



NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Follow-up Review of NOAA Fisheries Enforcement Programs and Operations

FINAL REPORT NO. OIG-12-017-I
JANUARY 31, 2012

U.S. Department of Commerce
Office of Inspector General
Office of Audit and Evaluation

FOR PUBLIC RELEASE

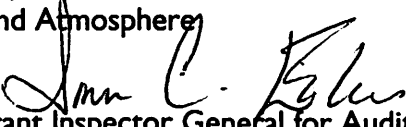




UNITED STATES DEPARTMENT OF COMMERCE
Office of Inspector General
Washington, D.C. 20230

January 31, 2012

MEMORANDUM FOR: Dr. Jane Lubchenco
Under Secretary of Commerce
for Oceans and Atmosphere

FROM: Ann C. Eilers 
Principal Assistant Inspector General for Audit and Evaluation

SUBJECT: *Follow-up Review of NOAA Fisheries Enforcement Programs and Operations*

This is our final report detailing the results of our follow-up review of NOAA fisheries enforcement programs and operations. In response to our January 21, 2010, report, *Review of NOAA Fisheries Enforcement Programs and Operations*, NOAA identified activities planned or already taken to improve its Office of Law Enforcement within the National Marine Fisheries Service (NMFS), along with NOAA's Office of General Counsel, Enforcement Section. In NOAA's response, public announcements, and press releases, we identified 47 action items. We conducted a follow-up review to (1) provide an interim assessment of NOAA's corrective actions, (2) determine the effectiveness of actions already taken, and (3) identify constructive measures NOAA should consider going forward. We targeted the scope of our review to NOAA's submitted action plan. This report presents the findings of our review, conducted under the authority of the Inspector General Act of 1978, as amended, and Department Organization Order 10-13, dated August 31, 2006.

We found that NOAA has taken some positive steps in addressing challenges identified in our reviews. As identified in appendix C, during the past two years NOAA has completed or implemented a majority of the action items. NOAA has decided not to implement 2 action items, leaving 13 of the action items to be completed.

We have received your January 18, 2012, response to our draft report. Where appropriate, we have modified this final report based on this response and discussions with NOAA subsequent to the issuance of the draft report. The formal NOAA response is included as an appendix. The final report will be posted on the OIG's website pursuant to section 8L of the Inspector General Act of 1978, as amended.

We would like to express our thanks to your staff for the courtesies shown to us during our review. Please direct any inquiries regarding this report to me at (202) 482-2754 and refer to the report title in all correspondence.

Attachment

cc: **Monica Medina, Principal Deputy Undersecretary for Oceans and Atmosphere**
Samuel Rauch, Acting Assistant Administrator, NOAA Fisheries
Paul Doremus, Deputy Assistant Administrator for Operations, NOAA Fisheries
Lois Schiffer, General Counsel, NOAA
Bruce Buckson, Director, Office of Law Enforcement, NMFS
Mary B. Ward, Deputy General Counsel, NOAA
Ben Friedman, Deputy General Counsel, NOAA
Charles L. Green, Acting Assistant General Counsel, Enforcement Section,
NOAA
Edward Horton, Chief Administrative Officer, NOAA
Mack Cato, Audit Liaison, NOAA



Report In Brief

JANUARY 31, 2012

Background

This review follows up our January 21, 2010, *Review of NOAA Fisheries Enforcement Programs and Operations*. The report found the following: (1) NOAA senior leadership and headquarters elements need to exercise substantially greater management and oversight of the agency's regional enforcement operations. (2) NOAA needs to strengthen policy guidance, procedures, and internal controls in its enforcement operations, to address a common industry perception that its civil penalty assessment process is arbitrary and unfair.

(3) NOAA needs to reassess its Office of Law Enforcement (OLE) workforce composition (presently 90 percent criminal investigators), to determine if this criminal-enforcement-oriented structure is the most effective for accomplishing its primarily regulatory mission.

In response, NOAA identified activities planned or already taken to improve its Office of Law Enforcement, along with its Office of the General Counsel Enforcement Section. In a February 3, 2010, memo, a March 18, 2010, response, and several public announcements, NOAA identified 47 immediate and long-term activities to address OIG findings and recommendations

Why We Did This Review

We conducted this review to (1) provide an interim assessment of NOAA's corrective actions, (2) determine the effectiveness of actions already taken, and (3) identify constructive measures NOAA should consider going forward. We targeted the scope of our review to the NOAA action plan.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Follow-up Review of NOAA Fisheries Enforcement Programs and Operations

OIG-12-017-I

WHAT WE FOUND

NOAA made progress in completing many key action plan items.

During the past two years, NOAA has completed or implemented a majority of the 47 action items, to include (1) requiring a high-level review of all proposed charges for alleged violations and of all settlements by the General Counsel for NOAA, (2) finalizing a rule to place the burden of justifying a particular civil penalty or sanction on NOAA rather than the respondent in cases before Administrative Law judges, and (3) developing a new penalty policy.

