

U.S. DEPARTMENT OF COMMERCE
Office of Inspector General



**PUBLIC
RELEASE**

*NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION*

*NMFS Office of Law Enforcement
Needs Management Improvements*

Audit Report No. STL-9835-8-0001 / September 1998

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EXECUTIVE SUMMARY

The National Marine Fisheries Service is responsible for the management, conservation, and protection of living marine resources within the United States Exclusive Economic Zone. The NMFS Office of Law Enforcement's mission is to achieve an acceptable level of compliance with statutes and regulations affecting the living marine resources and marine habitat of the United States. To accomplish its mission, Enforcement (1) conducts investigations, patrols, and inspections throughout the United States and its territories, and on the high seas as authorized by U.S. law and international agreements; (2) engages in public outreach to increase understanding of laws and of the underlying conservation purposes; (3) provides coordination and support to states, tribes, and territories enforcing regulations that protect marine resources; and (4) provides training to other federal and state officers who participate in fisheries enforcement.

NMFS fisheries special agents and fisheries patrol officers have specific authority to enforce 32 statutes related to the conservation and protection of marine resources. Most enforcement activities are related to the following laws:

- Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801-1882).
- Endangered Species Act (16 U.S.C. 1531-1543).
- Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407).
- Lacey Act Amendments of 1981 (16 U.S.C. 3371-3378).
- Marine Protection, Research and Sanctuaries Act (16 U.S.C. 1431-1439).
- National Marine Sanctuary Act.

We conducted a performance audit of the Office of Law Enforcement to evaluate the efficiency and effectiveness of its operations and its coordination efforts with related agencies. During our review, Enforcement was undergoing numerous management improvements. Our review identified several areas where additional improvements are warranted. Specifically:

- NMFS needs to provide the Office of Law Enforcement with more specific policy guidance to assist it in addressing its goals and objectives and allocating its resources. The current NMFS guidance to Enforcement is contained in the NOAA Fisheries Strategic Plan and is too general to be effective. More specific guidance will assist Enforcement in defining its organizational structure and allocating limited resources to meet NMFS's highest priorities (see page 3).
- Enforcement needs to establish more specific performance measures. The current measures are too limited to address all Enforcement activities, are not tied to the goals and objectives in the Enforcement strategic plan, and are not directly linked to offices with corresponding responsibility for achieving the measures. Properly developed performance measures will help ensure that Enforcement programs meet intended goals, operational processes are properly assessed, and continuous program improvement is promoted and tracked (see page 6).

- A recent Enforcement sponsored “role and deployment” study was limited in that it did not evaluate all options due to planning constraints placed on the study. Management should evaluate all options available to Enforcement for achieving its mission and maximize its efficiency and effectiveness (see page 8).
- Enforcement’s Vessel Monitoring System, a satellite-based fishing vessel tracking and monitoring system, was not fully documented, had limited resources, and the use of its data as legal evidence had not been tested. The system and its technology are new and under development for nationwide implementation. Any system utilizing new technology needs to be carefully planned, documented, and tested before widespread implementation (see page 11).

We make recommendations for improvements to the Assistant Administrator of Fisheries on pages 4, 7, 9, and 13.

NOAA generally agreed with our findings and recommendations and states that actions have been taken to implement improvements in several of the areas noted. The Agency’s complete response is attached as Appendix I.

INTRODUCTION

The National Marine Fisheries Service is responsible for the management, conservation, and protection of living marine resources within the United States Exclusive Economic Zone. The NMFS Office of Law Enforcement's mission is to achieve an acceptable level of compliance with NOAA statutes and regulations affecting the living marine resources and marine habitat of the United States. To accomplish its mission, Enforcement:

- Conducts investigations, patrols, and inspections throughout the United States and its territories, and on the high seas as authorized by U.S. law and international agreements.
- Engages in public outreach to increase understanding of laws and the underlying conservation purposes.
- Provides coordination and support to states, tribes, and territories enforcing regulations that protect marine resources.
- Provides training to other federal and state officers who participate in fisheries enforcement.

Office of Law Enforcement personnel have specific authority to enforce 32 statutes related to the conservation and protection of marine resources. However, most enforcement activities are conducted under the following laws:

- Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801-1882).
- Endangered Species Act (16 U.S.C. 1531-1543).
- Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407).
- Lacey Act Amendments of 1981 (16 U.S.C. 3371-3378).
- Marine Protection, Research and Sanctuaries Act (16 U.S.C. 1431-1439).
- National Marine Sanctuary Act (Amendment 1 to Department Organization Order 25-5B).

