




MAR 18 2010

MEMORANDUM FOR: Todd J. Zinser
Inspector General

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

SUBJECT: Office of Inspector General Review of NOAA Fisheries
Enforcement Programs and Operations (January 21, 2010)

DATE: March 18, 2010

Shortly after I arrived at NOAA on March 20, 2009, I became aware of concerns about NOAA's program to enforce the important laws that we implement to protect our nation's natural resources, fisheries, marine sanctuaries, threatened and endangered species, and marine mammals. Based on those concerns from some Members of Congress and the fishing community, I requested that you evaluate our program. The result of your hard work and that of your staff was a Report, Office of Inspector General Review of NOAA Fisheries Enforcement Programs and Operations (January 21, 2010). I reviewed that Report and its recommendations with great interest. I determined that the recommendations could provide a basis for moving NOAA toward a more effective, fair, and transparent enforcement program. To assure its implementation, by Memorandum of February 3, 2010, I directed the NOAA General Counsel Lois Schiffer and the Acting Assistant Administrator for Fisheries to take ten specified steps and to report back to me by March 20, 2010, that they had done so. The February 3 Memorandum is attached as Appendix 1.

Lois Schiffer and Eric Schwaab, the newly-appointed Assistant Administrator, have now provided me with a report organized as a Response to the Recommendations in the January 21, 2010 Inspector General's Review. I have reviewed their Response with care, and adopt it fully. I provide it to you as the response you requested within 60 days. I am satisfied, on the basis of the implementation actions taken and steps outlined in the Response, that NOAA is moving toward a better enforcement program. As Lois and Eric note, this is a first big step, and we will continue to adapt and refine our approaches so that they work effectively as a tool to achieve our overarching goals of resource protection and support for our coastal communities.

In this cover memorandum, in addition to adopting the report from Lois and Eric, I identify three important components of moving toward an effective enforcement program. These are strong leadership, procedural changes, and certain changes in the culture of NOAA's program.

THE ADMINISTRATOR



As to leadership, the Inspector General's January report echoes certain similar findings in previous reviews of NOAA's enforcement program. We are paying special attention to the problems that have been identified before, and will address them comprehensively. I am personally committed to providing strong leadership to that effort, through continuing scrutiny and evaluation and improvement. To that end, I will review implementation of the steps that are outlined in the Response and will work to assure that we meet the deadlines we have specified to the Inspector General for those steps. In addition, I intend to provide strong leadership by conducting an annual review of the enforcement program and incorporating lessons learned from that review. I am confident that in Lois and Eric I have strong leaders who will work with me on these improvements.

As to procedural and cultural changes, the report outlines a number of important steps and actions. I have transferred administration of NOAA's penalty fund to the NOAA Comptroller, as more fully described here. Also, at my behest, the General Counsel's Office has issued a memorandum requiring higher levels of management review of charging decisions and settlements. A proposed regulation requiring that NOAA justify penalty assessments and sanctions to Administrative Law Judges reviewing our cases is being published for notice and comment in today's Federal Register. As to cultural changes, we are reviewing the attitudes, background, and performance expectations that are most effective for the goals of the program. And we are committing to a detailed communications plan with the fishing community. That plan includes ideas for training staff in better defusing difficult situations, and opportunities for listening as well as talking to those affected by our enforcement program. The Office for Law Enforcement has frozen hiring of criminal investigators and is here committing in detail to a workforce analysis of the balance between criminal investigators and civil inspectors.

While the report from Lois and Eric responds directly to the five Recommendations in your Report of January 21, three crucial steps that we have taken do not fit neatly into those Recommendations, so I outline them in this cover memorandum.

First, in the January 21 Report, you express concern about NOAA use of the Civil Monetary Penalties Fund and its failure to audit the Fund. We have taken action in response to that concern. In my February 3 Memorandum, I directed an immediate shift in oversight of the Civil Monetary Penalties Fund (also known as the Asset Forfeiture Fund) from NMFS to NOAA's Comptroller. In response, by memorandum of February 5, 2010, NOAA Comptroller Jon Alexander transferred the Fund and its administration to the office of the Comptroller. Mr. Alexander's memorandum is Appendix 2a. Further, in that same memorandum, the Comptroller instituted a requirement that all proposed expenditures from this Fund of more than \$1,000 must be approved by the Comptroller. The Comptroller further reviewed the \$1,000 threshold, and reaffirmed it with analysis by memorandum of March 2, 2010, which is Appendix 2b. Further, the NOAA General Counsel Office of Enforcement and Litigation submitted existing contracts to the Comptroller for guidance on whether additional expenditures from the Fund under those contracts required Comptroller approval. The list of existing contracts provided by the NOAA General Counsel Office of Enforcement and Litigation to the Comptroller is Appendix 2c; the Comptroller's response finding that the use of the Fund for these contracts is appropriate and specifying the procedures for approval of expenditures under these contracts is Appendix 2d. In addition, your Office of Inspector General has contracted with an external entity—KPMG—to

