but was discontinued at the direction of GCEL management at some point in the distant past. These approaches are currently being discussed within GCEL and will be subject to more detailed discussion and analysis at the GCEL training conference during the last week of January 2010. In the meantime, attorneys are encouraged to use one of the proposed forms. **Lead Person: Charles Juliand, GCEL/NE.**

6. **New Case Tracking Data Base** – Steady progress has been made on replacing the EMIS data base with a more up-to-date and versatile system (JustWare) developed and managed by New Dawn Technologies. The new system will provide a more dependable and highly mechanized capability for tracking and reporting on case activity, for comparing enforcement activities against regional and national priorities, for ensuring consistency as appropriate across regions, and for storing and sharing pleadings, guidance materials and other information. In addition, it will provide a reliable link to the case data base (LEADS) currently maintained by OLE, better enabling

GCEL and OLE to share information and coordinate efforts. GCEL's new case tracking data base is scheduled to be fully operational by December 2010. **Lead Persons: Charles Green, GCEL/SS; Susan Beresford, GCEL/SS.**

7. **Tracking Priorities** – GCEL attorneys typically attend, even initiate, regional meetings in which regional priorities are discussed and enforcement priorities are set. These meetings include the Regional Administrator, the OLE Special Agent in Charge and other senior OLE personnel, and GCEL, and they may include the Sanctuaries Program's Regional Director as well as sanctuary managers, either in the same meeting or separately. At the conclusion of such a meeting, the GCEL senior attorney reports to the other attendees and to GCEL management, either in a memo or informally by email, on the results of the meeting.

To underscore the importance of following through on identified priorities, GCEL will adopt a more formal and uniform approach to reporting on these regional priorities meetings, either by the attorney in attendance or through a paralegal. This approach will be finalized at the GCEL Training Conference in the last week of January 2010.

In addition, the AGCEL or his Deputy will endeavor to be present at these meetings, either in person or by phone, as schedules permit. The AGCEL and his Deputy will also use the opportunity offered by periodic visits to regional offices to review with the Regional Administrator, with OLE and with GCEL attorneys the progress in following up on enforcement of regional priorities. The AGCEL and his Deputy will use the Quarterly Case Status Charts, which are currently prepared by all GCEL attorneys and which account for every case referred to GCEL, to review overall progress in cases assigned to individual attorneys and in overseeing GCEL's efforts to implement regional enforcement priorities. These functions are already being performed, but will henceforth reflect even greater attention to the role of GCEL case prosecutions in advancing regional and national priorities. **Lead Persons: Richard Mannix, AGCEL; Charles Green, DAGCEL.**

8. **Public Access to Charging Information** – It is currently GCEL's practice in the Northeast to provide Commercial Fisheries News with regional information on penalties and permit sanctions assessed, summary settlements and written warnings issued, and case settlements concluded. A paralegal develops this information on a monthly basis chiefly by reviewing case packages and other materials. When the new case tracking database is operational, this information can be readily downloaded from that database. In the meantime, it must be manually assembled.

However, without waiting for implementation of the new case tracking database, GCEL and OLE have agreed to expand the practice of publishing case information to all other regions and will make the information available on one or both of our offices' public websites. In doing so, we will be careful to note with respect to charged cases that the charges are alleged, not proven, and to defer publishing information on specific charges until after the respondent has been served with the charging document. This initiative will be discussed, and the process will be finalized, at the January 2010 GCEL Training Conference which will include GCEL attorneys and paralegals as well as OLE leadership. **Lead Persons: Richard Mannix, AGCEL; Todd DuBois, OLE/SS; Lesli Bales-Sherrod, OLE/SS.**

9. **Development of a GCEL Practice Manual** – In order to provide a central repository for the various GCEL policies, procedures and guidelines that are currently applicable, as well as those currently being developed or may be issued in the future, GCEL will assemble and issue a Practice Manual for use by GCEL attorneys and staff. Modeled, in concept, on the United States Attorneys' Manual issued by the Justice Department, the GCEL Practice Manual will be uniquely tailored to the conduct of GCEL prosecutions and to interaction with our enforcement partners, program offices and other federal and state agencies.

The Manual will include existing policies and guidelines, such as those relating to criminal referrals, summary settlement authority, reporting on the status of cases, and the sharing of information. It will address initiatives identified and developed pursuant to this memorandum, including those relating to penalty assessments, the tracking of priorities, and outreach to Councils and to the regulated community. And it will provide more precise and updated guidance on other topics, such as offers of settlement, review of briefs, approval of consensual monitors, and parallel prosecutions. **Lead Persons: Richard Mannix, AGCEL; Charles Green, DACGEL; Susan Beresford, GCEL/SS.**

-----Original Message-----

From: Diane Moseley [<mailto:diane.m.moseley@noaa.gov>]

Sent: Friday, February 05, 2010 11:37 AM

To: wfm.eco@noaa.gov

Cc: John Oliver; Eduardo J Ribas; Joseph Abbott; Roger Mason

Subject: [Fwd: Immediate Freeze on the Hiring of NMFS/Office of Law Enforcement Criminal Investigations]

Hello,

Please note there is an immediate freeze on the hiring of criminal investigators until NMFS completes an internal workforce analysis to address the appropriate mix of enforcement personnel.

Thank you.
Diane

Workforce Analysis Plan
Prepared by NOAA Fisheries Service and NOAA Workforce Management
March 17, 2010

Proposed Executive Sponsors: John Oliver (NMFS) and Eddie Ribas (NOAA Workforce Management Office, WFMO)

Proposed Project Leads: Brian Brown (NMFS) and Jeremy Andrucyk (WFMO)

Proposed Project Team Members: Mark Spurrier (NMFS), Steve Springer (WFMO), Diane Moseley (WFMO), and other NMFS and WFMO members TBD

Short-Term Actions

Analysis Phase:

- (1) Data Collection, Review, and Interpretation: Collect and review OLE enforcement case files to determine what types of actions OLE personnel have performed in each region and the time associated with these actions. **(completed within 6 weeks of adoption of plan)**
- (2) Workforce Analysis: Identify the tasks performed by Enforcement Officers (1801 Occupational Series) and by Criminal Investigators (1811 Occupational Series) and identify the competencies (knowledge, skills and abilities) required to perform them. **(completed within 9 weeks of adoption of plan)**
- (3) Benchmarking: Benchmark with similar Federal and State Agencies for potential adoption of applicable best practices. **(completed within 9 weeks of adoption of plan)**
- (4) Workload Distribution: Analyze the workload distribution between NOAA and other Federal/State Agencies, i.e., Coast Guard; State Conservation and Enforcement Agencies, etc. **(completed within 9 weeks of adoption of plan)**