Enforcement is headquartered in Silver Spring, Maryland, and has five regions: Northeast (Gloucester, MA), Southeast (St. Petersburg, FL), Northwest (Seattle, WA), Southwest (Long Beach, CA), and Alaska (Juneau, AK). Each regional office is under the supervision of a special agent-in-charge. NMFS has 50 field enforcement stations throughout the United States, the Virgin Islands, Puerto Rico, Guam, and American Samoa. In fiscal year 1998, Enforcement had a budget of \$17.6 million and was authorized 164 personnel, of which 131 were special agents or fisheries patrol officers. Special agents conduct investigations of complex schemes that violate conservation laws. Fisheries patrol officers are uniformed officers who work closely with industry representatives and fishers to ensure that they understand the provisions of new regulations; perform dockside inspections; and document violations of laws and regulations.

Eight Regional Fishery Management Councils are partners with NMFS in managing the Nation's fisheries. The councils prepare fishery management plans and amendments that define how

fisheries should be regulated, and NMFS ensures that the plans and amendments are properly implemented.

Enforcement has been the subject of numerous peer and OIG reviews. Our last audit, conducted in September 1991, found that NOAA's Office of General Counsel diminished Enforcement's effectiveness by routinely halving assessed fines; the Enforcement management information system was deficient; controls over overtime were inadequate; and the system to report complaints about Enforcement was deficient.

Since late 1995 under a new Chief of the Office of Law Enforcement, Enforcement initiated numerous management improvements. Specifically, it updated and codified its operations manual; applied for accreditation with the Commission on Accreditation for Law Enforcement Agencies; completed inspections of each region's operations, including the condition of all manuals, case management process and status, evidence storage and handling, budget, firearm storage, time and attendance, undercover accounts, and regional programs; initiated a study of its organizational structure and resource deployment to determine the best structure and deployment scheme to implement Enforcement's strategic plan and fulfill its mission; and reviewed the Asset Forfeiture Fund for compliance with fund requirements.

PURPOSE AND SCOPE

The purpose of our audit was to evaluate the efficiency and effectiveness of the Office of Law Enforcement's operations. We reviewed program files, records, and reports at Enforcement headquarters, the Northwest Regional Office, and the Southeast Regional Office. We interviewed program officials at Silver Spring, Seattle, Gloucester, Woods Hole (MA), Long Beach, and St. Petersburg. We also interviewed officials of the U.S. Coast Guard, Alaska Department of Fish and Wildlife, California Department of Fish and Game, Washington Department of Fish and Wildlife, and Idaho Department of Fish and Game. Our fieldwork was conducted from January through April 1998.

We reviewed Enforcement's compliance with Department Order 25-5b and found no instances of material noncompliance. We also reviewed Enforcement's procedures and controls for evaluating operations, reporting program results, and coordinating with other agencies. Management control weaknesses related to office priorities, performance measures, and the Vessel Monitoring System are discussed in our report. We found that coordination efforts with related agencies was extensive and effective. We did not review the validity and reliability of controls of computer-generated data because our audit objectives did not require such a review.

This review was conducted in accordance with generally accepted government auditing standards and was performed under the authority of the Inspector General Act of 1978, as amended, and Department Organization Order 10-13, dated May 24, 1980, as amended.

FINDINGS AND RECOMMENDATIONS

I. NMFS POLICY DIRECTION FOR ENFORCEMENT NEEDS FOCUS

NMFS has not provided specific, formal policy guidance for the Office of Law Enforcement to use as a basis for its goals, objectives, and resource allocation. The Government Performance and Results Act of 1993 (Results Act) seeks to focus government decision making and accountability on the results of activities. Sound management practice dictates that specific operational guidance be provided to ensure that Office of Law Enforcement goals, objectives, and resource allocations are consistent with and facilitate achievement of overall NMFS goals and objectives and to target the optimal use of resources.

Also required is a description of how the goals and objectives are to be achieved, including the operational processes, skills, and technology, and the human, capital, information, and other resources required to achieve them. The establishment of goals and objectives in the context of management strategies and available resources is consistent with the intentions of the Results Act.

