



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

December 12, 2011

The Honorable Daniel K. Inouye
Chairman, Committee on Appropriations
The Capitol, Room S 128
U.S. Senate
Washington, DC 20510

The Honorable Thad Cochran
Vice Chairman, Committee on Appropriations
The Capitol, Room S 128
U.S. Senate
Washington, DC 20510

The Honorable Barbara A. Mikulski
Chairman, Subcommittee on Commerce,
Justice, Science, and Related Agencies
The Capitol, Room S 128
U.S. Senate
Washington, DC 20510

The Honorable Kay Bailey Hutchison
Ranking Member, Subcommittee on Commerce,
Justice, Science, and Related Agencies
The Capitol, Room S 128
U.S. Senate
Washington, DC 20510

Dear Chairman Inouye, Vice Chairman Cochran, Chairman Mikulski, and Ranking Member Hutchison:

As required by House Report 112-169, we are pleased to provide the status of the National Oceanic and Atmospheric Administration's (NOAA's) implementation of recommendations from the Department of Commerce Office of Inspector General July 2010 report on the fisheries enforcement Asset Forfeiture Fund (AFF).

Our July 2010 report, OIG-19887-1, recommended 13 ways for NOAA to improve administration and oversight of the AFF. In response, NOAA developed specific corrective actions and provided my office with quarterly updates on progress to implement them. The attachment shows the status of NOAA's corrective action plan as of August 16, 2011.

NOAA asserts that all corrective actions are 100 percent complete. As a result, we reviewed evidence supporting the completion of each action plan item identified by NOAA and found some level of support for NOAA's assertions. However, we did not conduct an in-depth audit of the action plan and did not review more detailed documentation that might more fully support each of NOAA's conclusions. We are, however, currently conducting a separate review addressing AFF financial controls with additional insights on the fund. Once complete, we will share the results of the review with the Committee.

Our review of NOAA's action plan indicates that more work is needed to address the following items:

- **OIG Recommendation 1, Action Plan Item (c):** "Develop procedures and implement routine monitoring and oversight of the fund."

Status: NOAA developed procedures to monitor AFF transactions associated with all enforcement activities except those associated with asset seizure. It is not yet routinely



monitoring the AFF deposit account, which contains the proceeds from the sales of assets seized by Office of Law Enforcement (OLE) agents.

- **OIG Recommendation 6, Action Plan Item (c):** “Ensure the appropriate office determined has the staff with the proper skill set and training to review and approve AFF appropriate expenditures including knowledge of record retention requirements,” and **OIG Recommendation 7, Action Plan Item (c):** The National Marine Fisheries Service (NMFS) and the General Counsel for Enforcement and Litigation (GCEL) “will communicate the records retention schedule/policy to appropriate OLE and GCEL officials and staff and will implement procedures to ensure compliance with the disposition schedule.”

Status: NOAA trained NMFS Office of Management and Budget (OMB) on the proper approval of AFF disbursements. However, OLE, GCEL, and NMFS OMB staffs were not trained on the revised AFF record-retention policies.

- **OIG Recommendation 8, Action Plan Item (d):** “Research and document the best approach for moving all AFF financial data to the new AFF fund.”

Status: NOAA researched and documented an approach for moving all legacy AFF financial data to a new fund code for the AFF, in order to segregate AFF activity from other NOAA transactions beginning in FY 2011. However, NOAA did not identify balances on hand at September 30, 2010, associated with Northeast Multispecies Fishery Management Plan and Pacific Insular violations prior to transferring the data into the new AFF fund code.

- **OIG Recommendation 9, Action Plan Item (a):** The Acquisition and Grants Office “will review the data set to validate the findings reported by KPMG. In the event cardholder impropriety is substantiated, the [Commerce Bankcard Center] will inform the Approving Official of the findings and take appropriate action depending upon the extent and severity of the impropriety found” and **Action Plan Item (c):** “Educate purchase cardholders of split purchase implications.”

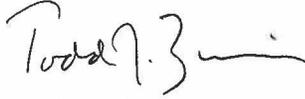
Status: NOAA did not review the entire data set described in our July 2010 report. NOAA reviewed only 41 of the 4,000 potential split purchases and none of the 1,200 potential duplicate purchases identified in our July 2010 report.