Regional and national priorities for OLE have not been finalized.

OLE had deferred finalizing its enforcement priorities until it hired a permanent director, who has been on board since September 4, 2011.

NOAA's placement of the compliance liaison within OLE raises independence concerns.

As part of its action plan, NOAA established a compliance liaison in OLE's Northeast office. However, the liaison reports directly to the Northeast office's Special Agent in Charge, which may foster the appearance that the position's independence may be impaired.

NOAA's workforce analysis is one year behind schedule. As of December 2011, NOAA had not begun the implementation phase of its workforce analysis, which was scheduled to begin October 2010.

Enforcement case management system data integrity issues have not been resolved.

OLE and GCEL have not fully addressed data integrity issues within and between their two case management systems: JustWare and the Law Enforcement Accessible Database System.

OLE and Enforcement Section policies and procedures manuals need to include a consistent method for handling prior violation information.

Neither manual provides a method for documenting, storing, or obtaining prior violation information, an important factor when deciding a penalty assessment or sanction.

Enforcement Section participation in Fishery Management Council Meetings has been limited and inconsistent.

NOAA had planned to increase communications with the Fishery Management Council by ensuring availability of Enforcement section attorneys at meetings. However, participation has been limited in two regions.

E-hotline and "Complaints and Compliments" web page effectiveness is uncertain. Having different methods of submitting complaints of enforcement improprieties may be confusing for complainants.

Contents

Introduction 1

Results 2

 I. NOAA Made Progress in Completing Many Key Action Plan Items 2

 II. Regional and National Priorities for OLE Have Not Been Finalized 2

 III. NOAA’s Placement of the Compliance Liaison Within OLE Raises Independence Concerns 3

 IV. NOAA’s Workforce Analysis Is One Year Behind Schedule 3

 V. Enforcement Case Management System Data Integrity Issues Have Not Been Resolved 4

 VI. OLE and Enforcement Section Policies and Procedures Manuals Need to Include a Consistent Method for Handling Prior Violation Information 5

 VII. OLE Staff Consistently Attend Fishery Management Council Meetings; Enforcement Section Participation Has Been Limited and Inconsistent 6

 VIII. E-Hotline and ‘Complaints and Compliments’ Web Page Effectiveness Is Uncertain 6

Conclusion 7

Summary of Department and OIG Comments 8

Appendix A: Objectives, Scope, and Methodology 9

Appendix B: January 2010 Recommendations 10

Appendix C: NOAA Action Items 11

Appendix D: Response to OIG’s Draft Report 14

*COVER: Detail of fisheries pediment,
U.S. Department of Commerce headquarters,
by sculptor James Earle Fraser, 1934*

Introduction

Since the beginning of fiscal year 2010, OIG has issued three public reports on the National Oceanic and Atmospheric Administration's (NOAA's) fisheries enforcement efforts. This review follows up on our January 21, 2010, *Review of NOAA Fisheries Enforcement Programs and Operations*, which found that NOAA senior leadership and headquarters elements need to exercise substantially greater management and oversight of the agency's regional enforcement operations; NOAA needs to strengthen policy guidance, procedures, and internal controls in its enforcement operations to address a common industry perception that its civil penalty assessment process is arbitrary and unfair; and NOAA needs to reassess its Office of Law Enforcement (OLE) workforce composition (presently 90 percent criminal investigators), to determine if this criminal-enforcement-oriented structure is the most effective for accomplishing its primarily regulatory mission. The five recommendations in the January 2010 report are included in appendix B.

In its memo of February 3, 2010, its response of March 18, 2010, and several announcements, NOAA itemized immediate and long-term actions to address OIG findings and recommendations. A complete list of all related NOAA action items is in appendix C. With the understanding that some efforts were still being implemented, we conducted an interim assessment to determine NOAA's progress through October 2011.

We found that NOAA has taken some positive steps in addressing challenges identified in our reviews. As identified in appendix C, during the past two years NOAA has completed most its planned action items. We identified various others that have not been completed and two that NOAA has decided not to implement.

Results

I. NOAA Made Progress in Completing Many Key Action Plan Items

Significantly, and to its credit, NOAA has (a) required a high-level review of all proposed charges for alleged violations and of all settlements by the General Counsel for NOAA; (b) finalized a rule to place the burden of justifying a particular civil penalty or sanction on NOAA rather than the respondent in cases before Administrative Law Judges; and (c) developed a new penalty policy, including a revision of the penalty and permit sanction schedules. Also, beginning on March 16, 2010, NOAA's Office of General Counsel, Enforcement Section (Enforcement Section) adopted a policy requiring consistent documentation on standardized case assessment forms of case facts, charging decisions, and proposed civil penalty amounts. The Enforcement Section also implemented a policy to have all cases reviewed by NOAA's Deputy General Counsel or General Counsel. We reviewed all 196 cases processed since the policy went into effect through March 25, 2011, and verified that Enforcement Section management has instituted and is utilizing a process that clearly documents attorney notes and higher-level reviews of the facts and alleged offenses.