conduct a forensic audit of the Fund's expenditures, and that audit is now in process. We understand from the NOAA Comptroller that the audit is scheduled to be completed by April 16, 2010, with a report to follow. We will evaluate that report and any recommendations in it. Thus we have taken a series of steps to address your concerns about the Fund's audit and use.

Second, in your January 21, 2010, report you expressed concern about the need for improved communications with fishermen. We have undertaken a plan to address that concern as well. In my February 3 Memorandum, I specified that NMFS, in consultation with the NOAA Office of Communications, will direct resources to improve communications on enforcement issues, particularly in the Northeast. The Office of Communications and External Affairs, in consultation with OLE and GCEL, has now developed a detailed Communications Plan to improve outreach with fishermen. The Plan is Appendix 3. The goals of the Communications Plan are to increase NOAA's transparency and rapport with fishermen; increase the frequency and improve the quality of interactions among fishermen and NOAA enforcement officers and attorney-advisors; to increase public knowledge and understanding of fisheries and other regulations; and to promote the biological and financial benefits of sustainable fishing. The Memorandum specifies a number of tools and strategies, including fishermen's forums, and a web-portal and repository. In addition, we are considering several tools to provide compliance assistance, including compliance guides, a Fisheries Enforcement Email ListServ, and a survey of compliance tools used by other agencies that may be appropriate for NOAA. We will also look at providing training to NOAA enforcers in tools for defusing difficult situations. It provides for implementation through establishment of a NOAA Communications Tiger Team, use of a competency assessment and measurable matrix, and a provision for third party review. To address your recommendation that we consider reinstatement of an Ombudsman, that approach is listed in the plan for further evaluation. As noted in the Communications Plan, a pilot Fishermen's Forum is scheduled for April 20, 2010. My staff has committed to assess implementation and success of the plan periodically and to provide results of that assessment to me promptly.

Finally, I am pleased that we have developed plans for an Enforcement Summit, a forward-looking step to further develop and improve our enforcement program. As Lois and Eric have noted in their report to me, they view the important steps taken in response to your January 21 report as a strong foundation for further developing an effective and fair program for enforcement of all of NOAA's authorities. In my February 3 Memorandum, I directed: "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." My goals for the Summit and additional outreach surrounding the Summit are to listen as stakeholders provide us with forward-looking ideas, including in the areas of communication, priority setting and program implementation, to help us achieve an excellent enforcement program that seeks to achieve protection of the nation's natural resources in NOAA's areas of responsibility. We plan to give serious consideration to all of the ideas that come from the Summit and from people who provide input on these topics through our website and other means. Plans for the Summit, to be held on June 22, 2010 in Washington, D.C., are well under way. We have identified an excellent independent neutral facilitator for the program – the Udall Center for Dispute Resolution—a well-respected agency with the skills and experience to lead all the participants in a useful Summit. An outline of the Udall Center's plan

for the Summit, developed in consultation with our staff, is Appendix 4. I am confident this Enforcement Summit will provide the opportunity to consider new approaches for a better enforcement program.

We understand that your office is continuing to review certain aspects of the enforcement program, and we look forward to receiving the results of those reviews as we move forward to strengthen the program.

Again, thank you for the opportunity to move NOAA's enforcement work forward as an effective, transparent, and fair program. I am committed to providing strong leadership for this program. We will provide you with regular reports on our progress toward implementation of the steps outlined in response to the January 21 IG Report recommendations. Our goal is resource protection consistent with strong communities, sustainable economies, and good relations with those affected by regulations. We look forward to working together with you toward this important, multi-faceted goal.



