



# NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

## More Action Needed to Improve Controls in Asset Forfeiture Fund

FINAL REPORT NO. OIG-12-019-I  
FEBRUARY 8, 2012

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

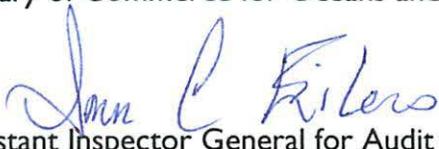
**FOR PUBLIC RELEASE**





February 8, 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:** More Action Needed to Improve Controls in Asset Forfeiture Fund  
Final Report No. OIG-12-019-1

This memorandum provides our final report, *More Action Needed to Improve Controls in Asset Forfeiture Fund*. We conducted the review to address concerns with controls over the Asset Forfeiture Fund (AFF) raised in OIG reports published in January 2010 and July 2010, which revealed several weaknesses in NOAA's management and internal controls over the AFF. The July 2010 report also showed that NOAA inconsistently identified accounts that constituted the AFF.

Our review focused on determining (1) if NOAA properly defined assets comprising the AFF, including the completeness and accuracy of funding sources, (2) if NOAA appropriately defined allowable uses of fund assets and developed controls over collections and disbursements, and (3) if the audit plan of the independent auditor of the AFF financial statements was designed to provide reliance on the AFF cash balances as of March 31, 2011, and if the independent auditor could provide an opinion on the balance.

We found that NOAA (1) lacks appropriate controls to assure that all proceeds from fines, penalties, and forfeitures are received and accurately recorded, and (2) has not accurately recorded or adequately pursued the total amount owed for fines and penalties. Our report describes these weaknesses in detail and recommends steps to strengthen controls over Asset Forfeiture Fund activities. We also noted that the AFF does not contain all fines, penalties, and forfeited proceeds collected by NOAA for marine resource violations; described NOAA's accounting for the use of fines and penalties from Northeast Multispecies Fishery Management Plan violations; and provided a further clarification of AFF inflow and outflow data.

In accordance with Department Administrative Order 213-5, within 60 days of the date of this memorandum, please provide us with an action plan that responds to all of the report recommendations.

We would like to thank the NOAA staff and management for its cooperation. Please contact me either via email or by phone at (202) 482-2754, if you would like to discuss the results of this review.

**Attachment**

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# Report In Brief

FEBRUARY 8, 2012

## Background

The Asset Forfeiture Fund (AFF) contains proceeds from marine resource violations that are expendable under the guidelines of the Magnuson-Stevens Act section 311 (e)(1). Clifton Gunderson, an independent audit firm, determined the AFF asset balance to be \$13.6 million, with \$7.5 million of unrestricted cash, as of March 31, 2011.

## Why We Did This Review

We addressed concerns over the Asset Forfeiture Fund raised in OIG reports published in January 2010 and July 2010, which revealed several weaknesses in NOAA's management and internal controls over the AFF. We reviewed NOAA's approach to defining and reporting on the AFF. We also examined AFF policies and procedures and controls over AFF collections and disbursements.

Our review sought to determine whether (1) NOAA properly defined assets comprising the AFF, including the completeness and accuracy of funding sources, (2) NOAA appropriately defined allowable uses of fund assets and developed controls over collections and disbursements, and (3) the audit plan of the AFF financial statements, compiled by an independent auditor, was designed to provide reliance on the AFF cash balances as of March 31, 2011, and whether the independent auditor could provide an opinion on the balance.

## NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

### More Action Needed to Improve Controls in Asset Forfeiture Fund

OIG-12-019-I

### WHAT WE FOUND

NOAA lacks controls to assure that all proceeds are received and accurately recorded. Also, NOAA has not accurately recorded or adequately pursued the total amount owed for fines and penalties.