NMFS strategies related to enforcement activities are contained in the NOAA Fisheries Strategic Plan. The plan contains a general statement charging Enforcement with developing and carrying out programs, policies, and procedures necessary to enforce all statues and regulations within NOAA's broad jurisdiction, with additional general statements on how to improve enforcement and regulatory effectiveness. The plan states that compliance with laws and regulations is a key factor in the success of fisheries and protected species management plans.

The discussion of enforcement in the NOAA strategic plan is too general to provide effective guidance and does not facilitate the development of results-oriented goals and objectives for enforcement. The plan fails to prioritize the different laws and regulations to be enforced; lacks outcome-related goals and objectives; and provides no guidance for allocating Enforcement resources.

The Office of Law Enforcement strategic plan, although more specific than the NOAA Fisheries Strategic Plan, is also too general to be an effective management tool. The Enforcement plan contains six general goals:

- Strengthen fisheries management.
- Facilitate prosecutions.
- Expand external partnerships.
- Improve internal coordination and team support.
- Improve human resource management.
- Expand outreach program.

Each goal consists of a few paragraphs of general discussion followed by several generic objectives, such as, provide a coordinated process, provide timely review, and enhance the level of support or cooperation. However, the plan does not contain specific outcome-related goals and objectives, a description of how they are to be achieved, an indication of the priority placed on them, or an identification of the resources required to meet them.

The need for the type of planning envisioned by the Results Act is particularly true for the Office of Law Enforcement because it has extremely limited resources to address its many responsibilities. Enforcement has only 131 special agents and fishery patrol officers and a \$17.6 million budget to enforce 32 statutes over a huge geographical area, an enormous task. For example, under the Magnuson Act, Enforcement's responsibilities extend throughout the U.S. Exclusive Economic Zone (a zone extending 200 miles from the shores of the United States). In addition, Enforcement has limited jurisdiction for the conservation and protection of anadromous species that migrate from the sea to fresh water to spawn, all continental shelf fisheries resources, and highly migratory species extending beyond the Exclusive Economic Zone.

To assist Enforcement in defining its organizational structure and allocating resources to meet NMFS's highest priorities, NMFS needs to provide more precise written policy guidance. The guidance should include overall NMFS priorities and strategies related to enforcement activities.

A. RECOMMENDATION

We recommend that the Assistant Administrator for Fisheries develop specific agency priorities and outcome-related goals and objectives for the Office of Law Enforcement for fiscal year 1999.

B. AGENCY RESPONSE

NOAA did not concur with our conclusion that providing more precise written policy guidance on NMFS priorities and strategies related to enforcement activities would assist Enforcement in defining its organizational structure and allocating resources. NOAA agreed that the specifics being sought by the OIG do not appear in the NOAA Fisheries Strategic Plan. NOAA stated that the agency priorities and goals have been developed and are tracked at a much lower level of specificity in the Annual Operation Plan that supports the Strategic Plan. NOAA believes that upon review of Enforcement's FY 1999 Operating Plan, the OIG will concur with this assessment. NOAA also stated that NMFS expected that our audit would include an assessment of whether the current organizational structure supports the legislative mandates of the Office of Law Enforcement.

C. OIG COMMENTS

We still believe that NMFS needs to provide more precise written policy guidance to assist Enforcement in ensuring that it meets NMFS's enforcement priorities. Granted, such guidance can be provided in many forms, including the NOAA Fisheries Strategic Plan or Annual Operating Plan. Consequently, we reaffirm our recommendation.

We did not intend to evaluate the organizational placement of the Office of Law Enforcement within NOAA during our review. However, this issue was raised by the Chief of the Office of Law Enforcement. We did not find indications that the organizational placement of Enforcement negatively impacted Enforcement's ability to perform legislatively mandated responsibilities. In fact, we requested that the Chief of the Office of Law Enforcement provide us with examples that the organizational placement of Enforcement was interfering with its ability to perform mandated responsibilities. These examples were not provided.

II. PERFORMANCE MEASURES NEED TO BE MORE SPECIFIC

Enforcement has not established the type of performance measures needed to comply with the Results Act, help Enforcement ensure that its programs meet intended goals, assess program efficiency, and promote program improvement. The Chief of the Office of Law Enforcement stated that the office had not developed such performance measures because it had not yet been required to do so.