In addition, although NOAA informed all applicable OLE and GCEL personnel that credit card training was required, NOAA did not establish a process to monitor and ensure that all applicable employees have taken the required annual training.

An identical letter was also sent to the House Committee on Appropriations and Subcommittee on Commerce, Justice, Science, and Related Agencies.

If you have any questions, please feel free to contact me at (202) 482-4661, or Ann Eilers, Principal Assistant Inspector General for Audit and Evaluation, at (202) 482-2754.

Sincerely,

A handwritten signature in black ink that reads "Todd J. Zinser". The signature is written in a cursive style with a large initial "T" and a long horizontal flourish at the end.

Todd J. Zinser

Attachment

cc: The Honorable John Bryson, Secretary of Commerce
Dr. Jane Lubchenco, Under Secretary of Commerce for Oceans and Atmosphere and
NOAA Administrator

ASSET FORFEITURE FUND (AFF) CORRECTIVE ACTION PLAN*
UPDATED AS OF AUGUST 16, 2011

OIG Recommendation	Actions Planned	% of Completion	Current Status
1. Precisely define the AFF and comprehensively audit it, initially and annually. To arrive at its findings, KPMG expended significant time attempting to define the AFF since NOAA could not provide a consistent definition. As such, KPMG was unable to assess individual transactions beyond review of available supporting documentation.	<p>a) Independent review and confirmation of the fund balance for the AFF as of March 31, 2010 by an independent certified public accounting firm.</p> <p>b) The NOAA Finance Office will define the activities that make up the AFF and fund accounting structure to enable a clear understanding of the AFF and how it functions.</p> <p>c) Develop procedures and implement routine monitoring and oversight of the fund including benchmarking against other federal agencies with asset forfeiture funds to determine best accounting and fiscal management practices for the fund.</p> <p>d) Develop format for fund activity statements to allow for routine reporting and monitoring of fund transaction activity and fund balance.</p> <p>e) Contract with an independent CPA firm in place to conduct a comprehensive financial audit on the March 31, 2011 fund activity statements.</p>	<p>100%</p> <p>100%</p> <p>100%</p> <p>100%</p> <p>100%</p>	<p>COMPLETED</p> <p>COMPLETED. Collection of materials and research was conducted on current activities and fund structure. Documents describe current as well as prior accounting structure.</p> <p>COMPLETED. Document on best practices from Justice, Treasury, and Department of Interior has been finalized.</p> <p>COMPLETED. Statements have been developed from data provided and format tested to ensure that statements are providing consistent information. Statements as of December 31, 2010 were provided to the Office of Inspector General, DOC.</p> <p>COMPLETED. An unqualified "clean" opinion was issued by Clifton Gunderson, CPA.</p>
2. Communicate the results of initial and annual audits of the AFF to NOAA and DOC senior leadership, as well as outside stakeholders (Congress, OMB, etc.).	2) Provide notification of results of the financial audit to NOAA and DOC senior leadership, and outside stakeholders. Make the determination whether an annual audit is needed or whether alternative procedures would be sufficient.	100%	COMPLETED. Statement released on June 16, 2011 by Maureen Wylie announcing a unqualified audit opinion. The Statement has been posted to NOAA's website. Testimony for the June 20, 2011 Senate hearing on enforcement in Boston also contained information on the outcome of the audit.