### WHAT WE RECOMMEND

We recommend that the Under Secretary of Commerce for Oceans and Atmosphere require the following:

1. NOAA's Office of Law Enforcement (OLE) and Enforcement Section develop policies and procedures that ensure that payments due to the government are recorded accurately and in a timely manner, and implement a segregation-of-duties matrix identifying compatible and incompatible functions associated with the collection, recording, deposit, and reconciliation of fines, penalties, and forfeitures.
2. OLE train agents and enforcement technicians on collection procedures and policies.
3. Enforcement Section headquarters work with the Enforcement Section Northeast division to improve the timeliness of the division's lockbox submissions.
4. OLE, the Enforcement Section, and NOAA Finance implement a process to ensure that deposit account cases are periodically reviewed and that legally resolved cases are transferred from the deposit account or returned to a respondent in a timely manner.
5. OLE implement procedures to track and reconcile how Enforcement Action Reports are used and issued, including those issued to joint enforcement partners and the U.S. Coast Guard.
6. OLE evaluate the Law Enforcement Accessible Database System (LEADS) internal control weaknesses, develop specific protocol for recording information, and restrict LEADS user access to cases.
7. The Enforcement Section develop policies and procedures to ensure that debts are recorded in the Commerce Business System (CBS) as soon as legally enforceable, which will include independent monitoring for amounts not yet recorded in CBS.
8. The Enforcement Section standardize its case monitoring process and reinforce use of the JustWare system.
9. The Enforcement Section and NOAA Finance develop policies and procedures to consistently pursue collection of fines and penalties in a manner that treats all respondents uniformly and in compliance with the Debt Collection Improvement Act of 1996.

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

## Introduction

We began a nationwide review of the policies and practices of the National Oceanic and Atmospheric Administration's (NOAA's) Office of Law Enforcement (OLE) and NOAA Office of the General Counsel Enforcement Section (Enforcement Section) in June 2009, at the request of Dr. Jane Lubchenco, Under Secretary of Commerce for Oceans and Atmosphere. In January 2010, we reported that controls over the accounting of payments for marine resource violations were weak and, therefore, we could not readily determine how NOAA used the funds. As a result, we contracted with KPMG, an independent certified public accounting firm, to conduct a forensic review of asset forfeiture fund (AFF) expenditures. KPMG's review, published in July 2010,<sup>1</sup> revealed several weaknesses in NOAA's management and internal controls over the AFF.<sup>2</sup> The report also showed that NOAA inconsistently identified accounts that constituted the AFF. KPMG could not accurately segregate these accounts and therefore could not identify AFF revenues and expenditures.<sup>3</sup>

*The Asset Forfeiture Fund (AFF) contains proceeds from marine resource violations that are expendable under the guidelines of the Magnuson Stevens Act section 311 (e)(1). Clifton Gunderson, an independent audit firm, determined the AFF asset balance to be \$13.6M, with \$7.5M of unrestricted cash, as of March 31, 2011.*

NOAA quickly outlined a corrective action plan to address the recommendations in our July report. The plan's key initiatives included

- defining the fund;
- obtaining an independent review and confirmation of its balance;
- documenting a formal interpretation of the statutory language in the Magnuson-Stevens Fishery Conservation and Management Act (the Magnuson-Stevens Act)<sup>4</sup> and identifying authorized uses;
- developing an internal, formal policy for authorized and prohibited uses of AFF money; and
- centralizing approval processes for expenditures, including formal approval for all AFF expenditures over \$1,000.

<sup>1</sup> Commerce OIG, *Review of NOAA Fisheries Enforcement Asset Forfeiture Fund*, OIG-19887-1, July 2010.

<sup>2</sup> See Other Matters, section I, for a list of fines, penalties, and forfeitures that currently are included in the AFF.

<sup>3</sup> See Other Matters, section III.

<sup>4</sup> The Magnuson-Stevens Act is codified, as amended, at 16 U.S.C. § 1801 et seq.

In February 2011 we initiated a review that evaluated key aspects of AFF operations. Specifically, our follow-up focused on determining (1) if NOAA properly defined assets comprising the AFF, including the completeness and accuracy of funding sources; (2) if NOAA appropriately defined allowable uses of fund assets and developed controls over collections and disbursements; and (3) if the audit plan of Clifton Gunderson, the independent auditor of the AFF, was designed to provide reliance on the AFF cash balances as of March 31, 2011, and if the firm can provide an opinion on the balance.

Our review found that NOAA

- lacks appropriate controls to assure that all proceeds from fines, penalties, and forfeitures are received and accurately recorded; and
- has not accurately recorded or adequately pursued the total amount owed for fines and penalties.