The Results Act requires that each organizational level develop performance measures that:

- Demonstrate results by telling how well the organizational level is achieving its goals.
- Are limited to the key performance dimensions that will enable the organization to assess accomplishments, make decisions, realign processes, and assign accountability.
- Respond to multiple priorities.
- Are linked directly to the offices with corresponding responsibility for making the programs work.
- Are linked to the parent organization's goals and tied to budget estimates and obligations.

As noted on page 3, the Office of Law Enforcement strategic plan describes six goals and presents generic objectives for each goal. However, the plan does not provide specific outcome measures associated with the goals and objectives.

During our review, Enforcement did identify the following five performance measures for use in the Commerce FY 1999 Annual Performance Plan and the NOAA FY 1999 Budget Request:

- 45 initiatives to educate and promote voluntary compliance.
- 75 regulations downgraded or rewritten.
- 5 fleets using VMS for some regulations.
- 160 significant civil/criminal violations documented for prosecution.
- A 5% reduction in enforcement risk factors in the most at-risk fisheries each base year.

However, these performance measures are too limited to cover all major Enforcement activities, are not tied to the six goals and associated objectives, and are not directly linked to the offices with corresponding responsibility for achieving the measures.

Properly developed performance measures that provide links between strategic goals, resources, and daily activities are a valuable management tool. More specific measures will give Enforcement managers and staff (1) a straightforward road map showing how their daily activities contribute to attaining organization-wide strategic missions and goals, and (2) additional

information to ensure that programs meet intended goals, to assess the efficiency of operational processes, and to promote continuous program improvement.

A. RECOMMENDATION

We recommend that the Assistant Administrator for Fisheries direct the Chief of the Office of Law Enforcement to develop performance measures for fiscal year 1999 that link strategic goals, objectives, resources, and daily activities.

B. AGENCY RESPONSE

NOAA agreed that the NOAA Fisheries Strategic Plan does not provide specific outcome measures associated with the goals and objectives of the Office of Law Enforcement. NOAA stated that it is at the Annual Operating Plan and internal office planning levels that these specifics become apparent. NOAA asserts that Enforcement had submitted 18 milestones under the Fisheries strategic plan goals for the FY 1999 budget; additional performance measures are in the FY 1998 NMFS Annual Operating Plan, and Enforcement had developed its own FY 1998 annual operating plan to track the NMFS milestones. NOAA stated that a newer Enforcement strategic plan is being developed and NOAA will be more overtly alert to ensure that it meets GPRA goals.

C. OIG COMMENTS

Performance measures covering all major Enforcement activities, tied to Enforcement's goals and associated objectives, and directly linked to the offices responsible for achieving the measures, were not provided in NOAA's response nor were they contained in the NMFS or Enforcement FY 1998 Annual Operating Plans. Enforcement officials stated that in late July 1998, at the request of NMFS, Enforcement developed performance measures for the first time for inclusion in the NMFS FY 1999 Annual Operating Plan. However, these measures do not provide a link between strategic goals, resources, and daily activities. In addition, Enforcement officials stated that Enforcement has not developed similar performance measures for the Enforcement Annual Operating Plan. The Office of Law Enforcement needs to develop and articulate more detailed and specific performance measures. NOAA should provide this level of detail in its Audit Action Plan. We reaffirm our recommendation.

III. ROLE AND DEPLOYMENT STUDY OBJECTIVES WERE LIMITED

The Office of Law Enforcement initiated a study, referred to as the role and deployment study, of its organizational structure and resource deployment to obtain maximum efficiencies and effectiveness from existing resources. The study was to develop recommendations that complemented Enforcement's vision, mission, and strategic plan. However, the study's value was lessened because predetermined constraints prevented the study from considering all available options.

Sound management practices dictate that the role and deployment study be designed to consider all available options in providing recommendations for staff and other resource deployment. The study should identify the universe of Enforcement's responsibilities, prioritize them, identify the resources needed to address them, identify existing resources, provide recommended approaches to fulfilling the responsibilities, and demonstrate how the recommended approaches would maximize the use of resources.

The role and deployment study's initial purposes were stated as:

- Developing an organizational structure and deployment scheme that supports the vision, mission, and strategic plan of the Office of Law Enforcement.
- Developing a transition plan to implement the adopted organizational structure and deployment scheme.
- Incorporating the philosophy of community oriented policing and problem solving.