3. Specifically identify and account for the AFF in NOAA's annual budget submissions	<p>a) Verify that all mandatory (non-fee) accounts appear as their own section in the Congressional Budget Justification.</p> <p>b) Within the Congressional Justification the AFF, and all necessary mandatory accounts, will appear in the NMFS section. AFF, and all necessary mandatory accounts, will be listed on the NOAA Control Table under Mandatory Accounts.</p> <p>c) The budget details for AFF, and other identified funds, will be presented in NOAA's Budget Summary (Blue Book).</p>	<p>100%</p> <p>100%</p> <p>100%</p>	<p>COMPLETED. All mandatory non-fee accounts have been identified. They will be represented in the FY 12 President's Budget.</p> <p>COMPLETED. The AFF is now reported separately from the NMFS in NOAA's FY 2012 Budget.</p> <p>COMPLETED. The AFF is now reported separately from the NMFS in NOAA's FY 2012 Budget.</p>
4. Modify OLE's and GCEL's processes for budgeting and spending AFF proceeds to be comparable to other agencies with similar asset forfeiture funds; and benchmark the asset forfeiture fund programs of the Treasury and Justice Departments for applicable best practices.	<p>a) Determine the budget and spending processes of the asset forfeiture fund programs of the Treasury and Justice Departments.</p> <p>b) Develop process based on determined best practices and implement formal approval of the FY 2011 and future annual AFF budgets, including review and approval of budgets by NMFS CFO and NOAA CFO.</p> <p>c) Enter AFF approved budget operating plans into the CBS and MARS in order to allow comparison between budget and obligations.</p> <p>d) Produce AFF monthly reports - 1. Budget Operating Plans vs. Obligations and 2. Collections</p>	<p>100%</p> <p>100%</p> <p>100%</p> <p>100%</p>	<p>COMPLETED. NMFS met with the Asset Forfeiture Management Staff in the DOJ Justice Management Division on August 13th. They discussed all aspects of budgeting for their AFF (from preparation of Congressional budget estimates to planning and approval of current year budgets). In addition to the information already reviewed (see 8/6/10 update), DOJ sent NMFS a 101 presentation of their program and several guidance documents that they use to determine if a funding request can be covered by the AFF. NMFS also reviewed documentation on the Department of Treasury's Forfeiture Fund.</p> <p>COMPLETED. Process officially approved by NOAA Comptroller on 10/15/10 and NOAA CFO on 10/19/10.</p> <p>COMPLETED. Budget Operating Plans were entered into CBS May 23, 2011.</p> <p>COMPLETED. NOAA Finance provided summary level collections data to the MARS team. The team was able to replicate the CBS Billing Report in MARS. We also have BOPS vs. Obligations reports in MARS.</p>
5. Document a formal interpretation of the statutory language in the Magnuson-Stevens Act as to authorized uses of the AFF; and establish and update formal policy for OLE and GCEL to clearly prescribe both authorized and	a) Establish workgroup to document guidelines on the appropriate and inappropriate usage of the AFF monies.	100%	COMPLETED