The Enforcement Section also developed a comprehensive policy and procedures manual and trained staff on those procedures during the week of March 28, 2011. The manual provides operational and procedural consistency nationwide and is a positive step toward addressing the perception that Enforcement Section attorneys operate without regard to process. However, as discussed on p. 5, the Enforcement Section needs to establish guidelines on how it documents and retrieves prior history data on alleged violators of fishing regulations.

Before we issued our January 2010 report, the Enforcement Section did not have a national penalty policy. Instead, the Enforcement Section gave each attorney significant discretion in setting penalties. In response to our recommendations, the Enforcement Section attempted to simplify the penalty setting process by establishing one penalty permit sanction matrix for each major statute that NOAA enforces, with narrower penalty and permit sanction ranges to be applied nationally.

II. Regional and National Priorities for OLE Have Not Been Finalized

Previously, NOAA established OLE priorities at the regional level, contributing to the lack of oversight from headquarters. As of November 2011, OLE has drafted regional and national enforcement priorities based on recommendations from participants at its fisheries enforcement summit, Fishery Management Councils, interstate fishery commissions, nongovernment organizations, internal staff, and other NOAA offices. However, OLE has yet to finalize its regional and national enforcement priorities. During the OIG review, NOAA informed us that OLE had deferred finalizing its enforcement priorities until it hired a permanent director, who has been on board since September 4, 2011.

III. NOAA's Placement of the Compliance Liaison Within OLE Raises Independence Concerns

As part of its action plan, NOAA established a permanent "compliance liaison," a position piloted in OLE's Northeast office. The compliance liaison is expected to interpret laws, regulations, and policies; conduct outreach activities; and troubleshoot emerging industry issues. NOAA management decided to have the compliance liaison report directly to the Northeast office's Special Agent in Charge. However, having the compliance liaison report directly to an official within the OLE field office fosters the appearance that the position's independence may be impaired.

OIG found a common perception among fishing stakeholders that complaints about enforcement brought to the compliance liaison may result in retaliation due to NOAA's established reporting structure. Because of the historically contentious relationship between the regulated fishing industry and OLE in the Northeast, NOAA should consider that members of the fishing community may not readily reach out to an OLE liaison.

IV. NOAA's Workforce Analysis Is One Year Behind Schedule

In response to our January 2010 report, the Under Secretary of Commerce for Oceans and Atmosphere ordered a hiring freeze of criminal investigators until the National Marine Fisheries Service (NMFS) completed an internal workforce analysis. In the report we recommended that NOAA reassess OLE's workforce composition, which was approximately 90 percent criminal investigators, to determine whether the ratio of uniformed enforcement officers/inspectors to criminal investigators was most effective for accomplishing its mission. The hiring freeze for criminal investigators was still in effect as of December 2011, although enforcement officers have been hired.

OLE's workforce analysis approach consists of short- and long-term actions. The short-term actions are in three phases: analysis, recommendation, and implementation. The long-term actions have three steps: (1) determine the future NOAA mission requirements for OLE; (2) identify the competencies needed to meet OLE's future mission; and (3) develop a long-term—1 to 2 years—workforce plan. At the time of our review, NOAA had not begun implementing its workforce analysis plan, which was scheduled to begin October 2010.

In a February 2011 memorandum, NOAA's Office of Workforce Management recommended that OLE (1) consider external factors and business drivers, (2) determine how much emphasis to place on ensuring compliance versus investigating noncompliance, and (3) consider acquiring staff from other occupational series as an alternate staffing scenario. OLE and management are currently reviewing staffing scenarios.

Based on our review of its draft analysis, it appears that NOAA has considered the roles of the U.S. Coast Guard, joint enforcement agreements at the state and local level, complexity of violations, and difficulty in obtaining evidence to prove violations. NOAA plans to seek a third-party review of its workforce analysis plan prior to implementation.

V. Enforcement Case Management System Data Integrity Issues Have Not Been Resolved

On April 1, 2011, in response to the OIG report, the Enforcement Section replaced the Enforcement Management Information System (EMIS) database with JustWare, a web-based, commercial, off-the-shelf case-management system. The Enforcement Section demonstrated JustWare's case-tracking capabilities for us as well as its ability to import data from its legacy EMIS. NOAA, however, did not address necessary enhancements (discussed below) to OLE's Law Enforcement Accessible Database System (LEADS), identified as inadequate in the previous review.

OLE and the Enforcement Section have made initial attempts to address data integrity issues by configuring LEADS to send case file information to JustWare. The electronic sharing of information between the two systems, however, is currently one-directional, and users can only upload information from LEADS to JustWare once per case. This means that all Enforcement Section information documented in JustWare must be manually entered into LEADS. If additional actions are taken by OLE staff on a case, the information must also be documented manually in both systems. Despite improvements, OLE and the Enforcement Section have yet to fully address data integrity issues within and between their two case management systems.