The study's purpose was later reduced to developing recommendations that complement and support Enforcement's vision, mission, and strategic plan. The Chief of the Office of Law Enforcement directed that the study be conducted within five constraints:

- Maintain a full-time equivalent cap of 164.
- Achieve a 1:1 ratio of special agents to fishery patrol officers.
- Reduce the number of grades GS-13 and above.
- Achieve a 7:1 supervisory to staff ratio.
- Improve career paths for Enforcement staff.

In addition, the deployment portion of the study was limited to only 58 of the 164 full-time-equivalent positions because the consultant performing the study considered the other 106 positions as core or minimum positions. Headquarters officials, special and deputy special agents-in-charge, regional support personnel, district supervisors, and a minimum of one officer and one agent per coastal state were not considered for redeployment. The study was scheduled to be issued in final by September 1, 1998, but still has not been completed.

The Chief of the Office of Law Enforcement imposed the constraints because of budget limitations, desires of the Assistant Administrator for Fisheries for a 1:1 mix of special agents to fishery patrol officers, National Performance Review requirements for flatter organizational structures, and perceived organizational needs for minimum staffing and career development. These constraints prevented the study from evaluating all available options for Enforcement to achieve efficiencies and effectiveness. For example, adopting a 1:1 ratio of special agents to fishery patrol officers will reduce the number of agents and increase the number of officers. One reason given for this constraint is to increase Enforcement's visibility. However, by dictating that increased visibility be achieved by reducing special agents ignores the option of increasing visibility through greater use of existing contracts with other enforcement organizations, such as state enforcement organizations.

A sound planning process should evaluate all available options in order to provide a complete evaluation of Enforcement and its performance in relation to its mission, priorities, and resources. The study's outcomes should include a plan showing the best deployment of resources based on an analysis of all options in relation to Enforcement's workload, priorities, and resources. A role and deployment study that does not evaluate all options may not recommend the option that would maximize the use of resources.

A. RECOMMENDATIONS

We recommend that the Assistant Administrator for Fisheries direct the Chief of the Office of Law Enforcement to:

- Evaluate the impact of the predetermined constraints placed on the study and determine if they were appropriate before implementing its recommendations.
- In conjunction with the development of measurable Enforcement performance priorities, initiate a deployment staffing plan that includes all 164 full-time-equivalent personnel for fiscal year 1999.

B. AGENCY RESPONSE

NOAA agrees that the study was limited in scope but states that the limitations were by design. The study's targets were to review specific unresolved issues within NMFS enforcement operations and pertinent only to the NMFS mission. NOAA notes that the study has not been completed and suggests it may be premature to project what the findings will be or what actions NMFS will take in response to them.

C. OIG COMMENTS

Sound management practices dictate that the role and deployment study be designed to consider all available options. In addition to providing a plan based on an analysis of all options in relation to Enforcement's workload, priorities, and resources, the study could provide options

incorporating any desired constraints of NMFS or the Chief of the Office of Law Enforcement. We reaffirm our conclusion and believe that NOAA should incorporate our recommendations as it prepares the final version of the study.

IV. VESSEL MONITORING SYSTEM NEEDS CAREFUL PLANNING

The Vessel Monitoring System (VMS), a satellite-based fishing vessel tracking and monitoring system, is new and under development for nationwide implementation. The VMS uses satellite tracking and communications technology to conduct NMFS compliance monitoring activities from a VMS workstation. The VMS can monitor large geographical areas, and provide real-time catch reporting data, vessel location, and vessel activity. We noted that the system was not fully documented, system resources may not have been adequate for scheduled implementation of the VMS, and use of VMS data as legal evidence had not been tested. Any system under development utilizing new technology needs to be carefully implemented, planned, documented, tested, and funded before widespread implementation.

The Office of Law Enforcement initiated and is responsible for the development and implementation of VMS technology. Enforcement is using VMS technology to assist its efforts to enforce fishery requirements. Vessel location and activity signature provide the means to monitor entire fleets for compliance with a variety of management measures through displays of vessel positions and days-at-sea calculations. For example, VMS can be used to alert NMFS and U.S. Coast Guard officials when a vessel is approaching a closed area or is at sea during a closed season.

As part of its national effort to apply VMS technology, Enforcement is monitoring a 120-vessel domestic Hawaiian longline fleet in the Pacific and 300 scallop and groundfish vessels in the Northeast, and is conducting a pilot program involving up to 10 vessels in the Southeast. Implementation of additional Northeast groundfish fisheries, delayed until 1999, will extend coverage to over 400 vessels in that region. Enforcement is also developing a standardized system for implementation in future fisheries.