We also

- noted the AFF does not contain all fines, penalties, and forfeited proceeds collected by NOAA for marine resource violations;
- described NOAA's accounting for the use of fines and penalties from Northeast Multispecies Fishery Management Plan; and
- provided further clarification of the AFF inflow and outflow data.

Figure 1 shows a comprehensive look of the various control weaknesses we identified during our review. These are further described in detail throughout this report.

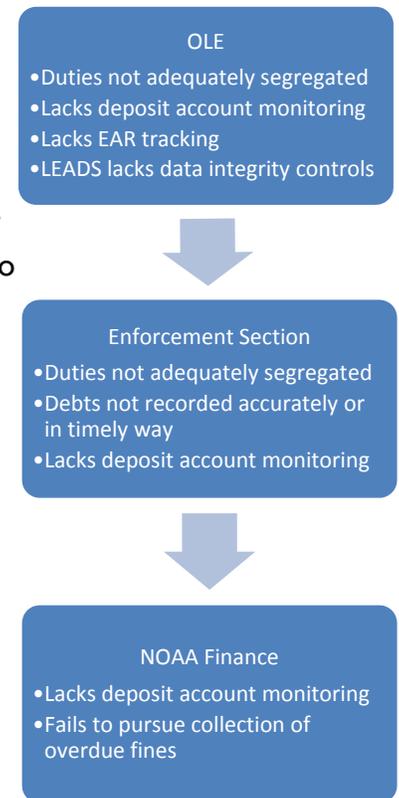


Figure 1. Breakdown of Issues by Office

# Findings and Recommendations

## I. NOAA Has No Assurance That All Proceeds from Assessed Fines, Penalties, and Forfeitures Are Received and Accurately Recorded

Our review indicates NOAA lacks adequate internal controls over its collection of fines, penalties, and forfeiture proceeds included in the fund, and therefore does not have assurance that all amounts due NOAA are actually received. Office of Management and Budget (OMB) Circular A-123, *Management's Responsibility for Internal Control*, 8, states: "Monitoring the effectiveness of internal control should occur in the normal course of business. In addition, periodic reviews, reconciliations or comparisons of data should be included as part of the regular assigned duties of personnel. Periodic assessments should be integrated as part of management's continuous monitoring of internal control, which should be ingrained in the agency's operations."

Our review of NOAA's fine and penalty collection process identified significant internal control weaknesses that increase the risk of fraud. These include inadequate segregation of duties; policies and procedures that lack financial controls and methods for monitoring collection; lack of deposit fund monitoring; failure to track and reconcile Enforcement Action Reports (EARs); and lack of system controls in NOAA's case management system.

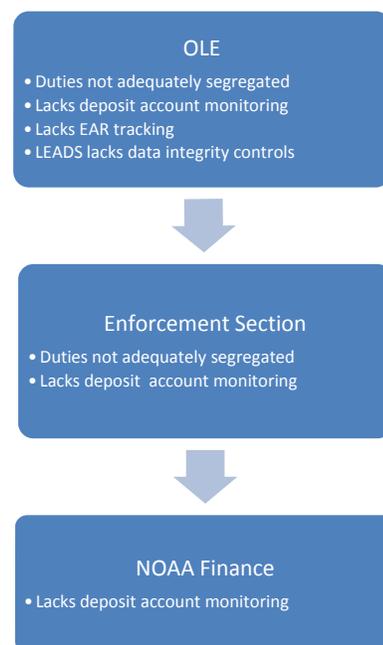


Figure 2. Issues by Office for Finding I

Figure 2 provides a summary of the control weaknesses that we identified during our review related to receipt of fines and penalties.

### A. OLE and the Enforcement Section collection and deposit processes for fines, penalties, and forfeitures are not adequately segregated

OLE and the Enforcement Section do not maintain effective segregation of duties for the collection and deposit of fines and penalties. To prevent opportunities for fraud, duties should be segregated to ensure that no single person is responsible for several key activities associated with collections. Failure to adequately segregate key collection activities may result in undetected misuse of funds. We reviewed summary settlement collection procedures and found the following three examples of inadequate segregation of duties within OLE and the Enforcement Section:

1. Regional enforcement technicians have both custody and recording roles that should be segregated (see table I). Regional enforcement technicians collect all incoming mail that contains summary settlement payments, prepare payments for deposit to a dedicated lockbox, and enter the payment receipts into the Law Enforcement Accessible Database System (LEADS), an OLE web-based system for entering, managing, and reporting law enforcement data. The enforcement technicians also have access to altering fine and

penalty amounts within the LEADS database, which should not be provided to the person who collects the payments.