MAR 18 2010

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

FROM: Lois Schiffer *Lois Schiffer*
NOAA General Counsel

Eric Schwaab *Eric Schwaab*
Assistant Administrator
NOAA Fisheries

SUBJECT: Office of Inspector General Review of NOAA Fisheries
Enforcement Programs and Operations (January 21, 2010)

DATE: March 18, 2010

Introduction

Below is our response to the Office of Inspector General Review of NOAA Fisheries Enforcement Programs and Operations. We are pleased that you are adopting it as the National Oceanic and Atmospheric Administration's official response to the Inspector General's Report of January 21, 2010.

Our report below outlines the specific actions NOAA is taking in response to both the Inspector General's Report and your February 3, 2010, Memorandum, which specified five immediate actions and five additional actions to respond to the IG Report. Your Memorandum is Appendix 1. A chart showing the IG Recommendations and the responsive components of your February 3 Memorandum is Appendix 5.

As you know, Lois Schiffer took office as NOAA's General Counsel on February 1, and Eric Schwaab became the Assistant Administrator for Fisheries on February 16. Both of us view the Inspector General's Report and your Memorandum as providing us with an opportunity to assure that NOAA has a sound, effective, and fair enforcement program for the laws that NOAA administers, including fisheries and other resource protection statutes. We have both devoted substantial time during our short tenures to taking initial steps to build a better enforcement program. In this Report, we outline those steps and our plans for additional actions as outlined in your Memorandum. We are both committed to continuing to evaluate and improve NOAA's enforcement program as we move forward, with a goal of better protection of our nation's natural resources. Because we both have experience with enforcement programs, we underscore that these initial steps are important, and that building an excellent program to protect the



important resources that NOAA has responsibility for, consistent with support for our nation's coastal communities, is an ongoing process that takes time to achieve. We are also committed to providing the leadership necessary to achieve your goals.

A few initial observations: Our goal and approach are to look forward toward building an improved, effective and fair program that addresses the full range of statutes that NOAA enforces. Earning the public's confidence in the fairness of our program is important. We are not here re-examining specific cases or data mentioned in the Report or looking at the history of our offices; thus, we have developed no opinions as to the complaints and case-specific allegations mentioned in the Inspector General's Report. Further, we are in general impressed with the hard work and commitment of the people in our enforcement staffs throughout the country; we take extremely seriously the need for management approaches and steps to assure that their work results in a fair and effective program with sound environmental results. We welcome continuing to work with you on these important tasks.

As to development of this Report and actions in response to the Inspector General's Report and your Memorandum, we have formed a working group with members of our staffs to develop materials and take actions in response. The actions described in this Report, and the appended memoranda and materials, have been developed by that group working with us. We appreciate their work and could not have completed this Report without them; at the same time, we take full responsibility for the work and actions we outline here and for going forward to implement them. We look forward to working with the staff in the Office for Law Enforcement and the General Counsel Office of Enforcement and Litigation to carry them out.

Background

Because you had received expressions of concern from fishermen, Members of Congress and elected state officials about the operation of the enforcement program at NOAA, shortly after you took office as Under Secretary of Commerce for Oceans and Atmosphere and Administrator of the National Oceanic and Atmospheric Administration, you sent a Memorandum to the Department of Commerce Inspector General requesting a review of the policies and practices of the two components of NOAA that work on enforcement matters – the Office for Law Enforcement within NOAA Fisheries, and the NOAA General Counsel Office of Enforcement and Litigation. On January 21, 2010, the Inspector General's Office of Investigations issued a 26-page Final Report, No. OIG-19887, entitled "Review of NOAA Fisheries Enforcement Programs and Operations." The IG Report analyzed the program, and made five recommendations. It requested that within 60 days you apprise the Inspector General of your response to the results of the review, including any actions taken or planned with respect to the recommendations.

In a Memorandum of February 3, 2010, addressed to Lois Schiffer, NOAA General Counsel, and James Balsiger, Acting Assistant Administrator for Fisheries, you set forth assignments to respond to the IG Report. Your Memorandum is Appendix 1. Eric Schwaab, the newly appointed Assistant Administrator for Fisheries has since assumed the responsibilities that the Memorandum assigned to the Acting Assistant Administrator for Fisheries. The Memorandum requests that Lois Schiffer take the lead and work with the Assistant Administrator for Fisheries

on these assignments. The Memorandum specifies five immediate actions and five additional actions to be completed by March 21, 2010. These actions implement the five Inspector General recommendations and other issues identified in the IG report. You have requested that we respond to you by March 20, 2010.