Funding for the VMS program has come either directly from the Enforcement budget or indirectly through the Asset Forfeiture Fund. The Fund contains fines, penalties, and proceeds of forfeited assets that are collected by the Secretary of Commerce for violations of marine resource laws. Expenditures from the Fund are restricted to certain law enforcement and prosecution purposes.

System Documentation. The VMS computer code, operating manual, and contingency plan have not been adequately documented. The current system was developed by revising off-the-shelf software to fit VMS, but the revisions are not fully documented. In addition, an operating system manual and a contingency plan have not been developed. Enforcement officials told us that documenting the system code is a priority and a contingency plan and operating manual are needed, but have not been completed.

System Resources. The Northeast VMS is being developed and operated by only one computer technician and one VMS technician. The scheduled implementation, subsequently delayed, of additional Northeast fisheries would have increased VMS monitoring to over 400 vessels in that area. Enforcement personnel acknowledge that the technicians can operate the current system but believe that more resources will be needed to adequately monitor and maintain the system when it

is expanded to include more vessels and fisheries. Another indicator that additional resources are needed is that Enforcement has not been able to complete the system documentation and contingency plan.

Evidence. Enforcement personnel are uncertain if the data produced by the current VMS can be successfully used as evidence in prosecutions of fishery violators and have not yet tested its use as evidence. Uncertainties over the use of VMS data as evidence stem from the way the data is handled and the fact that it has not been tested in a prosecution. The VMS data is transmitted from a fishing vessel to a vendor in a binary code. The vendor translates the binary code into an ASCII format that can be read by the Enforcement computer equipment and transmits the reformatted data to Enforcement. Enforcement is concerned about the use of VMS data for prosecutions because it does not have the original binary data and the data is translated by a third party, the vendor. In addition, vendors may not be maintaining the original ASCII code. Enforcement officials believe that under the rules of evidence VMS data must be maintained in its original binary form as well as in any manipulated format to provide the best evidence for use in prosecutions.

Systems under development need to be thoroughly and timely documented, operations manuals need to be developed, and contingency plans need to be implemented to protect system operations in case of the loss of key personnel, such as with the development of the original Northeast VMS. Adequate resources need to be committed to the VMS to meet planned implementation schedules, ensure system expansion is properly developed, and ensure system operations are not interrupted. The use of VMS data in prosecutions of fishery violators needs to be tested to ensure that the current data can be used as evidence, or to assist in making revisions to the VMS or its procedures to correct any deficiencies.

If the VMS system is not carefully planned and implemented, it could fail for a number of reasons, including inadequate system hardware, insufficient personnel resources, excessive workload requirements, and the lack of admissibility of VMS data as evidence.

During our review, Enforcement and NMFS took the following actions to address concerns with the VMS system:

- Delayed the scheduled implementation of the Northeast VMS from 56 to 300 vessels and deferred further expansion to 400 vessels in that region.
- Prepared a Northeast Enforcement Division VMS study stating that additional technical support will be needed to monitor and maintain an expanded system, VMS data needs to be retained in its original form for evidence purposes, VMS regulations need to be modified to require vendors to archive data for at least three years, and a VMS operational manual needs to be developed.
- Created a VMS steering committee comprised of both enforcement and fishery management officials to oversee the system creation.

A. RECOMMENDATIONS

We recommend that the Assistant Administrator for Fisheries direct the Chief of the Office of Law Enforcement to:

- Ensure that the newly created VMS steering committee addresses the issues of system documentation and resource needs before increasing VMS monitoring in fiscal year 1999.
- Oversee the completion and documentation of the VMS code, manual, and contingency plan before increasing VMS monitoring in fiscal year 1999.
- Initiate efforts to test VMS data as legal evidence in the first available prosecution case where VMS data was instrumental in identifying the violation.

B. AGENCY RESPONSE

NOAA agreed that, before increasing VMS monitoring in fiscal year 1999, the VMS steering committee should address the issues of system documentation and resource needs and the VMS code, manual, and contingency plan should be completed and documented. However, NOAA believes that initiating a test case for prosecution is the sole responsibility of NOAA General Counsel for Enforcement and Litigation.