Table 1. Compatibility of Regional Enforcement Technicians' Multiple Roles

Role	Process Incoming Checks <sup>a</sup>	Send Checks to Lockbox <sup>a</sup>	Update LEADS <sup>b</sup>
Process Incoming Checks <sup>a</sup>	-----	Incompatible	Incompatible
Send Checks to Lockbox <sup>a</sup>	Incompatible	-----	Incompatible
Update LEADS <sup>b</sup>	Incompatible	Incompatible	-----

<sup>a</sup>Custodial role. <sup>b</sup>Recording role.  
Source: OIG

- OLE agents can perform asset custody and recording roles that should be performed by three different people (see table 2). OLE agents have the authority to seize fish caught in violation of marine resource laws. OLE agents who identify unallowable marine catches are responsible for seizing the catch, negotiating the sale of the seized catch, receiving proceeds from the sale, updating LEADS, and delivering the proceeds to the regional enforcement technician.

Table 2. Compatibility of OLE Agents' Multiple Roles

Role	Seizing Catch and Negotiating Sale <sup>a</sup>	Receiving Proceeds from Sale <sup>a</sup>	Updating LEADS <sup>b</sup>	Delivering Proceeds to Technician <sup>a</sup>
Seizing Catch and Negotiating Sale <sup>a</sup>	-----	Incompatible	Incompatible	Incompatible
Receiving Proceeds from Sale <sup>a</sup>	Incompatible	-----	Incompatible	Incompatible
Updating LEADS <sup>b</sup>	Incompatible	Incompatible	-----	Incompatible
Delivering Proceeds to Technician <sup>a</sup>	Incompatible	Incompatible	Incompatible	-----

<sup>a</sup>Custodial role. <sup>b</sup>Recording role.  
Source: OIG

3. Within their own authority, Enforcement Section attorneys can perform authorization, asset custody, and recording roles that should be performed by three different people (see table 3). Enforcement Section attorneys are responsible for issuing a Notice of Violation and Assessment, negotiating payment options, updating EMIS/JustWare,<sup>5</sup> collecting the first payment, submitting the first payment to the Enforcement Section paralegal who prepares the payment for lockbox deposit, and if any remaining balance exists for the case, forwarding a case package to NOAA Finance to establish a receivable in NOAA’s financial system.

Table 3. Compatibility of Enforcement Section Attorneys’ Multiple Roles

Role	Issuing NOVA <sup>c</sup>	Negotiating Payment <sup>c</sup>	Updating JustWare <sup>b</sup>	Collecting Payment <sup>a</sup>	Submitting Payment to Lockbox <sup>a</sup>	Submitting Remaining Balance to NOAA Finance <sup>a</sup>
Issuing NOVA <sup>c</sup>	-----	Compatible	Compatible	Incompatible	Incompatible	Incompatible
Negotiating Payment <sup>c</sup>	Compatible	-----	Compatible	Incompatible	Incompatible	Incompatible
Updating JustWare <sup>b</sup>	Compatible	Compatible	-----	Incompatible	Incompatible	Incompatible
Collecting Payment <sup>a</sup>	Incompatible	Incompatible	Incompatible	-----	Incompatible	Incompatible
Submitting Payment to Lockbox <sup>a</sup>	Incompatible	Incompatible	Incompatible	Incompatible	-----	Incompatible
Submitting Remaining Balance to NOAA Finance <sup>a</sup>	Incompatible	Incompatible	Incompatible	Incompatible	Incompatible	-----

<sup>a</sup>Custodial role. <sup>b</sup>Recording role. <sup>c</sup>Authorization role.

Source: OIG.

In all three examples, an OLE or Enforcement Section employee is assigned excessive control over a revenue collection process, without compensating controls. This represents a failure to adequately segregate roles associated with fine and penalty collection, deposits, and recording. It also increases the risk that funds can be misappropriated without detection.

<sup>5</sup> EMIS was GCEL’s electronic case management system until it was replaced with the JustWare case management system in 2011.