We here report that we have carried out the actions specified in your Memorandum of February 3. We provide below a NOAA Audit Action Plan, in which we outline those actions that respond to the five recommendations in the IG Report. We also note that in the cover Memorandum that you are today sending to the Inspector General, you have summarized other actions that we have taken to carry out the directives in your February 3 Memorandum.

NOAA AUDIT ACTION PLAN

Audit Report Title: Review of NOAA Fisheries Enforcement Programs and Operations

Audit Report Number: Final Report No. OIG-19887/January 2010

Audited Entity: National Marine Fisheries Service (NMFS), Office of Law Enforcement (OLE), NOAA General Counsel Office of Enforcement and Litigation (GCEL)

OIG Recommendation #1: Ensure that NOAA leadership regularly addresses and provides input to enforcement priorities and strategies with regional management, including formal reporting protocols. Given the complexities of NOAA's mission and organization, the industry, and the current enforcement climate, its setting of enforcement priorities should involve integration and coordination with the headquarters fisheries management and science center elements, including the Assistant Administrator for NMFS—to whom OLE reports. Further, NOAA should consider reestablishing the position of ombudsman to serve as an interface with the regulated industry; such a position was created in May 1999, but has remained vacant for several years and it is unclear within NOAA whether the position still exists.

Action Planned or Taken: Based on the audit report, state what action your office plans to take or has taken for Recommendation #1.

- a) NOAA's Office for Law Enforcement, in consultation with NOAA's Office of the 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, 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. A copy of the Memorandum outlining the details of the priority-setting plan and schedule is Appendix 6. We also note, as set forth more fully below under Recommendation #4, that the Inspector General's Report recommends implementation of plans in a December 1, 2009, Memorandum from the Assistant General Counsel for Enforcement and Litigation. A copy of the December 1, 2009, Memorandum is Appendix 7. That December 1 Memorandum proposes adoption of a more formal and uniform approach of reporting on regional priority implementation by GCEL attorneys to GCEL management. The priority-setting plan outlined here follows through on that proposal.
- b) As to whether to reestablish the position of Ombudsmen, we have developed a Communications Plan and Outreach Strategy that is Appendix 3. This Communication

Plan is discussed more fully in your cover letter to the Inspector General of today's date. The tool of reestablishing the position of Ombudsman is listed as one of a number of options in that Memorandum. The purpose of an Ombudsman is to act as a trusted intermediary, in this case between NOAA and the fishing community on a variety of fisheries management matters. We propose in the Communications Plan and Outreach Strategy a broader engagement strategy. With respect to the IG's suggestion of reinstating an Ombudsman here, we understand that the Ombudsman in the 1990's worked for the Secretary of Commerce, rather than for the NOAA Administrator or Assistant Administrator for Fisheries. We note that currently General Counsel enforcement lawyers provide notice in all charging documents of the opportunity for charged persons to raise concerns with the Small Business Administration's Ombudsman. We will explore several options for NOAA, including the use of an Ombudsman and other approaches, to address the specific outreach concerns raised in the IG Report. We are not at this time making a specific recommendation whether to reestablish the position of Ombudsman, but will consider it further as we implement the Communication Plan and Strategy.

Target Implementation Date:

- a) July 29, 2010 (adoption of priority setting plan)
- b) September 15, 2010

NOAA AUDIT ACTION PLAN

Audit Report Title: Review of NOAA Fisheries Enforcement Programs and Operations

Audit Report Number: Final Report No. OIG-19887/January 2010

Audited Entity: National Marine Fisheries Service (NMFS), Office of Law Enforcement (OLE), NOAA General Counsel Office of Enforcement and Litigation (GCEL)

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. In particular, NOAA should determine whether the agency has an appropriate balance and alignment of uniformed enforcement officers/inspectors and criminal investigators, based on mission need.

Action Planned or Taken: Based on the audit report, state what action your office plans to take or has taken for Recommendation #2.