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UPDATED AS OF AUGUST 16, 2011

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unauthorized expenditures of AFF monies.	b) Develop baseline document of the current usage of the AFF monies.	100%	COMPLETED
	c) Prepare a legal memorandum that analyzes and sets forth the meaning of the Magnuson-Stevens Act provision that establishes the AFF, including authorized and unauthorized uses of the Fund	100%	COMPLETED. Legal opinion regarding collections and use of the proceeds from fines, penalties, forfeitures was issued in a memorandum from Cameron F. Kerry, DOC General Counsel and Lois Schiffer, NOAA General Counsel.
	d) Develop a formal policy on the authorized and unauthorized uses of AFF monies, how the OLE and the GCEL split costs between AFF and appropriated funds.	100%	COMPLETED. Asset Forfeiture Fund (AFF) Use Policy put in place in September 2010 was reaffirmed and finalized.
6. Take steps to greater centralize AFF approval processes for expenditures.	a) Document and formalize the current approval process for AFF expenditures.	100%	COMPLETED
	b) Determine the most appropriate office to approve AFF expenditures in the future in order to centralize the process.	100%	COMPLETED. The final version of the recommendation for the most appropriate office to approve AFF expenditures in the future was completed and the Finance Office met with NMFS to discuss.
	c) Ensure the appropriate office determined has the staff with the proper skill set and training to review and approve AFF appropriate expenditures, including knowledge of record retention requirements.	100%	COMPLETED. Finance Office completed the final version of the recommendation for the proper skill set and training needed to approve AFF expenditures in the future and met with NMFS to discuss.
	d) Document and formalize the new approval process through the centralized office determined in (b) for AFF expenditures.	100%	COMPLETED. NOAA Finance Office has met with NMFS & GCEL to discuss the transfer of the approval process for requests for obligation. A "white paper" was developed in order to obtain approval for the transition and met with NOAA CFO to discuss transition on December 10, 2010. The NOAA CFO issued a memo on December 22, 2010 to OLE & GCEL to begin the transition. A planning meeting was held with NMFS, January 10, 2011, to begin the transition of the process to NMFS.
7. Ensure that approved Asset Forfeiture Fund (AFF) expenditure transactions have required electronic/hard-copy supporting documentation (a recurring KPMG finding).	a) The Audit, Internal Control and Information Management Office will review relevant financial record and purchase document retention policies listed in the NOAA Records Management Handbook Chapter 200 (specifically, section 200-6 (<i>Electronic Budget Tracking Records</i>)) to update as warranted.	100%	COMPLETED. Reviewed Chapter 200 of the Records Management Handbook in conjunction with NMFS Records Liaison Officer. Chapter 200 was revised on 4/14/09 and several series related to budget/finance records have been revised, in particular 200-09 Credit/Bank Card Transactions retention extended to 6 years and 3 months. As a result of the review, we determined the capture of Assets Forfeiture Funds would be better served if a separate records retention schedule is created under Chapter 1513 Fishery Law Enforcement and Surveillance Files for Assets Forfeiture Funds.
	b) The Audit, Internal Control and Information Management Office, NMFS, and GCEL will promulgate necessary revisions to this section.	100%	COMPLETED. AIMO has secured OLE and GCEL agreement/approval on a records retention schedule for the AFF.
	c) NMFS and GCEL will communicate the records retention schedule/policy to appropriate OLE and GCEL officials and staff and will implement procedures to ensure compliance with the disposition schedule.	100%	COMPLETED. Formal approval of the new records series was submitted to the National Archives and Records Administration on 10/29/10 for their review and approval by the Archivist of the United States. NARA approved the new records series for the AFF on April 7, 2011.
	d) The Audit, Internal Control and Information Management Office will ensure annual reminders on proper records management practices are disseminated to NOAA employees.	100%	COMPLETED. An annual notification will be sent to NOAA employees each year. The annual notification reminder for FY 2011 was sent to all NOAA employees on Feb. 7, 2011.
8. Develop improved processes to clearly identify and track AFF monies received and expended, and to ensure that AFF funds are not commingled.	a) Identify and document the approach for establishing the new AFF fund code and communicating the related changes to all affected personnel.	100%	COMPLETED. The Finance Office has documented our draft approach for establishing the new Fund Code and the approach for communicating the related changes to the affected personnel.