Recommendation Phase:

- (5) Develop Recommendations: Develop recommendations for the best balance and mix of NMFS OLE Enforcement Officers and Criminal Investigators (1801 Series and 1811 Series) in each region and strategies for adoption. **(completed within 12 weeks of adoption of plan)**
- (6) Validation: Employ credible external group or team to evaluate workforce analysis plan process, findings, and recommendations (including balance and mix). We will work with representatives from NMFS and Workforce Management to identify an appropriate external group or team. **(completed within 15 weeks of adoption of plan)**

Implementation Phase:

- (7) Pilot recommendations in highly visible geographic area(s) to determine potential for further nationwide implementation. **(commence by mid-October 2010)**
- (8) Based on results of pilot, initiate nation-wide implementation. **(completion dependent upon results of pilot)**

Long-Term Actions to follow completion of steps required by Inspector General's Report of January 21, 2010.

- (1) Determine the future (3-5 years) NOAA mission requirements for enforcement as called for by the completed NMFS Strategic Plan.
- (2) Identify the competencies NMFS OLE will need to meet its future mission.
- (3) Develop a long-term workforce plan to ensure NMFS OLE has the competencies needed in the future (3-5 years).

**Plan and Schedule for Developing
NOAA General Counsel Office of Enforcement and Litigation
Internal Operating Procedures Manual
Prepared by the NOAA Office of the General Counsel
March 17, 2010**

To assure the fairness and effectiveness of enforcement actions taken by the General Counsel's Office, the NOAA General Counsel Office of Enforcement and Litigation (GCEL) is developing an internal operating procedures manual (Manual).

The Manual will provide guidance to GCEL attorneys on how to handle enforcement matters assigned to them across the range of NOAA statutes, from initial review and charging decisions, to settlements and hearings, through to collections. The first priority will be to develop guidance for attorneys to follow in making recommended charging decisions, proposing civil penalties or permit sanctions, and settling cases. The Manual will also act as a resource guide for GCEL attorneys by compiling other documents and information relevant to their practice (e.g., approval forms, sample documents, and external policies, guidelines and procedures).

This memorandum describes the plan and schedule for developing the Manual.

Plan and Schedule for Development of Manual

Stage One – To Be Completed by July 30, 2010

Stage One will focus on developing guidance relating to the review of cases, charging decisions, penalty assessments and settlement processes.

The first step is to collect and review all existing guidance relevant to GCEL's practice and then identify the guidance we believe should be updated and included in the Manual, or rescinded. During this step, we will also consult other federal agencies that have enforcement programs to consider their practices in these areas and the applicability of those practices to our program. Next, we will update existing guidance or develop new guidance on the priority topics described below:

1. Intake of new cases –
 - a. Identifying cases to be treated as a priority. Considerations are likely to include review of established Agency regional and national enforcement priorities, deterrence value, and case-specific timing requirements.
 - b. Determining when a case should be declined; returned for further investigation; or returned for issuance of a Summary Settlement, OLE issued Written Warning, or verbal warning. Considerations are likely to include the strength of the evidence, any weaknesses in the case, handling of similar cases/violations in the past, and history of compliance.

- c. Determining if a case should be charged civilly or, where appropriate criminal provisions exist, referred instead to the Justice Department for criminal prosecution. Considerations will be developed in consultation with the Justice Department and are likely to include whether the incident involved deliberate or intentional misconduct or concealment of misconduct, repeat violations, or a high level of damage to the resource.
- 2. Charging Cases Civilly–
 - a. Determining the appropriate statutory or regulatory authorities for charging, where more than one authority may apply. In developing our approach, we are likely to consider guidance regarding which statute or regulation to use when a case involves similar or identical violations under more than one statute or more than one regulatory scheme.
 - b. Determining what violations to charge. Considerations are likely to include evaluation of any benefit gained from identifying and charging all violations balanced against equitable considerations that may warrant focusing only on the most significant violations.
 - c. Determining what counts as a violation (e.g., whether to treat a multi-day fishing trip as one violation or as separate violations for each day of the trip), units of prosecution (e.g., where multiple fish are involved), and whom to charge (e.g., owner, operator, crew, and/or dealer). Considerations are likely to include an evaluation of the nature of the particular violation at issue, and the roles, culpability, authority and actions of the parties involved.
- 3. Proposed Penalty Assessments and Permit Sanctions –
 - a. Determining whether a civil penalty, permit sanction, written warning, forfeiture or some combination is the most appropriate sanction. Considerations are likely to include an evaluation of any history of prior violations and what will encourage compliance and provide a deterrent to future violations.
 - b. Determining an appropriate penalty or permit sanction, or combination of both. This topic will be addressed in the Penalty Policy being established and discussed in greater detail in a separate memo from this office.
- 4. Settlement –
 - a. Determining when settlement is appropriate. Considerations are likely to include evaluation of any benefits to be gained from going to hearing versus settling a case, importance of the case to the Agency’s mission, and resources required to take a case to hearing.
 - b. Guidelines for conducting settlement discussions when dealing with respondents who are not represented by counsel, to ensure fairness in our process.

- c. Guidelines regarding settlement terms, identifying mandatory terms, recommended terms, optional terms, and unacceptable terms. This section is expected to provide guidance on what terms are required in Agency settlement agreements, those that are not permitted, as well as provide some model language for terms that may apply to some settlements, but not others.

Stage Two – to be completed by October 29, 2010

Stage Two will address issues related to handling of cases post-charging, appeals to the Administrator and judicial review of final agency decisions in enforcement cases. We will update existing guidance or develop new guidance on the topics described below:

1. Handling Cases Post-Charging –
 - a. What to include in the Agency’s case summary document provided to Respondents during discovery – what level of detail is appropriate in briefing the legal and factual issues in dispute, the basis for the penalty assessment and the identification of the Agency’s likely witnesses and evidence.
 - b. Handling ability to pay issues. This will include guidance on how to evaluate claims of inability to pay, review of financial documentation, and when it is appropriate to involve a financial expert.
 - c. Policy for Handling Congressional or White House inquiries regarding pending cases. Generally, such inquiries should be referred to and handled by NOAA GC senior management or GCEL management, and not the enforcement attorney handling a case, to avoid the appearance of improper political interference in enforcement matters.
2. Administrative Appeals –
 - a. Determining when to request discretionary review. Considerations are likely to include whether discretionary review in a particular case will further the Agency’s goals, will provide greater clarity and consistency to our program, or will provide an opportunity to correct mistakes of law or policy.
 - b. Guidelines for preparation of briefs to the Administrator
3. Judicial Review
 - a. Responding to Requests to Suspend Penalties or Permit Sanctions while judicial action is pending.
 - b. Role for GCEL attorneys in working with U.S. Attorney’s Office and the Justice Department in NOAA cases on appeal to federal court. In developing this guidance, consideration will be given to addressing the role of GCEL attorneys in civil or criminal matters referred to the Justice Department for handling.