OIG sampled 144 of 196 cases processed March 16, 2010 (the effective date of higher level Enforcement Section reviews) through March 25, 2011, which required enforcement action and had gone through higher level reviews by Enforcement Section management. We compared Enforcement Section files to OLE's management system data to determine if information on cases and their current status were consistent. Table I contains a summary of our tests.

Table I. Case Management System Testing Summary

Region	Total Cases	Cases Tested	Information Different Between OLE and Enforcement Section	Incorrect Disposition or Status Recorded
Alaska	13	13	4	1
Northeast	33	24	0	2
Northwest	10	8	0	0
Pacific Islands	27	20	4	4
Southeast	96	66	1	8
Southwest	17	13	3	0
Total	196	144	12	15

Source: OIG Analysis

More than 7 percent of the tested cases did not have consistent information between the OLE and Enforcement Section systems, and 11 percent of the cases did not have the correct disposition or status recorded.¹ In some cases, details of a subject's probation that were noted in the Enforcement Section's system were missing from OLE's LEADS files altogether. We also found instances where Enforcement Section-generated information was omitted or where incorrect documents were uploaded into LEADS. In several instances, the Enforcement Section had marked the status of a case as "open" while OLE had the same case marked as "closed"—or vice versa.

Due to a lack of system and business process controls in LEADS, conflicting or redundant information can be entered, producing unreliable system reports. Some regional offices provided an abundance of documentation, while others only used comment fields to provide limited descriptions of case details. Some offices chose to document the status of a case in the case management modules, while others preferred using the incident-tracking module. As a result, we saw conflicting case status information within the same cases in LEADS. Also, as noted earlier, our request for prior violation status reports produced varying results. Due to these weaknesses, management and staff cannot obtain thorough and accurate case history or case status information without physically reviewing individual files. LEADS also has no automated reminder system or calendar tool allowing agents to track important due dates. This forces staff to create discrete and unwieldy methods to manage their workflow and schedules. Also missing from OLE's current processes are reconciliation reviews of data, protocols for populating records and system use, and a tracking system to monitor record-keeping timeliness.

If NOAA does not establish system controls and standard processes for LEADS, OLE management decisions will continue to be susceptible to unreliable or inaccurate data. During interviews, several OLE staff shared their frustration that some information extracted from LEADS is unreliable. They also characterized the system as inefficient and cumbersome. NOAA must implement controls and process improvements to ensure information is consistent, accurate, and fully integrated between the separate case management systems. If OLE decides to continue using LEADS, it must implement a policy on how to use the system and populate data.

VI. OLE and Enforcement Section Policies and Procedures Manuals Need to Include a Consistent Method for Handling Prior Violation Information

Neither OLE's nor the Enforcement Section's manual provides a method for documenting, storing, or obtaining prior violation information—an important factor when deciding a penalty assessment or sanction. OLE and the Enforcement Section currently do not have processes for gathering this information, identifying who will be responsible for the processes, or for ensuring that the case management systems are capable of effectively and efficiently tracking prior violations. Further, Enforcement Section and OLE staff could not provide consistent evidentiary support for their reviews of alleged violators' prior histories of noncompliance. Each person responsible for data analysis had a different approach to obtaining histories of noncompliance

¹ Percentages are based on a 95 percent confidence level. With +/-1.8 percent margin of error, we found that between 8 and 13 of the 196 case files did not have consistent information. Likewise, with +/-2.7 percent margin of error, we found that between 11 and 20 of the 196 case files contained inconsistent disposition or status.

for alleged violators. Some used queries, while others relied on memory; query results varied depending on query parameters and how staff entered information into OLE's LEADS or the Enforcement Section's EMIS. Inadequate controls over the consistency of information in these files and how information is analyzed restrict the Enforcement Section and OLE from acquiring data and performing effective comparative analyses.

VII. OLE Staff Consistently Attend Fishery Management Council Meetings; Enforcement Section Participation Has Been Limited and Inconsistent

NOAA stated in its action plan that it would increase communications with the Fishery Management Councils by ensuring availability of Enforcement Section attorneys at meetings, particularly in the Northeast. We contacted OLE and Enforcement Section staff from four offices and attended one council meeting where we also spoke to several of NOAA's enforcement partners from other agencies. We found that OLE staff consistently attended council meetings; however, participation by the Enforcement Section was limited in two regions. In those regions, OLE staff and Fishery Management Council representatives recommended that Enforcement Section attorneys be more accessible to the public at the meetings to help answer questions about penalties and sanctions. Some attorneys were resistant to more significant involvement, citing limited resources and a reluctance to provide legal advice before discussing issues more closely with colleagues. Considering NOAA's communication and outreach strategy, however, it appears that the Enforcement Section is missing an opportunity to improve public relations and transparency. While most Fishery Management Council meetings have Enforcement Section attorney representation, a more involved presence with all the Council meetings would help NOAA provide information on enforcement activities and also address specific issues of concern in the fishing community.