- a) By her Memorandum of February 3, 2010, Dr. Lubchenco 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 Dr. Lubchenco. By email of February 5, 2010, NOAA Workforce Management notified the staff who support NOAA Fisheries' hiring efforts that there is an immediate freeze on hiring of criminal investigators until a workforce review was completed and reviewed. A copy of Dr. Lubchenco's February 3 Memorandum is Appendix 1; the February 5 email is Appendix 8.
- b) The Assistant Administrator for Fisheries, in consultation with the Director of the Workforce Management Office, has developed a plan to review the Office for Law Enforcement (OLE) staffing and procedures, which includes engagement with a third party reviewer. We will work with representatives from NOAA Fisheries and Workforce Management to identify an appropriate external group or team to conduct the third party review. The plan has three Stages:
 - i. Analysis Stage: this stage will include data collection; a workforce analysis of tasks and competences of Enforcement Officers (civil) and Criminal investigators (criminal); benchmarking with similar federal and state agencies for adoption of applicable best practices; and analysis of workload distribution among NOAA and other federal and state agencies. We note that NOAA enforcement officers and criminal investigators participate with U.S. Coast Guard and state enforcement officials in enforcing NOAA statutes, and the analysis will consider NOAA's role in this broader context.
 - ii. Recommendation Stage: this stage will include development of recommendations for the best balance and mix of civil enforcement officers and criminal investigators in each region, and strategies for adoption and validation by a credible external group.

iii. Implementation Stage: this stage will include implementation of the recommendations on a pilot basis in a highly visible geographic area, and then, based on results of the pilot, implementation of the recommendations nationwide.

The plan for a workforce analysis and implementation specifies deadlines, with analysis and recommendation completed, and pilot implementation phase commenced, by mid-October 2010. A plan and schedule for completion of the workforce analysis is Appendix 9.

Target Implementation Date:

- a) February 5, 2010
- b) Mid-October 2010

NOAA AUDIT ACTION PLAN

Audit Report Title: Review of NOAA Fisheries Enforcement Programs and Operations

Audit Report Number: Final Report No. OIG-19887/January 2010

Audited Entity: National Marine Fisheries Service (NMFS), Office of Law Enforcement (OLE), NOAA General Counsel Office of Enforcement and Litigation (GCEL)

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.

Action Planned or Taken: Based on the audit report, state what action your office plans to take or has taken for Recommendation #3.

- a) The General Counsel's Office is addressing this recommendation by developing an internal operating procedures manual (Manual) that 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 in developing the Manual will be to develop guidance for attorneys to follow in making recommended charging decisions, proposing civil penalties or permit sanctions, and settling cases. The Plan for developing the Manual includes three stages, and a fourth ongoing review and improvement stage. The plan and schedule for developing the Manual is Appendix 10, with the Manual to be completed by December 31, 2010.
- b) NOAA General Counsel has instituted higher level reviews of proposed charging decisions, including proposed penalties and permit sanctions, and proposed settlements. After consultation with the union, Lois Schiffer, General Counsel, issued a Memorandum on March 16, 2010, requiring all charging recommendations, declination recommendations, and proposed settlements to be sent to a Deputy General Counsel or the General Counsel for prior approval, with supporting information necessary for that purpose. The Memorandum is Appendix 11. The December 1, 2009, Memorandum from GCEL referred to in IG Recommendation #4, below, provides for General Counsel Office lawyers to write explanatory notes to the case file. This recommendation is addressed by the March 16, 2010, Memorandum.
- c) In addition to the action taken in (b), the NOAA Office of the General Counsel is developing a penalty policy including a revision to its penalty and permit sanction schedules as follows: by July 1, 2010, develop a Penalty Policy that will inform revision

and application of penalty and permit sanction schedules, and to revise penalty and permit sanction schedules; by October 15, 2010, identify those areas where there is currently no schedule and to develop schedules in those areas; and by December 15, 2010, provide an opportunity for public outreach and input with regard to the penalty policy and schedules, and to make revisions as appropriate. 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 address the IG's concerns. The plan and schedule for developing a Penalty Policy is Appendix 12.

- d) The Office for Law Enforcement is addressing this Recommendation by developing a plan and schedule for reviewing, and revising as appropriate, OLE's National Enforcement Operations and Directives Manuals, to ensure that they provide sufficient policy guidance on regulatory and criminal authorities and procedures. The first priority for this effort is to develop guidance for personnel to follow in making initial determinations as to whether incidents will be treated as a civil or criminal matter. A plan and schedule for reviewing and revising the Manuals is Appendix 13.

Target Implementation Date:

- a) December 31, 2010
- b) March 16, 2010
- c) December 15, 2010
- d) December 15, 2010

NOAA AUDIT ACTION PLAN

Audit Report Title: Review of NOAA Fisheries Enforcement Programs and Operations

Audit Report Number: Final Report No. OIG-19887/January 2010

Audited Entity: National Marine Fisheries Service (NMFS), Office of Law Enforcement (OLE), NOAA General Counsel Office of Enforcement and Litigation (GCEL)

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.