Stage Three – to be completed by December 31, 2010

Stage Three will focus on review of other existing guidance not considered as part of Stages One and Two, and will update and incorporate it into the Manual, or rescind it, as appropriate. Stage Three review will look at more specific, detailed issues not covered by the guidance discussed above.


An example of a topic to be addressed in Stage Three would be case preparation. In Stage One, we will have dealt with the larger issues of determining whether and how to charge a case. In Stage Two, we will provide guidance on drafting the Agency's summary document for discovery. In Stage Three, we will focus on guidance regarding preparation of a case for hearing.

Stage Four – Ongoing

Stage Four is a longer term project that focuses on periodic reviews of the Manual to ensure it stays up-to-date. We will also look at questions that have arisen in the past and evaluate the informal guidance provided or decisions made and determine whether formal guidance on this issue is warranted. In addition, as new practice questions come up, we will use the Manual to act as a compendium of those questions and decisions to ensure consistency with future practices. Finally, Stage Four will also be used to look at common practice areas that are currently being consistently practiced and are non-controversial to determine whether there would be utility in developing written guidance reflecting this practice to ensure future consistency.



MEMORANDUM FOR: All Employees in the NOAA General Counsel Office for Enforcement and Litigation

FROM:  Lois J. Schiffer
General Counsel

DATE: March 16, 2010

SUBJECT: Interim Procedures Requiring Prior Approval of All Enforcement Actions

The purpose of this memorandum is to establish a requirement that all attorneys in the General Counsel's Office at NOAA must obtain prior approval from the Deputy General Counsel (Mary Beth Ward) or the General Counsel for each proposed enforcement action and each proposed settlement or resolution of an enforcement action in any matter referred to the General Counsel's Office by the NOAA Office for Law Enforcement (OLE) or, through OLE, by the U.S. Coast Guard, State enforcement agents, or others. This includes proposals for administrative/civil enforcement actions, proposed referrals for criminal enforcement actions, proposed referrals to state, Tribal or foreign governments for disposition, and referrals for civil forfeiture actions. This requirement is effective as of the date of this Memorandum. The procedures specified in this Memorandum will be reviewed no later than six months from its date to consider how the process is working and whether any changes or revisions may be appropriate.

This requirement is to assure the effectiveness and fairness of enforcement actions taken by the General Counsel's Office, as recommended in the January 21, 2010, report issued by the Department of Commerce Inspector General entitled Review of NOAA Fisheries Enforcement Programs and Operations Final Report No. OIG-19887, and as directed by Administrator Lubchenco in her February 3, 2010, Memorandum.

Background

NOAA has authority and responsibility under a number of federal statutes to protect natural resources including marine areas and species consistent with such obligations as assuring sustainable fisheries. To meet those obligations NOAA, often in conjunction with sister federal agencies and state offices, uses a variety of tools including effective and fair enforcement. This Memorandum specifies a prior approval requirement for all enforcement actions.

Officers and agents in the NOAA Office for Law Enforcement, National Marine Fisheries Service, the U.S. Coast Guard, and State officers authorized under a Joint Enforcement Agreement monitor compliance and investigate potential violations of the statutes and



regulations enforced by NOAA. In general, when an investigating agent identifies a violation, he or she may pursue one of several available options, depending on the nature and seriousness of the violation.

Minor violations

Where a violation is minor or technical, having no significant resource impact, the agent may provide a verbal or written warning or issue a "Fix-It Ticket," which provides the violator with an opportunity to correct the violation within a certain time and waives any penalty.

In addition, for certain specified minor violations, the agent may issue a "Summary Settlement." Under a summary settlement, the alleged violator receives a document explaining the violation and how the alleged violator can resolve the matter expeditiously by paying a reduced amount specified in summary settlement schedules developed by the Office of General Counsel, with input from OLE and, frequently, the relevant program office. See <http://www.gc.noaa.gov/enforce-office3.html>.

More serious violations

If an agent determines that an alleged violation appears to be of a more serious nature, or if an alleged violator does not pay the agent's proposed summary settlement amount, the agent may refer the case to the General Counsel's Office for civil administrative enforcement, or to the U.S. Attorney's office for criminal prosecution. Similarly, cases investigated by the U.S. Coast Guard, by State officers operating under a Joint Enforcement Agreement with NOAA or agents from the Fish and Wildlife Service or Customs and Border Protection are transmitted to and reviewed by OLE and may be referred to the General Counsel's Office for civil administrative enforcement, or to the U.S. Attorney's office for criminal prosecution or civil forfeiture action.

The NOAA Attorney assigned, in consultation with the agent, will evaluate the proposed case, including whether the evidence demonstrates a violation of a NOAA statute or regulation, to determine whether to recommend charging the case or declining the referral. If the recommendation is to charge the case, the attorney may consider and recommend a Written Warning, a Notice of Violation and Assessment of a penalty, a Notice of Permit Sanction (or a combination of a Notice assessing a civil administrative penalty and permit sanction), or referral to the Department of Justice for criminal prosecution or civil forfeiture action.

In assessing the appropriate enforcement action, the attorney will evaluate the statutory factors in the relevant statute, which generally include the nature, circumstances, extent and gravity of the alleged violation (e.g., impact to the resource), as well as the alleged violator's degree of culpability, and history of prior offenses. In undertaking this evaluation, the attorney will consider penalties and permit sanctions that have been imposed for similar violations. NOAA attorneys are also guided by the General Counsel's Office's published schedules (available on its website at <http://www.gc.noaa.gov/enforce-office3.html>) in determining the appropriate amount of a civil administrative penalty or permit sanction and other appropriate standards.

NOAA is considering revised penalty and permit sanction policies and, as they are issued, attorneys will apply those policies.