VIII. E-Hotline and 'Complaints and Compliments' Web Page Effectiveness Is Uncertain

NOAA has provided several tools for stakeholders and constituents to communicate potential enforcement violations or complaints. One such tool, a 24-hour telephone enforcement hotline that has been advertised on OLE's website over the last several years, can be used to report possible enforcement violations. OIG discussions with the company managing the calls indicate that the hotline experiences regular use; however, use has not increased since our January 2010 review. The hotline also has not received any calls related to enforcement complaints since our January 2010 review. The company that manages the calls said they would route any complaints received to the applicable OLE regional office.

NOAA also created an Enforcement Complaint e-hotline (announced in September 2010) to field complaints involving enforcement improprieties by OLE or enforcement attorneys. According to a NOAA headquarters' announcement, this e-mail account, which routes mail directly to NOAA headquarters' internal audit department rather than to OLE or the Enforcement Section, aims to "provide fishermen and other members of the regulated community a mechanism for raising issues about NOAA law enforcement without fear of reprisal." At the time of OIG's review, the e-hotline had been operational for more than six

months. NOAA received only one complaint regarding enforcement improprieties during this time, despite numerous complaints being reported in the media during the same period. NOAA should determine whether the e-hotline is delivering the intended results.

OLE also established a separate “Complaints and Compliments” web page to provide information on how the public may offer feedback. This page, linked from OLE’s main web page, directs the public to file complaints by writing or telephoning OLE’s Office of Professional Responsibility. OLE also provides regional office supervisor’s direct contact information to the general public. However, the website does not clearly explain to users that OLE’s process is separate from the e-hotline on NOAA’s main website. Thus complainants may unknowingly contact OLE, the very organization against which they are complaining, believing there are no other options.

Having different methods of submitting complaints of enforcement improprieties is potentially confusing for complainants, particularly since NOAA does not clearly distinguish between the separate intake processes. These tools also are not easy to find on their respective websites and may not be well-known to the public. Consequently, NOAA should clearly explain to the regulated community a consistent process for communicating with NOAA and for filing complaints concerning enforcement activities.

Conclusion

We have not provided further recommendations. This report represents an interim assessment of NOAA’s progress in implementing our January 2010 recommendations. It is intended to assist NOAA in effectively completing the action items it identified.

Summary of Department and OIG Comments

OIG reviewed NOAA's response and considered it in preparing this final report. OIG also modified the draft report based on information provided by NOAA in subsequent communications.

NOAA's response indicates general concurrence with our findings. The response provides additional updated information summarizing the steps NOAA has taken and plans to take to address the challenges we identified and contains a clarification of its position on the placement of a compliance liaison under the direct supervision of the OLE Special Agent in Charge in the Northeast field office. We have no recommendations in this report; therefore, no action plan is necessary. However, we expect to continue a dialogue with NOAA on its progress in achieving the remaining action items.

Appendix A: Objectives, Scope, and Methodology

On June 2, 2009, the Under Secretary of Commerce for Oceans and Atmosphere requested that OIG review NOAA enforcement programs and operations as a result of concerns raised by members of Congress. In January 2010, OIG issued OIG-19887, the first of three reports that focused on NOAA's management of enforcement operations. Two subsequent reports were issued in July and September 2010 related to NOAA's asset forfeiture fund and the examination of specific complaints made by the fishing community, respectively.

This review evaluates NOAA's efforts to improve its fisheries enforcement programs and operations as stated in NOAA's action plan of March 18, 2010, in response to the January 2010 report. Another OIG report focusing on the asset forfeiture fund's management and civil penalties collections process will follow at a later date.

Considering that efforts are still in progress, we established review objectives to provide an interim assessment of NOAA's corrective actions and, when possible, determine the effectiveness of actions already taken and identify constructive measures to adopt going forward. Our review period was February through October 2011.

We conducted interviews with NOAA staff and external stakeholders and visited four regional law enforcement offices. We reviewed established and proposed policies and processes and analyzed evidence supporting NOAA's corrective actions. Further, we conducted a stratified random sample from 196 cases requiring higher level review as a result of action taken by the Enforcement Section. We did not include minor infractions in our sample.

Our work was performed in accordance with Quality Standards for Inspections (2005) issued by the President's Council on Integrity and Efficiency, and under authority of the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, and Department Organization Order 10-13 (2006).

Appendix B: January 2010 Recommendations

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.
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.
3. To promote greater transparency, consistency, and oversight in NOAA's enforcement processes and operations, (a) ensure that the Enforcement Section 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 Enforcement Section 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.
4. Ensure follow-through on the Enforcement Section 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.
5. Ensure that the Enforcement Section and OLE develop, implement, and effectively utilize reliable, integrated case management information systems.