C. OIG COMMENTS

Although General Counsel for Enforcement and Litigation is ultimately responsible for litigation, NMFS and the Office of Law Enforcement can initiate actions to convince the NOAA's General Counsel's Office of the importance of testing VMS data as evidence in a prosecution case and encourage the use of VMS data as evidence. We believe Enforcement can and should obtain NOAA's General Counsel's input on the handling of VMS data and any changes needed to ensure its use as evidence. We reaffirm our recommendations.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
CHIEF FINANCIAL OFFICER/CHIEF ADMINISTRATIVE OFFICER

SEP 24 1998

MEMORANDUM FOR: Johnnie Frazier
Acting Inspector General

FROM: Paul F. Roberts *Paul Roberts*

SUBJECT: NOAA Response to Draft OIG Report "NMFS Office
of Law Enforcement Needs Management
Improvements," No. STL-9835-8-XXXX

Attached are the National Oceanic and Atmospheric Administration's (NOAA) comments on the Office of Inspector General (OIG) draft report entitled "NMFS Office of Law Enforcement Needs Management Improvements," No. STL-9835-8-XXXX.

The NMFS concurs with the majority of the findings and has already taken action to implement improvements in several of the areas cited by the OIG's performance audit. In those areas that we do not agree with the OIG's recommendations, our rationale is provided in the response.

We would like to note, however, that while the "Purpose and Scope" of the review was to include an assessment of how well the Office of Law Enforcement coordinated with related agencies, there is no mention of that assessment or its results in the draft report.

Attachment



NOAA Response to Draft OIG Report "NMFS OFFICE OF LAW ENFORCEMENT
(OLE) NEEDS MANAGEMENT IMPROVEMENTS
NO. STL-9835-8-XXXX"

A. NMFS POLICY DIRECTION FOR ENFORCEMENT NEEDS FOCUS

General Comments: The National Marine Fisheries Service (NMFS) had expected that the performance audit would include an assessment of whether the current organizational structure supports the legislative mandates of the Office of Law Enforcement. For example, the Office of the Inspector General (OIG) report cites that one of the significant statutes assigned to Office of Law Enforcement (OLE) is the Marine Protection, Research and Sanctuaries Act; however, the OIG does not acknowledge that this statute falls to another line office within the National Oceanic and Atmospheric Administration (NOAA), the National Ocean Service. Similarly, the OIG audit also did not cover the new mission of OLE, i.e., enforcing the Remote Land Sensing Act for National Environmental Satellite, Data, and Information Service.

Recommendation: (draft report page 4)...the Assistant Administrator for Fisheries develop specific agency priorities and outcome-related goals and objectives for the OLE for fiscal year 1999.

NMFS Response: NMFS appreciates the OIG's acknowledgment that the OLE has extremely limited resources to address its many responsibilities; however, we do not concur with the conclusion that "more precise written policy guidance on NMFS priorities and strategies related to enforcement activities" is the answer to defining organizational structure and allocating resources. It does not address or offer resolution for the underlying cause of organizational inefficiencies facing OLE in meeting the overall NOAA mission - that of unfunded mandates and organization misalignment.

We also believe that OLE's strategies as outlined in the NMFS Strategic Plan are consistent with Government Performance and Results Act (GPRA) as they relate to NMFS goals and objectives. We concur that the specifics being sought by the OIG do not appear in the NMFS Strategic Plan; however, they have been developed and are tracked at a much lower level of specificity in the Annual Operating Plan (for each fiscal year) that supports the Strategic Plan. In fact, the model developed by OLE was used by the Deputy Assistant Administrator for Fisheries as an example for other line offices to use in planning, reporting and evaluating their performance and accomplishments. We think that upon review of the OLE's FY 1999 Operating Plan, the OIG will concur with this assessment.

B. PERFORMANCE MEASURES NEED TO BE MORE SPECIFIC

Recommendation: (draft report page 6)...the Assistant Administrator for Fisheries direct the Chief of the Office of Law Enforcement to develop performance measures for fiscal year 1999 that link strategic goals, resources, and daily activities.

NMFS Response: We agree that the NMFS Strategic Plan does not provide specific outcome measures associated with the goals and objectives of the OLE. It is at the Annual Agency Operating Plan and internal office planning levels that these specifics become apparent. In 1997, OLE submitted 18 milestones under the Fisheries strategic plan goals to build sustainable fisheries, recover protected species, and sustain healthy coasts for the FY 1999 budget.