Procedure for Seeking Prior Approval of Charging Decisions

Prior to taking any enforcement action, or declining to take an enforcement action, the NOAA Attorney must evaluate the case, summarize the evaluation and recommendation for action, declination, and/or penalty, and forward the attached form with that information by email to the Deputy General Counsel and the General Counsel for review, with a copy to the Assistant General Counsel and Deputy Assistant General Counsel for Enforcement and Litigation. Information includes the relevant facts, applicable statute or regulation, recommended enforcement action (i.e., written warning, civil administrative penalty, or permit sanction, criminal referral), any proposed penalty/sanction, and an analysis of the factors considered in support of the proposed action (i.e., the relevant statutory factors, treatment of other similar violations, and the penalty/permit sanction range recommended by the applicable penalty schedule). If the recommendation is to decline the referral, the attorney must prepare a draft memo setting forth the alleged violations and an explanation of the reasons why the referral does not warrant prosecution. In the email transmission to the Deputy and the General Counsel, the Attorney will use the following subject line, tailored to the specifics of the particular matter: **“Action Requested by [insert date three business days from transmission]: Proposed Charging Decision in [Name of referral].”**

In most instances, the Deputy General Counsel or General Counsel will either approve or disapprove the charging or declination decision, or request additional information, within three business days of receipt. If the circumstances of a particular referral require more expedited consideration, the attorney should note that fact in the subject line by indicating an earlier Action Requested date, and telephone the Deputy General Counsel simultaneously with transmission of the material.

Approval of a proposed charging decision or declination will be reflected by the Deputy General Counsel’s or General Counsel’s signature on the form submitted. The signed form reflecting that disposition will be returned to the attorney, who will provide a copy to the headquarters enforcement Paralegal and include a copy in the referral file. If a declination is approved or approved with comments, the NOAA Attorney will finalize the memo consistent with the comments and transmit the memo to the agent, with a copy to the headquarters enforcement Paralegal, and include a copy in the referral file. If a proposed charging decision or declination is disapproved, the attorney will confer with the Deputy Assistant General Counsel regarding appropriate next steps.

Settlements

Once a Written Warning or Notice of Violation and Assessment or Notice of Permit Sanction is issued, the alleged violator may choose to contest the action. In certain circumstances, including circumstances where the attorney receives information from the alleged violator regarding his or her ability to pay the proposed penalty or financially withstand the proposed permit sanction, or where the attorney obtains additional evidence regarding the strength of the case against the alleged violator, it may be appropriate to settle the case in exchange for a reduced penalty or permit sanction.

Any NOAA Attorney proposing to settle a case must, prior to entering into any settlement of an enforcement action, submit a memo to the Deputy General Counsel and General Counsel, with a

copy to the Assistant General Counsel and Deputy Assistant General Counsel for Enforcement and Litigation, detailing the terms of the proposed settlement and the reasons why a settlement of the matter is appropriate. The memo must address the strengths and weaknesses of the case and proposed penalty or permit sanction, the relevant statutory factors, treatment of other similar violations, and the penalty/permit sanction range prescribed by the applicable penalty schedule. The draft settlement agreement and the approved Charging form must be attached as to the memo. In the email transmission to the Deputy and the General Counsel, the Attorney will use the following subject line, tailored to the specifics of the particular matter: **“Action Requested by [insert date three business days from transmission]: Proposed Settlement in [Name of referral].”**

In most instances, the Deputy General Counsel or General Counsel will either approve or disapprove the settlement memo, or request additional information, within three business days of receipt. Approval of a proposed settlement will be reflected by the Deputy General Counsel’s or General Counsel’s signature on the memo submitted. The attorney will provide a copy of the approved final settlement memo to the headquarters GCEL Paralegal and include a copy in the referral file. If a proposed settlement is disapproved, the attorney will confer with the Deputy Assistant General Counsel regarding appropriate next steps.

Recordkeeping

With respect to both referral decisions (declinations, charging decisions, and proposed criminal referrals) and settlements, the headquarters enforcement Paralegal will maintain a file of the approved Charging forms, declination memos and settlement memos as noted above, together with an Excel spreadsheet with an entry for each referral decision and if settled, an entry of the settlement terms. Beginning May 1, 2010, the headquarters enforcement Paralegal will transmit the spreadsheet by email on the first business day of each month to the General Counsel and Deputy General Counsel, together with supporting materials as requested by the General Counsel and Deputy General Counsel, to allow NOAA senior leadership an opportunity to assess the process.

Effect on Existing Policies

The existing protocol regarding referral of matters to the U.S. Attorney’s Offices for potential criminal prosecution remains in effect. It is Dale J. Jones and Richard Mannix, Memorandum on Procedures for Referral of Cases to DOJ or USAO for Criminal Prosecution, April 18, 2008.

This review policy will have no effect on determinations of whether or not work is being done independently for purposes of performance evaluation or promotion determinations.

Exercising my authority under NOAA Organization Handbook Transmittal Number 29, Delegations of Authority - General Counsel, dated March 3, 1992, I am hereby repealing any further delegation of authority for decisions specified in paragraph IV of that Transmittal.

Attachment: Case Assessment and Notes (form for proposing charges)

ATTORNEY WORK PRODUCT - DO NOT DISTRIBUTE

Case Assessment and Notes

CASE #: _____

CASE NAME: _____

OWNER: _____

PERMIT #: _____

OPERATOR: _____

PERMIT #: _____

DOV: _____

VESSEL
NAME/DOC #: _____

SEIZED
PROPERTY: _____

CASE SUMMARY

CASE DECLINATION (if applicable)
Reason(s) for declination:

PROPERTY FORFEITURE (if applicable)
Reason(s) for forfeiture:

ATTORNEY WORK PRODUCT - DO NOT DISTRIBUTE

Case Assessment and Notes

COUNT #

VIOLATION

PENALTY RANGE		
FIRST	SECOND	THIRD

NOVA/NOPS ASSESSMENT AMOUNT

REASONS FOR ASSESSMENT
NATURE:
CIRCUMSTANCES:
GRAVITY:
CULPABILITY:
PRIORS:
OTHER MITIGATING/AGGRAVATING CIRCUMSTANCES:

NOVA/NOPS SETTLEMENT RANGE
\$ _____ – \$ _____, and/or permit sanction as follows: _____.

ENFORCEMENT ATTORNEY
SIGNATURE

DATE

APPROVING OFFICIAL/ OFFICE
SIGNATURE

DATE

**Plan and Schedule for Developing
Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions
Prepared by the NOAA Office of the General Counsel
March 17, 2010**

To assure the fairness and effectiveness of enforcement actions taken by the General Counsel's Office, the NOAA General Counsel for Enforcement and Litigation (GCEL) is developing an internal operating procedures manual (Manual). One of the key guidance documents that will be developed and included in the Manual is a Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions (Penalty Policy).