Appendix C: NOAA Action Items

(As of October 6, 2011)

NOAA Action	NOAA Office	Status*
Create Enforcement Section internal operating procedures manual (see section I)	Enforcement Section	Implemented
Perform periodic reviews of the Enforcement Section manual	Enforcement Section	Implemented
Implement higher level reviews of Enforcement Section enforcement actions (see section I)	Enforcement Section	Implemented
Revise existing NOAA fisheries enforcement penalty schedules	Enforcement Section	Implemented
Revise Enforcement Section penalty policies	Enforcement Section	Implemented
Amend 15 C.F.R., part 904	Enforcement Section	Implemented
Perform periodic reviews of the OLE manual	OLE	Implemented
Develop an outreach strategy	OLE	Not completed
<ul style="list-style-type: none"> Direct resources to improve communications on enforcement issues 	OLE / Enforcement Section	Implemented
<ul style="list-style-type: none"> Facilitate public access to regulatory compliance criteria 	OLE / Enforcement Section	Implemented
<ul style="list-style-type: none"> Utilize additional compliance assistance measures 	OLE	Implemented
<ul style="list-style-type: none"> Hold a National Enforcement Summit 	OLE / Enforcement Section	Implemented
<ul style="list-style-type: none"> Increase communications with Fishery Management Councils (see section VII) 	OLE / Enforcement Section	Implemented
<ul style="list-style-type: none"> Provide public access to charging information 	OLE / Enforcement Section	Implemented
<ul style="list-style-type: none"> Initiate dockside communications 	OLE	Implemented
<ul style="list-style-type: none"> Establish a complaint hotline (e-hotline) (see section VIII) 	OLE	Implemented
<ul style="list-style-type: none"> Hire a compliance liaison (see section III) 	OLE	Implemented
<ul style="list-style-type: none"> Hire an outreach coordinator (see section III) 	OLE	Implemented
<ul style="list-style-type: none"> Evaluate other tools for regular communications with communities 	OLE	Implemented
<ul style="list-style-type: none"> Establish a Tiger Team 	OLE	Not completed
<ul style="list-style-type: none"> Have a third party review performance 	OLE	Not completed

<ul style="list-style-type: none"> Establish 'Ask an Agent' and 'Frequently Asked Questions' portal (see section VIII) 	OLE	Not completed ^{1**}
<ul style="list-style-type: none"> Establish a fisheries enforcement e-mail listserv 	OLE	Not completed ^{1**}
<ul style="list-style-type: none"> Utilize social media tools 	OLE	Not completed ^{1**}
<ul style="list-style-type: none"> Examine other cooperative research programs 	OLE	Not completed ^{1**}
<ul style="list-style-type: none"> Train NOAA enforcers in tools to defuse difficult situations 	OLE	Not completed ^{1**}
<ul style="list-style-type: none"> Begin Northeast fishermen's forums 	Enforcement Section	Abandoned
<ul style="list-style-type: none"> Reinstate the position of ombudsman (see section III) 	OLE	Abandoned
Develop draft regional priorities plan (see section II)	OLE	Completed
Develop draft national priorities plan (see section II)	OLE	Completed
Finalize implementation of priorities plan (see section II)	OLE	Not completed
Update OLE internal operating procedures manual (see section VI)	OLE	Not completed
Institute OLE hiring freeze	OLE	Implemented
Formulate a plan to review the NMFS OLE staffing and procedures	OLE	Implemented
Prepare a workforce analysis plan	OLE	Implemented
Conduct the workforce analysis	OLE	Implemented
Develop recommendations from the workforce analysis plan	OLE	Implemented
Implement the workforce analysis plan	OLE	Not completed
Develop 1–2-year action plan	OLE	Not completed
Develop a strategy and schedule to improve management information systems (see section V)	OLE / Enforcement Section	Implemented
Prepare a monthly combined OLE and Enforcement Section enforcement report	OLE / Enforcement Section	Implemented
Provide Enforcement Section case outcome information to OLE within 5 business days	OLE / Enforcement Section	Implemented
Replace Enforcement Section's case management system (see section V)	Enforcement Section	Implemented
Configure JustWare to fit Enforcement Section case tracking requirements	OLE / Enforcement Section	Implemented

Map system data	Enforcement Section	Implemented
Obtain certification and accreditation	Enforcement Section	Implemented
Configure JustWare for docket reviews, sanction assessments, and case charging	Enforcement Section	Not completed

* The status of each action item listed in the table was confirmed through OIG observations, document reviews, and discussions with NOAA officials. Only select components of the action plan are referenced in the body of the report.


** Listed as a possible action item and not established as a firm commitment by NOAA officials.

Appendix D: Response to OIG's Draft Report



UNITED STATES DEPARTMENT OF COMMERCE
 National Oceanic and Atmospheric Administration
 NATIONAL MARINE FISHERIES SERVICE
 1315 East-West Highway
 Silver Spring, Maryland 20910
 THE DIRECTOR

MEMORANDUM FOR: Ann Eilers JAN 18 2012
 Principal Assistant Inspector General
 Office of Audit and Evaluation
 Office of Inspector General, U.S. Department of Commerce

FROM: Samuel D. Rauch, Acting Assistant Administrator 
 National Marine Fisheries Service

SUBJECT: Comments on the Draft Report Entitled, "*Follow-up Review of NOAA Fisheries Enforcement Programs and Operations*"

This memorandum responds to the Draft report from the Office of Inspector General (OIG), entitled "Follow-up Review of NOAA Fisheries Enforcement Programs and Operations," issued on December 9, 2011. In a letter accompanying that report, the OIG asked the National Oceanic and Atmospheric Administration (NOAA) to "submit any comments to the draft report by January 18, 2012," and that these comments would be considered by the OIG and attached as an appendix to the final report.