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	<p>b) Establish the new AFF fund code and begin recording all new AFF budget and financial transactions to the new AFF fund code at the start of Fiscal Year (FY) 2011.</p> <p>c) Work with budget representatives from the NMFS and the NOAA General Counsel to identify the best approach for tracking each AFF budget and financial transaction.</p> <p>d) Research and document the best approach for moving all AFF financial data to the new AFF fund.</p> <p>e) Based on the outcome of our research, design and deploy the approach for tracking and reporting all AFF financial transactions from a single new AFF fund code.</p>	<p>100%</p> <p>100%</p> <p>100%</p> <p>100%</p>	<p>COMPLETED. The new fund code (1006) and project codes have been established. Communications have been distributed to OLE and GCEL users. OLE and GCEL began recording activity to the new ACCS values on October 1st.</p> <p>COMPLETED. Worked with NMFS and GCEL to document the approach and the impact on Budget and Financial data. Any additional changes to the interpretation of the statutory language could impact this deliverable.</p> <p>COMPLETED. NOAA Finance completed documentation of the conversion approach for historical documents. Conversion approach document revised and reissued January 24, 2011.</p> <p>COMPLETED. Completed the transfer of cash balances from fund codes 6 and 96 to fund code 1006. Completed documentation of the Conversion.</p>
<p>9. Implement more stringent internal reviews for improperly split purchase card transactions (i.e., those involving the same card holder, date, vendor, and the same or different amounts) and duplicate purchase transactions. KPMG found evidence of multiple split transactions, which circumvent single purchase limits and competitive procurement procedures, as well as duplicate transactions.</p>	<p>a) AGO will review the data set to validate the findings reported by KPMG. In the event cardholder impropriety is substantiated, the CBC will inform the Approving Official of the findings and take appropriate action depending upon the extent and severity of the impropriety found.</p> <p>b) AGO provides data and makes recommendations to management on split purchase findings. It will be the responsibility of OLE and GCEL management to determine whether to pursue taking any disciplinary or other personnel actions on the basis of the information provided by the CBC.</p> <p>c) Educate purchase cardholders of split purchase implications</p> <p>d) Improve the split purchase review. Approving Officials will be reminded of their responsibility to monitor transactions for possible split purchases and take action immediately as appropriate.</p>	<p>100%</p> <p>100%</p> <p>100%</p> <p>100%</p>	<p>COMPLETED. Requested a copy of the KPMG dataset in Microsoft Excel format on July 29, 2010. Received file containing the data set of approximately 399 transactions generated by KPMG on July 29, 2010. Completed review of 34 of the 41 transactions identified as Split and completed preliminary report of the findings on 08 18 2010. Requested 7 additional files from OIG on 8 19 2010 to complete review of split transactions. Remaining 7 transactions received from OIG and reviewed. KPMG Data Set Validation final report completed on 8 26 2010.</p> <p>COMPLETED. Memorandum from CBC to NMFS Assistant Administrator, Acting Director OLE, and Director Management and Budget NMFS dated 8 27 2010 forwarding report from 9. a) for action.</p> <p>COMPLETED. News Flash sent out to all NOAA cardholders and Approving Officials via CPCS email on 8 30 2010. In an effort to educate both NOAA Cardholders and Approving Officials, the News Flash contained the current web link to Purchase Card Policy, the definition of Split Purchase, two additional references within the policy dealing with split purchases and two examples of split purchases.</p> <p>COMPLETED. Received notification from DOC/OAM on July 20, 2010 that JP Morgan Chase reporting system is now generating notification email alerts to Cardholders, Approving Officials and Agency Program Coordinators (APC's) department wide identifying potential split purchases. Confirmed with NOAA Agency Program Coordinators (APC's) that the system is identifying potential split transactions automatically. NOAA Approving Officials are providing purchase card documentation to NOAA APC's for transactions identified as potential split purchases.</p>
<p>10. Determine the cost-effectiveness of General Services Administration-leased vs. purchased vehicles; establish formal policy for vehicle acquisition and management, based on operational need; and apply appropriate disposition procedures for excess vehicles.</p>	<p>a) Logistics Division will provide Fisheries with GSA and other Government-wide policy (for lease versus purchase of vehicles and vehicle management and disposition procedures.</p> <p>b) The Logistics Division will prepare a paper, based on GSA and Government-wide policy, to develop NOAA guidance for the lease versus purchase of vehicles. The Guidance will be provided to all NOAA offices so that program-level policies can be developed or updated.</p>	<p>100%</p> <p>100%</p>	<p>COMPLETED. LOD provided NMFS OLE Gov't-wide policy on lease vs. purchase of vehicles.</p> <p>COMPLETED. Logistics has provided guidance for a lease/purchase analysis to NMFS OLE and to regional Logistics personnel for dissemination in the field.</p>