This Penalty Policy will provide guidance to NOAA's enforcement attorneys in determining proposed penalties and permit sanctions under the various statutes that are administered and enforced by NOAA. A critical component of this effort will be the initiative, described in the December 1, 2009, memorandum, to review and revise the Penalty Schedules developed and used by GCEL. This initiative will provide more structured Penalty Schedules that will provide greater guidance to the NOAA GCEL attorneys in the exercise of their discretion in proposing penalty and permit sanction assessments, greater predictability for the regulated community, improved transparency in case handling, and more effective resource protection.

Development of the Penalty Policy, and accompanying Penalty Schedules, will be accomplished in three stages. Stage One will focus on the development of the Penalty Policy and revision of the existing Penalty Schedules. Stages Two and Three will focus on identifying and filling any gaps in the Penalty Schedules and further refining, as appropriate, following an opportunity for public comment. This memorandum describes the plan and schedule for this initiative.

Background

NOAA has authority and responsibility under more than 30 federal statutes to protect living marine resources, including marine areas and species, consistent with such obligations as assuring sustainable fisheries. Of our cases, 90% are brought under four of these statutes -- the Magnuson-Stevens Fisheries Conservation and Management Act, National Marine Sanctuaries Act, Endangered Species Act and Marine Mammal Protection Act. While there is significant variation in the penalties and sanctions authorized under each of these statutes (e.g., \$11,000 per violation under the Marine Mammal Protection Act and \$140,000 per violation under the Magnuson Act¹), the factors considered in determining an appropriate penalty or permit sanction are generally the same under each statute (i.e., the nature, circumstances, extent and gravity of the alleged violation; the alleged violator's degree of culpability; any history of prior offenses; and the alleged violator's ability to pay the penalty). These similarities will allow us to develop a Penalty Policy that has broad applicability across the range of statutes we enforce, taking into account differences in the relevant statute that call for a different approach.

¹ The maximum civil monetary penalties authorized by statute are periodically adjusted for inflation, as required under the Federal Civil Penalties Inflation Act (Pub. L. 101-410) as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134). See 73 F.R. 75321 (December 11, 2008).

Currently, in making a proposed penalty or permit sanction assessment, the enforcement attorney is guided by Penalty Schedules that provide, within the relevant statutory penalty limit, ranges for different categories of violations (e.g., gear violations, permit violations, record keeping violations, size/limit violations, etc.) and, within each category, for first-time and repeat violators. Under this approach, the penalty ranges assigned to each category are quite broad in order to account for variables such as the status of the resource, management priorities (e.g., data needs), and the economic gain the violator derives from the violation. Because of these broad ranges, the Penalty Schedules themselves provide minimal guidance. The attorneys are required under the statutes to consider the aggravating and mitigating factors described. Additionally, enforcement attorneys consider assessments made in cases involving similar violations and regional enforcement priorities. In the past, the process by which enforcement attorneys apply all of these factors was not formalized or well-documented, contributing to the impression among some in the regulated community that the process is arbitrary and unfair.

Development of Penalty Policy and Revised Penalty Schedules

The January 21, 2010, report issued by the Department of Commerce Inspector General, entitled Review of NOAA Fisheries Enforcement Programs and Operations Final Report No. OIG-19887, identified a need for GCEL to undertake revisions of the penalty schedules in order to provide greater consistency and clarity and reduce confusion among affected industry parties. The report also recognized GCEL for having already committed to that initiative. The report highlighted four main areas of industry concern related to the assessment of penalties and sanctions: (1) that the penalties assessed are disproportionate to the gravity of the violation charged; (2) that it is unclear how GCEL attorneys determine the assessment for fines and permit sanctions; (3) that GCEL attorneys possess and exercise too much discretion in assessing penalties; and (4) that inconsistent penalties are assessed for similarly-situated violators.

These concerns underscore the need for greater predictability and transparency in the assessment of penalties and permit sanctions so that these assessments support the Agency's resource protection goals by effectively deterring future violations. In response, GCEL is developing a Penalty Policy, and accompanying Penalty Schedules, for inclusion in the Manual that will guide the enforcement attorneys in assessing civil administrative penalties and permit sanctions and documenting their rationale for the proposed assessment. In developing the Penalty Policy, we will consider the utility of a panel for review of proposed penalties in particular cases as well as other approaches to addressing the IG's concerns.

Stage One – To Be Completed by July 1, 2010

Stage One will focus on the development of the Penalty Policy and will include revision of the existing Penalty Schedules. In developing the Penalty Policy, we will review all existing guidance related to the assessment of penalties and permit sanctions. We will consider in that process how the Office for Law Enforcement handles "minor" violations and with them, develop guidance to identify what are "minor" and "non-minor" violations. We will also consult other

federal agencies that have enforcement programs to consider their practices with respect to penalty and permit sanction assessments, and the applicability of those practices to our program.

The Penalty Policy will guide enforcement attorneys in determining the appropriate penalty or permit sanction to assess in a particular case, in particular with respect to applying the relevant statutory factors to the facts of the case in order to evaluate the violation's level of severity. The attorney will use this evaluation of severity in applying the Penalty Schedule to arrive at an appropriate range. Other factors, such as the alleged violator's ability to pay the penalty, to the extent that the violator has provided that information to the agency prior to the issuance of any charging document, and the assessment in other cases involving similar violations, will be considered in arriving at a specific penalty or permit sanction within that range.

Our revision of the existing Penalty Schedules will include review of the penalty ranges provided for first-time and repeat violations to determine whether they require adjustment, likely followed by the division of those ranges into three tiers (Low, Medium and High) to account for the severity of the violation given the applicable statutory factors.

Below is a brief overview of the issues to be addressed in the Penalty Policy, with specific focus on application of the revised Penalty Schedules:

1. Identification of specific factors the presence or absence of which may trigger the determination that a violation fits within one of the three severity tiers, likely including:
 - the level of harm caused to the resource;
 - whether the violation was intentional or inadvertent;
 - the status of the resource;
 - whether the fishery is limited or open access;
 - the economic benefit the violator derived by the from the violation;
 - whether there were multiple violations or the violation was part of an ongoing course of illegal conduct;
 - whether the violator was cooperative or made efforts to conceal the violation;
 - whether the violator has a history of prior violations; and
 - whether there is a likelihood of future violations.
2. Weighing the aggravating and mitigating factors described above in making a proposed penalty or permit sanction assessment, particularly when there are factors associated with more than one tier that apply to the facts of a given case (e.g., a violation that involves significant harm to the resources but which resulted in little or no economic gain or advantage to the violator).
3. Application of other factors including comparison with penalty and permit sanction assessments made in other cases involving similar violations.
4. Adequately documenting the rationale for the proposed penalty or permit sanction assessment.