Action Planned or Taken: Based on the audit report, state what action your office plans to take or has taken for Recommendation #4.

Described below are the actions the General Counsel's office is taking to follow through on the nine items listed in the December 1, 2009, Memorandum attached as Appendix 7. We address the three items specifically mentioned in Recommendation #4 under (a) and (b) and the remaining six under (c) below:

- a) The General Counsel's office will:
 - propose a revision to its regulations at 15 C.F.R. Part 904 to remove any presumption in favor of the civil penalty or permit sanction assessed by NOAA. A proposed regulation has been submitted to the Federal Register, with publication expected on March 18, 2010. The target date for publication of a final rule is July 29, 2010 (see Appendix 14 – Proposed Regulation and Schedule for Rulemaking); and
 - establish a penalty policy including a revision to its penalty and permit sanction schedules. See Response to OIG Recommendation #3 (Action Planned or Taken (b)).
- b) The General Counsel's office has a plan and schedule for developing an internal operating procedures manual (Manual). See Response to OIG Recommendation #3 (Action Planned or Taken (a)).
- c) The General Counsel's office is following through on the six other initiatives outlined in its December 1, 2009, memo as follows:
 - GCEL, NOAA Fisheries and NOAA Public Affairs will hold a Northeast Fishermen's Forum, tentatively scheduled for April 20, 2010, and ensure availability of GCEL attorneys at Fishery Management Council meetings, as part of its Communications Plan and Outreach Strategy. See Response to OIG Recommendation #1 (Action Planned or Taken (b)).

- GCEL attorneys will begin providing explanatory notes to the case file regarding charging decisions, as part of our instituting higher level reviews of proposed charging decisions, including proposed penalties and permit sanctions. See Response to OIG Recommendation #3 (Action Planned or Taken (b)).
- GCEL is in the process of replacing its existing database, EMIS. See Response to OIG Recommendation #5 (Action Planned or Taken (a)).
- GCEL will adopt a more formal and uniform approach of reporting on regional priority implementation by GCEL attorneys to GCEL management, as part of the priority-setting plan. See Response to OIG Recommendation #1 (Action Planned or Taken (a)).
- GCEL will provide public access to enforcement charging information (e.g., number of cases charged, total penalties assessed, number of cases settled) on the GCEL internet site. First report to be posted by September 1, 2010.

Target Implementation Date:

- a) July 29, 2010 (for publication of final rule); December 15, 2010 (for penalty policy)
- b) December 31, 2010
- c) See above for target implementation dates

NOAA AUDIT ACTION PLAN

Audit Report Title: Review of NOAA Fisheries Enforcement Programs and Operations

Audit Report Number: Final Report No. OIG-19887/January 2010

Audited Entity: National Marine Fisheries Service (NMFS), Office of Law Enforcement (OLE), NOAA General Counsel Office of Enforcement and Litigation (GCEL)

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

Action Planned or Taken: Based on the audit report, state what action your office plans to take or has taken for Recommendation #5.

- a) OLE and GCEL have worked with their respective Information Technology vendors to develop a plan to upgrade GCEL's computer system and to assure that the respective office computer systems can provide integrated information and useful case reporting. Both OLE and NOAA General Counsel have worked with their computer contractors to develop systems that will "communicate with each other" and provide all the reports that both offices want. A plan that includes a description of this information technology approach and schedule for bringing the new database on line is Appendix 15. 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.
- b) Beginning July 7, 2010, and monthly thereafter, until the information technology modification work described above is completed, OLE and GCEL will take two steps to meet the IG's concerns. First, they will prepare a combined enforcement report for the NOAA General Counsel and the Assistant Administrator for Fisheries to facilitate their oversight of NOAA's enforcement program, assessment of the program's efficacy, and informed decision-making with respect to regional and national enforcement priorities. 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. Second, to meet the concern about case specific information, 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 systems accordingly. In addition, prior to taking an enforcement action (for example, issuing a charging document or settling a pending case), the GCEL attorney will contact OLE to determine whether there is any information not reflected in the case file or EMIS that may be relevant to the proposed enforcement action.

Target Implementation Date:

- a) December 31, 2010
- b) July 7, 2010