Overall, NOAA greatly appreciates the report's recognition that NOAA has "taken some positive steps in addressing challenges identified in our reviews," and that "NOAA has made progress in completing many key action plan items." The draft report acknowledges many of the important changes that NOAA has made since the OIG issued its initial report in January 2010, including: (1) requiring high level review of all proposed charges in enforcement cases; (2) finalizing a rule placing the burden of justifying a civil penalty at an administrative hearing on NOAA; (3) issuing a new national penalty policy; (4) creating a system that documents attorney notes and recommendations in all enforcement cases; and (5) developing a comprehensive Enforcement Section¹ policy and procedures manual.

NOAA also recognizes and agrees with the report's conclusion that NOAA is still working to complete certain action items. For example, the program has taken several major steps on the difficult and long path of developing and implementing a plan to change the composition of its workforce and improve its ability to meet both its civil and criminal enforcement missions in the coming years. Changing the composition of the workforce to better align with enforcement priorities and regional needs will understandably take time, and we continue to work diligently on this issue. These and other actions that the Office of Law Enforcement (OLE) has undertaken over the last 2 years reflect the program's commitment to designing and implementing widespread changes to its policies and procedures, in response to prior OIG findings and related guidance from NOAA leadership. On the basis of these efforts and the direction of current work,

¹ NOAA's General Counsel for Law Enforcement (GCEL), has been reorganized and is now called the Enforcement Section.



NOAA believes that OLE is making promising and lasting changes in its business processes and management practices that have substantially improved the enforcement program's functions and performance.

NOAA values the contribution that the OIG has made to identifying opportunities to improve this important program. To complement the record offered by the OIG's draft report, NOAA provides the following detailed comments on each of the report's findings:

Finding 1: NOAA made progress in completing many key action plan items

NOAA appreciates the report's recognition that NOAA has made considerable progress on a wide range of action items, and its acknowledgement that NOAA stated that it would consider several of the items listed as action items in Appendix C, but did not commit to implementing them. NOAA also notes that the binary labeling of NOAA's results ("implemented" or "not completed") does not recognize that some items may be on-going in nature, such as implementing an outreach strategy or using social media tools. In these and other areas NOAA has taken a number of significant steps, but by their nature these action items will never be "completed." Among the more complex and challenging of the remaining actions that have yet to be completed, such as finalizing a national priorities plan and implementing a national workforce plan, NOAA has made considerable progress to date and is on a solid path toward successful implementation.

Finding 2: Regional and national priorities for OLE have not been finalized

NOAA began working on national and regional enforcement priorities during the NOAA National Enforcement Summit in August 2010. Following the Summit, OLE solicited further recommendations for priorities by reaching out to fishery management councils, interstate commissions and other stakeholders, and inviting comments to be sent to the Special Agents in Charge of NOAA's six enforcement divisions or to NOAA's Office of General Counsel for Enforcement and Litigation. On November 8, 2011, NOAA publicly released a draft of its enforcement priorities and invited the public to submit comments through January 9, 2012. NOAA will consider these comments and anticipates releasing its final regional and national priorities this March.

Finding 3: NOAA's placement of the compliance liaison within the Northeast Region raises concerns

NOAA's point of view is that the primary purpose of the compliance liaison is to engage directly with fisherman, on the docks and in various public forums, to proactively address compliance and law enforcement issues. NOAA believes that the best place to do that is from within OLE, and that this placement provides a consistent, unified approach towards handling related enforcement and compliance issues. This business model is consistent with other national enforcement programs, such as the Environmental Protection Agency's "Office of Enforcement and Compliance Assurance," which pursues enforcement and provides compliance assistance by utilizing a variety of enforcement and compliance strategies. Given this design, the compliance liaison's function fits squarely within OLE's mandate to work directly and proactively with the regulated community.

With respect to managing complaints against the Agency, NOAA notes that stakeholders can currently use a variety of means to lodge complaints and participate in the management process and avail themselves of opportunities for input, including: (a) filing complaints with the OLE E-Hotline; (b) filing complaints on the OLE “complaints and compliments” web page; (c) providing input at meetings of the Regional Fishery Management Councils; (d) providing input to the Marine Fishery Advisory Committee and Atlantic highly migratory species advisory panels; (e) providing comments on Federal Register notices; and (f) participating in NMFS-administered appeals processes. While perceptions related to the compliance liaison role may vary by region, NOAA expects that the numerous mechanisms that can be used to lodge complaints, combined with the proactive engagement with the community in the region, will over time ensure that the compliance liaison function can be effective and valuable in the Northeast region and elsewhere.