Stage Two – To be Completed by October 15, 2010

Stage Two will focus on the identification of gaps where the existing Penalty Schedules are inadequate either in the range of violations addressed or in the range of available penalties and sanctions provided. Penalty Schedules will then be developed or amended to fill those gaps in consultation with the relevant NOAA program office, including the NOAA Fisheries Office for Law Enforcement and resource managers. We will also consult other federal agencies that use penalty schedules in their enforcement programs to consider whether their approaches are applicable to our program.

Stage Three – To be Completed by December 15, 2010

Stage Three will focus on further refinement of the Penalty Schedules, as appropriate, following an opportunity for public comment.

**Plan and Schedule for Review and Revision of the
Office for Law Enforcement's
National Enforcement Operations and Directives Manuals
Prepared by NOAA Fisheries Service
March 17, 2010**

The NOAA Office for Law Enforcement (OLE) will immediately initiate and undergo a process to review and update the current policies in its National Enforcement Operations Manual and Directives Manual (Manuals).

The primary purpose of the review will be to change operational policies and practices in order to create a clear separation between the policies and directives that apply to civil/regulatory matters and those that apply to criminal matters. Further revisions will establish guidance for personnel to follow in determining, when a potential violation is first identified, whether the incident will initially be treated as a civil/regulatory or criminal matter. We will also review, and revise as appropriate, our policies regarding inspections, execution of search warrants, interviews, and the use of consensual monitors. New policies will be developed as appropriate to establish additional operational guidelines to ensure the fair and equitable treatment of all persons affected by OLE enforcement operations in both civil and criminal matters. Every policy within the current Manuals will be reviewed and, where appropriate, updated through this process.

This memorandum describes the plan and schedule for modifying and updating the Manuals.

Plan and Schedule for Review and Revision of the Manuals

Stage One – To Be Completed by May 28, 2010

OLE will establish an internally-staffed project team to conduct comparative research on the matter of separating operations for criminal and civil matters. The team will confer with the U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service and other federal regulatory agencies to identify the policies and operational practices that they use to distinguish between their civil regulatory and criminal enforcement functions. We will seek guidance, examples and recommendations on how their policies are structured to identify strategies that can be adopted by OLE.

OLE will also collaborate with the NOAA Office of the General Counsel to assure full consideration of all relevant legal implications in the development of any policy pertaining to the separation of OLE's civil and criminal enforcement functions.

Stage Two – to be completed by September 15, 2010

Stage Two will involve a complete review and assessment of the current Manuals. The objective of the assessment will be to:

- Identify, assess and update all policy guidance and directives in accordance with determinations made in Stage One to guide effective enforcement management and operations based on civil/regulatory and criminal procedures;
- Identify, assess and update all policy areas to ensure effective training and implementation of new procedures; and
- Identify and update any policy that may contain information, references or practices that are out of date or no longer useful.

This process will also be expanded to include an assessment of the entire case management process, including evaluation of additional compliance assistance tools, including communications, outreach and other applicable measures. We will evaluate each step of the case processing continuum to identify decision points and develop guidance on decision-making at each of those points -- from the initial assessment of an incident as a potential violation to the final disposition and referral of the matter. The intent of this guidance will to assure that the same factors are being considered in case-handling decisions nationwide. These factors will likely include the impact of the violation on the resource, relevant statutory authorities, established Agency regional and national enforcement priorities, potential impact of the enforcement action, deterrence value, and case-specific timing requirements.

Stage Three – to be completed by December 15, 2010

This stage will focus on policy changes needed to reflect decisions made as a result of the planned workforce analysis and the implementation of the new process for setting regional and national enforcement priorities.

Stage Four – Ongoing

This stage will consist of annual reviews to ensure that the Manuals remain current and that necessary changes are made in a timely manner.

BILLING CODE: 3510-12-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 904

Docket No. 100216090-0123-01

RIN 0648-AY66

Regulations to Amend the Civil Procedures

AGENCY: Office of General Counsel (OGC), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: This rule amends the procedures governing NOAA's administrative proceedings for the assessment of civil penalties; suspension, revocation, modification, or denial of permits; issuance and use of written warnings; and release or forfeiture of seized property. The principal change removes the requirement that an Administrative Law Judge state good reason(s) for departing from the civil penalty or permit sanction assessed by NOAA in its charging document. This revision eliminates any presumption in favor of the civil penalty or permit sanction assessed by NOAA. The other change corrects a clerical error in a citation to rules pertaining to protective orders issued by Administrative Law Judges.

DATES: Written comments on this proposed rule must be submitted by [insert date 30 days after date of filing for public inspection at the Office of the Federal Register].

ADDRESSES: You may submit comments, identified by RIN 0648-AY66, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>
- **Fax:** 301-427-2211, Attn: Frank M. Sprtel, Attorney-Advisor
- **Mail:** Office of General Counsel for Enforcement and Litigation (GCEL), 8484 Georgia Avenue, Suite 400, Silver Spring, MD 20910

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NOAA will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Frank M. Sprtel, GCEL, (301) 427-2202.

SUPPLEMENTARY INFORMATION:

I. Background

NOAA is proposing to amend the civil procedure rules that apply to its administrative proceedings as described below. NOAA is proposing the changes described here: (1) to improve the efficiency and fairness of administrative proceedings; and (2) to correct a citation error.

II. Proposed Revisions

Subpart C—Hearing and Appeal Procedures

Duties and Powers of Judge

Section 904.204: This revision removes the requirement in 15 C.F.R. § 904.204(m) that an Administrative Law Judge state good reason(s) for departing from the civil penalty or permit sanction, condition, revocation, or denial of permit application (collectively, “civil penalty or permit sanction”) assessed by NOAA in its charging document. This revision eliminates any presumption in favor of the civil penalty or permit sanction assessed by NOAA in its charging document (*see In the Matter of: AGA Fishing Corp.*, 2001 WL 34683852 (NOAA Mar. 17, 2001)). It requires instead that NOAA justify at a hearing provided for under this Part that its proposed penalty or permit sanction is appropriate, taking into account all the factors required by applicable law. Additionally, by explicitly removing this presumption, this change provides Respondents with a full and fair opportunity to challenge the proposed Agency action.

This revision also corrects a citation in the regulation pertaining to protective orders issued by an Administrative Law Judge that is codified at 15 C.F.R. § 904.204(f). The current regulation incorrectly cites § 904.240(d). The regulation is revised to correctly cite § 904.251(h).