In FY 1998, OLE developed additional performance measures chosen to support the NMFS/NOAA strategic plan. These are in the FY 1998 NMFS Annual Operating Plan. OLE also developed its own FY 1998 annual operating plan to track these NMFS milestones. Furthermore, OLE milestones were broken down to smaller tasks assigned to the respective Enforcement Divisions. Collectively the Divisions' milestones support the national OLE initiatives. The Chief of the Office of Law Enforcement, in turn, briefs the Deputy Assistant Administrator on these accomplishments on a quarterly basis. In fact, the model developed by OLE was used by the Deputy Assistant Administrator as an example of how all NMFS line offices should report their accomplishments. Finally, failure to meet Division milestone objectives are a performance issue reflected in the supervisor's performance plan.

The OLE internal, supporting strategic plan covers the period from 1995 to 1998. It was the first strategic plan ever developed for law enforcement and it has served its purpose well. A newer OLE-internal plan flowing directly from the revised NOAA/NMFS strategic plans is being developed and we will be more overtly alert to ensure that it meets GPRA goals.

C. ROLE AND DEPLOYMENT OBJECTIVES WERE LIMITED

Recommendation: (draft report page 8)...the Assistant Administrator for Fisheries direct the Chief of the Office of Law Enforcement to:

- Evaluate the impact of the predetermined constraints placed on the study and determine if they were appropriate before implementing its recommendations.
- In conjunction with the development of measurable Enforcement performance priorities, initiate a deployment staffing plan that includes all 164 full-time equivalent personnel for fiscal year 1999.

NMFS Response: NMFS agrees that the Study was very limited in scope; however, that was by design. The Role and Deployment Study was undertaken by the Chief of Enforcement, after extensive consultations with the Assistant Administrator for Fisheries and the Acting Director, Office of Enforcement who had requested specific changes within the OLE field force. The Assistant Administrator for Fisheries has been briefed at all appropriate times, including approving the initial review and concurring with findings provided at a mid-point briefing in the study. Both the Assistant Administrator and the Deputy Assistant Administrator will continue to be involved in this effort and briefed on the project's findings when the final report is completed.

The project's targets were to review specific unresolved issues within NMFS enforcement operations and pertinent only to the NMFS mission. In that context, we disagree with the OIG findings and the two subsequent recommendations for changes.

The Role and Deployment Study has not been completed. It is premature to project what the findings will be or what actions NMFS will take in response to them.

D. VESSEL MONITORING SYSTEM NEEDS CAREFUL PLANNING

Recommendation: (draft report page 11)...the Assistant Administrator for Fisheries direct the Chief of Law Enforcement to:

- Ensure that the newly created Vessel Monitoring System (VMS) steering committee addresses the issues of system documentation and resource needs before increasing VMS monitoring in fiscal year 1999.
- Oversee the completion and documentation of the VMS code, manual, and contingency plan before increasing VMS monitoring in fiscal year 1999.

- Initiate efforts to test VMS data in a prosecution case in the first available case that VMS data was instrumental in identifying a violation.

NMFS Response: We agree with the first two recommendations. We disagree with the third recommendation since General Counsel Enforcement and Litigation (GCEL), not OLE, is responsible for litigation.

The first OIG recommendation deals with the newly created NMFS Executive VMS Steering Committee which will be addressing all VMS matters of national significance, including the documentation and resource issues in the recommendation.

The second OIG recommendation has actually been subsumed in the creation of our national program. A summary of our progress to date is as follows:

OLE is developing a national system to provide infrastructure, economies of scale, and coordination across NMFS regions and offices. While ensuring standards-based consistency for enacting national policies concerning fishing data confidentiality, systems security, and legal evidence handling. We are ambitiously involved with efforts to address critical needs. These include:

- requirements analysis;
- project planning with staff and budget projections;
- presentation directed at executives, management and technical levels; and
- National Directives that set performance standards and criteria.

National Directives include:

1. Best Evidence, Chain of Custody, and VMS Data Handling Procedures
2. Mobile Communications Service Provider Requirements
3. Mobile Transceiver Unit Requirements
4. VMS Security
5. VMS Confidentiality
6. Configuration Management and Change
7. Position Data Standard Format
8. Fishers Registration and Installation Responsibilities

The third recommendation involves initiating a test case for prosecution which is solely a GCEL function.