Finding 4: NOAA’s workforce analysis is one year behind schedule

The Office of Law Enforcement (OLE) has taken the OIG recommendations to evaluate staffing needs very seriously and has begun implementing an appropriate realignment of personnel that will allow OLE to meet both its civil and criminal enforcement missions. The realignment process began with the January 2010 freeze on hiring criminal investigators that still remains in effect. Since that time, OLE has used resources gained from attrition to increase the number of enforcement officers as a means of improving and expanding compliance efforts. At the time of the OIG review in June of 2009, the OLE workforce comprised 149 special agents and 15 enforcement officers. OLE’s workforce currently has 114 special agents and 21 enforcement officers, with an additional ten enforcement officers anticipated to be hired in FY 2012. Notably, an Assistant Director position was also converted from a special agent position to a non-sworn billet.

OLE’s increase in enforcement officers is an initial step in a strategic re-alignment of personnel classifications within OLE. This re-alignment represents a significant cultural and operational change for OLE, as well as its enforcement partners and other stakeholders. The implementation strategy considers this significant paradigm shift and analyzes strategies for retention to ensure that OLE is able to meet its missions and mandates in the coming years.

OLE is developing a draft staffing and deployment plan, as well as a draft competency model and training plan. In developing these plans, OLE is using a team approach, utilizing the NOAA Workforce Management Office and other Federal partners to review OLE’s missions and goals, minimum position qualifications, training requirements, and focus on compliance assistance. This effort has required a comprehensive review of current and anticipated work flow, workloads, staffing, position classifications, and training requirements.

Once the draft workforce plans are complete, OLE will use them to inform and develop a near term implementation plan, prioritizing vacancies to be filled to achieve an appropriate personnel balance. OLE expects to complete the implementation plan by the end of the 3rd quarter of FY 2012.

Finding 5: Enforcement case management system data integrity issues have not been resolved

The draft report correctly notes that on April 1, 2011, the Enforcement Section (formerly GCEL) began using a new case management system, Justware. OLE's new case management system, LEADS II, is still under construction, but OLE anticipates that LEADS II will be fielded later this calendar year. As part of that deployment, the Enforcement Section and OLE will work with their respective vendors to develop a bi-directional data exchange to operate between the two systems. This bi-directional data exchange will significantly reduce the need for manual updating of the systems and should significantly reduce the data integrity issues identified in the report. Although the roll out of LEADS II is expected this calendar year, all software upgrades are currently on hold pending completion of corrective security measures in response to the findings of the OIG 2011 audit of the NMFS OLE Wide Area Network (WAN).

Finding 6: OLE and GCEL policies and procedures manuals need to include a consistent method for handling prior violation information

Issuing a written policy to ensure a consistent approach for handling prior violation information is a new and positive recommendation. The Enforcement Section will work with OLE to create a policy for how to determine and record the priors of a respondent and add the newly developed policy to their respective practice manuals. Importantly, this issue should be resolved when OLE's new case management system, LEADS II, is brought on-line, and begins a bi-directional data exchange with Justware. As described above, although the roll out of LEADS II is expected this calendar year, all software upgrades are on hold pending completion of corrective security measures.

Finding 7: OLE staff consistently attend Fishery Management Council meetings; Enforcement Section participation was limited and inconsistent

NOAA believes that this issue was recently resolved and we expect to have coverage by enforcement attorneys at all Council meetings going forward. Over the last 2 years, Enforcement Section attorneys have consistently attended council meetings with enforcement agenda items for the South Atlantic Fishery Management Council (FMC), Gulf of Mexico FMC, Caribbean FMC, North Pacific FMC, and Western Pacific FMC. In November 2011, the Enforcement Section reassigned attorneys to ensure attendance at all New England FMC and Mid-Atlantic FMC meetings. Collectively, this level of attendance represents a significant effort given the relatively small size and diverse responsibilities of the available staff. The Enforcement Section currently has eleven line attorneys responsible for enforcement across the entire country, and there are eight Fishery Management Councils which hold 38 or more formal council meetings each year, along with a number of additional committee and subcommittee meetings in changing venues throughout the country.

Finding 8: E-Hotline and 'Complaints and Compliments' web page effectiveness is uncertain

NOAA appreciates the OIG's observation that the e-hotline has received only one complaint in its first 6 months of operation, and that additional effort should be taken to determine whether this level of use indicates that the actual volume of complaints is low or that the hotline is not being used to register complaints. While NOAA has anecdotal information to suggest that

complaints are indeed low, additional research needs to be conducted before either of the two conclusions can be established.

With regard to the report's observation that the OLE E-Hotline and "complaints and compliments" web page are not well explained and create confusion, NOAA agrees with the report's recommendation that NOAA should clearly explain a consistent process for filing complaints concerning enforcement activities. NOAA has modified the OLE website to better differentiate between the two complaint websites, and make it clear that the E-Hotline is tied directly to NOAA.