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	<p>c) The Logistics Division will review Sunflower property records to determine if OLE vehicle acquisitions and disposals have been properly reported.</p> <p>d) If the review in 10c determines some vehicle disposal is needed, the Logistics Division will provide OLE with specific guidance based on existing excess and disposal policy.</p> <p>e) NMFS will use the criteria to update their existing criteria and policy for vehicle acquisition management and disposition based on operational need and mission.</p> <p>f) NMFS Headquarters will communicate the revised procedures and criteria to Office of Law Enforcement personnel through mandatory training for any personnel responsible for acquiring or using vehicles.</p>	<p>100%</p> <p>100%</p> <p>100%</p> <p>100%</p>	<p>COMPLETED. Logistics reconciled OLE vehicle inventory pulled from Sunflower with the inventory provided by OLE obtained from OLE Division management staff</p> <p>COMPLETED. Logistics provided specific instructions for handling of OLE's excess inventory, for vehicles showing as excess in Sunflower and active in Sunflower, but considered excess by OLE.</p> <p>COMPLETED. The updated NMFS OLE policy has been approved and was distributed to senior OLE management on December 13, 2010.</p> <p>COMPLETED. NMFS OLE communicated the updated procedures with a training guide and a mandate for all supervisors to ensure completion of training by a specified date.</p>
11. Establish formal policy for which OLE personnel should be authorized used of daily take-home vehicles; and review and determine the number of "pool" vehicles per locale based on justified need.	<p>a) The Logistics Division will revise existing NOAA policy to clarify authorized use of government law enforcement vehicles incorporating GSA and other Government-wide policy.</p> <p>b) The Logistics Division will work with NMFS OLE to determine the appropriate inventory level for law enforcement vehicles.</p> <p>c) NMFS will implement procedures to ensure compliance with the internal policy.</p> <p>d) NMFS will ensure that personnel are aware of the appropriate use of a vehicle before OLE personnel use a government vehicle.</p>	<p>100%</p> <p>100%</p> <p>100%</p> <p>100%</p>	<p>COMPLETED. Logistics has updated the Vehicle Management website with current Government-wide vehicle management policy. Logistics has posted the new NOAA home-to-work policy for government law enforcement vehicles and provided to NMFS OLE.</p> <p>COMPLETED. Logistics has provided NMFS OLE with guidance regarding vehicle allocation methodology and the updated NOAA home-to-work policy. NMFS OLE has completed their physical inventory and Logistics has advised them of specific missing documentation needed to complete actions in Sunflower. The status of all OLE vehicles (awaiting excess, etc.) is clear in Sunflower. The NMFS OLE Director has completed review of the justifications and the inventory level has been determined.</p> <p>COMPLETED. The updated NMFS OLE policy has been approved and was distributed to senior OLE management on December 13, 2010.</p> <p>COMPLETED. NMFS OLE communicated the updated procedures with a training guide and a mandate for all supervisors to ensure completion of training by a specified date.</p>
12. Review and set policy for which OLE positions and personnel should be authorized use of purchase credit cards, based on operational need. Presently, nearly every OLE special agent and enforcement officer is issued a purchase card.	<p>a) Assist OLE and GCEL in conducting a review of the current number of cardholders with an overall goal of reducing the total number of purchase cards to the appropriate level; the CBC will generate and provide the following reports: 1. Cardholder Report and 2. Approving Official Report</p> <p>b) In cases where cardholders have low transactional activity, the CBC will recommend to OLE/GCEL management cancellation of those purchase cards.</p>	<p>100%</p> <p>100%</p>	<p>COMPLETED. Identified OLE/GCEL hierarchies for cardholders and approving officials as of June 30, 2010 (191 cardholders). CBC staff are currently generating reports to extract fiscal year 2009 and 2010 transactional data on OLE/GCEL cardholders for analysis. Approving Official hierarchy has been determined and the data is being assembled into a report. Data has been assembled to complete the 2 reports.</p> <p>COMPLETED. The CBC forwarded the two reports required by 12a on August 19, 2010 to OLE, Mark Patemi and GCEL, Charles Green. GCEL provided their response to the CBC and two of ten cardholder accounts were canceled on August 31, 2010. OLE provided their response to CBC and 60 of 182 were canceled on September 8, 2010.</p>
13. Determine whether NOAA's inability to adequately track AFF expenditures constitutes violation of any federal financial management law or standard. For example, while the Magnuson-Stevens Act requires that fines and penalties imposed for violations of the Northeast Multispecies Fishery Management Plan are to be specifically used to enforce that Plan, NOAA has not tracked the use of these funds. The then-Director was unfamiliar with this requirement when we initially addressed it with him.	The Assistant General Counsel for Administration will prepare a legal memorandum addressing whether NOAA's use of the AFF may have given rise to violations of any federal financial management law or standard. This review will address NOAA's use of the AFF subsequent to January 1, 2005.	<p>100%</p> <p>100%</p>	<p>a. COMPLETED. Legal opinion regarding collections and use of the proceeds from fines, penalties, forfeitures was issued February 28, 2011 in a memorandum from Cameron F. Kerry, DOC General Counsel and Lois Schiffer, NOAA General Counsel (see CAP #5).</p> <p>b. COMPLETED. Contract auditors provided Micro-Purchase Review and Management Letter which covers both the financial audit (see CAP#1) and the Micro-Purchases Review.</p>