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

There are no reporting, recordkeeping or other compliance requirements in the proposed rule. Nor does this rule contain an information-collection request that would implicate the Paperwork Reduction Act, 44 U.S.C. 3501, et seq.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The small businesses, as defined in the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., that this rule may affect include, but are not limited to, vessel owners, vessel operators, fish dealers, individual fishermen, small corporations, and others engaged in commercial and recreational activities regulated by NOAA. However, this rule does not have any compliance costs or associated fees for businesses, large or small. This rule is purely procedural, and merely amends and refines NOAA's existing rules of civil procedure.

Because this regulation will impose no significant costs on any small entities, but rather will only modify existing procedural rules, the overall economic impact on small entities, if any, is expected to be nominal. Accordingly, this rule will not substantially impact a significant number of small businesses.

As a result of this certification, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 15 CFR Part 904

Administrative practice and procedure, fisheries, fishing, fishing vessels, penalties, seizures and forfeitures.

Dated:

 3/12/10

Lois J. Schiffer

General Counsel

National Oceanic and Atmospheric Administration

For reasons set forth in the preamble, 15 CFR part 904 is proposed to be amended as follows:

PART 904—CIVIL PROCEDURES

1. The authority citation for part 904 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq., 16 U.S.C. 1531-1544, 16 U.S.C. 1361 et seq., 16 U.S.C. 3371-3378, 16 U.S.C. 1431-1445c-1, 16 U.S.C. 773-773k, 16 U.S.C. 951-962, 16 U.S.C. 5001-5012, 16 U.S.C. 3631-3645, 42 U.S.C. 9101 et seq., 30 U.S.C. 1401 et seq., 16 U.S.C. 971-971k, 16 U.S.C. 781-785, 16 U.S.C. 2401-2413, 16 U.S.C. 2431-2444, 16 U.S.C. 972-972h, 16 U.S.C. 916-916l, 16 U.S.C. 1151-1175 et seq., 16 U.S.C. 3601-3608, 16 U.S.C. 3631-3645, 16 U.S.C. 1851 note; 15 U.S.C. 5601 et seq., Pub. L. 105-277, 16 U.S.C. 1822 note, Section 801(f), 16 U.S.C. 2465(a), 16 U.S.C. 5103(b), 16 U.S.C. 1385 et seq., 16 U.S.C. 1822 note (Section 4006), 16 U.S.C. 4001-4017, 22 U.S.C. 1980(g), 16 U.S.C. 5506(a), 16 U.S.C. 5601-5612, 16 U.S.C. 1822, 16 U.S.C. 973-973R, 15 U.S.C. 330-330(e)

2. Section 904.204 to subpart C is amended by revising paragraphs (f) and (m) to read as follows:

Subpart C—Hearing and Appeal Procedures

§ 904.204 Duties and powers of Judge.

(f) Rule on contested discovery requests, establish discovery schedules, and, whenever the ends of justice would thereby be served, take or cause depositions or interrogatories to be taken and issue protective orders under § 904.251(h);

(m) Assess a civil penalty or impose a permit sanction, condition, revocation, or denial of permit application, taking into account all of the factors required by applicable law;

PROJECTED TIMELINE FOR FINAL RULE AMENDING 15 CFR Part 904		
Item	Status	Estimated Completion Date
Submission of the Proposed Rule to the Federal Register	Completed	3/12/10
Publication of the Proposed Rule		3/18/10
Public comment period		4/18/10
Review of and response to comments and preparation of draft final rule package		6/25/10
Department of Commerce and NOAA Clearance		7/16/10
Submission to the Federal Register		7/19/10
Publication in the Federal Register		7/29/10
Effective date		8/28/10

**Plan and Schedule to Improve the Use of
Enforcement Program Information Management Systems**
Prepared by the NOAA Office of the General Counsel and NOAA Fisheries Service
March 17, 2010

To assure that management and oversight of NOAA's enforcement program is supported by reliable and meaningful data, and to assure the fairness and effectiveness of case handling, the NOAA Office of General Counsel of Enforcement and Litigation (GCEL) and the NOAA Fisheries Office for Law Enforcement (OLE) have undertaken a plan to improve the use of information management systems maintained by the two offices.

This plan addresses both interim steps and long term measures to improve the quality of the case data available to OLE, GCEL and NOAA leadership in assessing the consistency, effectiveness and fairness of enforcement actions taken by NOAA. This plan will consist of three stages. The first stage will involve the preparation of a monthly report to senior NOAA leaders by OLE and GCEL that will contain a summary of NOAA's pending enforcement actions. The second stage will consist of the deployment of GCEL's new case management system, which will provide more reliable data and increased communication with the information management system used by OLE. The third stage will focus on leveraging GCEL's new system as a tool to provide greater management oversight of NOAA's enforcement program and increase the fairness and effectiveness of its enforcement activities.

This memorandum describes the plan and schedule for making these improvements.

Background

The January 21, 2010, report issued by the Department of Commerce Inspector General, titled "Review of NOAA Fisheries Enforcement Programs and Operations Final Report No. OIG-19887," recommended that the General Counsel for Enforcement and Litigation (GCEL) and the NOAA Fisheries Office for Law Enforcement (OLE) develop, implement and effectively utilize reliable, integrated case management information systems. This recommendation was based on a finding that a lack of reliable and efficient information management systems and meaningful data undermine the effective management and oversight of NOAA's enforcement program.

As the Inspector General's report noted, OLE and GCEL use separate case management systems to manage and monitor their enforcement activities; OLE uses the Law Enforcement Accessible Database System (LEADS) and GCEL uses the Enforcement Information Management System (EMIS). GCEL has contracted for a commercially-available case management system, Justware, to replace EMIS and expects to have that new system installed and in use by the end of this calendar year.

Plan and Schedule for Addressing Existing System Limitations

One of the principal shortcomings identified by the Inspector General relates to data integrity issues between EMIS and LEADS. These issues arise, in part, as a result of gaps in the information that is exchanged between the two systems. For example, LEADS does not currently provide EMIS with information concerning certain enforcement actions that are initiated by OLE, but not referred to GCEL. Such actions include seizures of unlawfully harvested fish, summary settlements and written warnings issued by OLE, as well as cases that are referred by OLE to the Department of Justice for criminal prosecution or civil forfeiture proceedings but which still require agency support by NOAA attorneys. Likewise, not all GCEL actions are communicated between the systems. For example, EMIS does not provide LEADS with case settlement information. In addition, the systems are not currently configured to synchronize data pertaining to the overall number of cases, the statutes under which cases are charged, or the ultimate disposition of cases.

Although it would be possible to develop the technical capability of the two systems to better communicate with each other, doing so now would not make good business sense as the cost to have OLE's contractor develop an enhanced interface would likely be in excess of \$10,000; the enhancement project would require a significant diversion of agency personnel time; and the enhancements would become obsolete when GCEL's new system comes on-line.

There are, however, interim measures that OLE and GCEL will undertake to compensate for the limited automated information sharing capacity that exists between EMIS and LEADS so as to make better use of the enforcement data that is currently available within the existing systems until the new GCEL system, Justware, is operational. Stage One of this plan will address, as a priority matter, those interim measures.

Stage One – Beginning July 7, 2010

a. To address the Inspector General's concern that the lack of reliable and efficient information management systems and meaningful data undermine the effective management and oversight of NOAA's enforcement program, beginning July 7, 2010, and monthly thereafter, OLE and GCEL will prepare a combined enforcement report for the NOAA General Counsel and the Assistant Administrator for Fisheries. A copy of the report will also be provided to the NOAA Chief of Staff.

In preparing this combined report, each office will first run its own report on the number of cases opened and closed during the previous month; the status of all open cases; the disposition of all closed cases; and the number and types of cases referred to GCEL for civil enforcement and to the Department of Justice for prosecution. The information from each office's report will then be compared and any discrepancies will be reconciled.

GCEL will add to the report information concerning:

- The number of cases accepted for civil enforcement and the number declined
- The number of cases charged, settled, adjudicated and appealed
- Aggregate information as to civil penalties and permit sanctions assessed
- Collections status on all cases with outstanding penalties owed

OLE will add to the report information concerning:

- Cases closed by OLE (*e.g.*, through issuance of a summary settlement or written warning)
- Cases referred to the Department of Justice and cases returned by the Department of Justice or GCEL to OLE for further investigation.

b. Second, to meet the concern as to the inadequacies of case specific information available with the offices' information management systems, GCEL will provide case outcome information (*e.g.*, settlement reached or entry of judgment or dismissal) to OLE within five business days of such action so that OLE may update its information management system accordingly. Currently, OLE does not consistently receive, through EMIS or otherwise, information concerning case outcomes. Once GCEL's replacement case management system is in place, this information will be passed automatically to OLE's system. In addition, prior to taking an enforcement action (for example, issuing a charging document or settling a pending case), GCEL attorneys will contact OLE to determine whether there is any other information that is not otherwise reflected in the case file or available in EMIS that may be relevant to the proposed enforcement action.

Stage Two –Projected To Be Completed by December 31, 2010

Stage Two will focus on the replacement of GCEL's case management system. Recognizing that its existing case management system, which dates from the early '80s, has long been obsolete and inadequately communicates with OLE's information management system, GCEL contracted in late 2008 with New Dawn Technologies to provide a web-based, commercial, off-the-shelf case management system, Justware, to replace EMIS. Under the contract, New Dawn will, among other requirements:

- Configure Justware to capture GCEL's case tracking requirements
- Import GCEL's legacy data from EMIS into Justware
- Develop information sharing capabilities ("interfaces") between Justware and the information management systems used by OLE, NOAA Finance, and the NMFS Permits office

Once these steps are completed, we will have additional capabilities that are currently lacking, including the ability to easily prepare customized reports; automatically share information between OLE and GCEL and reconcile inconsistent data; and readily identify regional variations in the type and number of cases charged; and other performance metrics such as case load and processing time.* This enhanced capability will also

* It is worth noting, however, that unreliable legacy data that is imported from EMIS into Justware will initially tend to adversely affect the accuracy of reports generated by the

improve the ability of both GCEL and OLE to have up-to-date information regarding actions taken by the other office in matters involving the same person or entity. Moreover, GCEL's new system will enable GCEL staff and managers to search the database for case information nationally or by region; by vessel, vessel owner, or vessel operator; by type of violation, and so on.

Below is a brief overview of the steps involved in the transition from EMIS to Justware. We are currently projecting that the database will be on line by December 31, 2010. There are multiple facets to making the database operational that may result in this date being extended, but we are committed to bringing an effective system on line expeditiously.

- Configuration – To Be Completed by May 14, 2010
 - The first step in the process of transitioning from EMIS to Justware is for GCEL to configure Justware so that it appropriately reflects GCEL's practice and allows for the capture of all appropriate information through each stage in the life of a case.
 - GCEL has completed approximately 75% of this task.
- Data mapping – To Be Completed by May 14, 2010
 - Concurrent with the configuration process, GCEL is identifying the legacy information it will import from EMIS at the time it begins to use Justware, as well as the information it will want to receive from the OLE information management system, LEADS, once Justware is in use.
 - Likewise, GCEL is working with OLE to identify the information OLE will want to receive from Justware.
 - Once GCEL and OLE have identified these data fields, Justware and Denali, the vendor that provides contracted information technology support for LEADS, will begin working to develop the mechanisms to share this information between the two systems.
- Certification and Accreditation – To Be Completed by October 15, 2010
 - Before it can begin to use Justware to support its operations, GCEL must first receive approval from the NOAA Information Technology security office that the new system works as intended, does not interfere with other information systems or present security vulnerabilities, and meets all federal information technology requirements.
 - To accelerate completion of this task, NOAA recently issued a change order authorizing New Dawn to retain a third party vendor with specialized experience in completing federal government certification and accreditations.

system. This shortcoming, which could be avoided only by foregoing importation of more than 30 years' worth of historical data, will lessen over time and can be mitigated by limiting the date range of data queries.

Stage Three – To Be Completed by December 31, 2010

Stage Three will focus on using LEADS and Justware as tools for greater management and oversight of our enforcement program. Below is a brief overview of some of the GCEL practice areas that Justware will be configured to address.

- Docket review – To Be Completed December 31, 2010
 - Justware will allow managers to review each enforcement attorney’s case status information. The data included in such a review could include:
 - The number of cases assigned to an attorney and their status (for example, pending review, charged, or pending closure)
 - The penalty amount assessed in a particular case, or penalty amounts assessed for particular types of violations.
 - Workload relative to other attorneys and average case processing time.

- Penalty and Permit Sanction Assessment – December 31, 2010
 - The Penalty Schedules and applicable statutory factors to be considered in assessing penalties and permit sanctions will be uploaded into Justware.
 - The case review form will be incorporated as a template in Justware to assure that the enforcement attorney’s rationale in assessing a penalty or permit sanction is appropriately documented.

- Case Charging – To Be Completed December 31, 2010
 - Standard forms, including Notices of Violation and Assessment, Notices of Permit Sanction, and Notices of Intent to Deny a Permit, will be uploaded into Justware.