Adding to the control deficiencies is that OLE's and Enforcement Section's written fine and penalty collection policies do not address financial internal controls for OLE and Enforcement Section operations. Although some OLE regional offices provided us with policies, none of the policies adequately addressed key internal controls related to segregation of duties, which are needed to prevent misappropriation of government assets. Other key duties, related to reconciling collection accounts and monitoring payment status, also were not addressed.

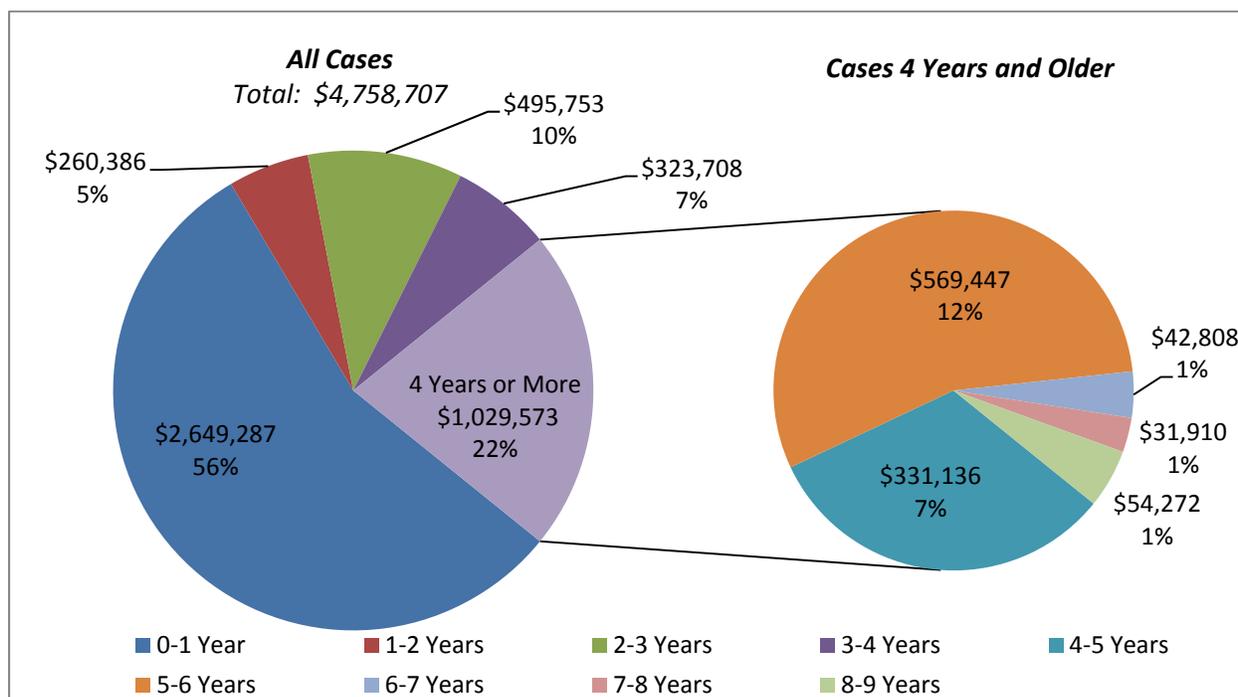
In addition to the segregation of duties issues, one Enforcement Section division is holding checks received for case payments for as long as a month or more before depositing funds in the lockbox. Per Enforcement Section collection guidance, all checks received should be submitted to the lockbox once or twice a week. Failure to remit checks to the lockbox in a timely manner increases the risk of misappropriation.

*B. The AFF deposit account lacks monitoring*

Neither OLE nor the Enforcement Section are monitoring deposit account balance to ensure that amounts are transferred to the AFF or returned to the respondent upon final disposition of a case. The deposit account holds proceeds that are pending legal determination from the sale of property seized by OLE agents. Once a case has a determination, funds should be moved from the deposit account in accordance with the legal disposition; either by returning money to the respondent or transferring money to one of NOAA's marine resource funds. Funds held in the deposit account are not available for NOAA's use. Because these amounts represent both an asset and a liability to the government until the case is legally resolved, it is essential that NOAA maintains an accurate deposit fund account and remits all funds due to respondents in a timely manner. As of March 31, 2011, NOAA's deposit account had a balance of \$4.8 million.

Our analysis identified that more than \$1 million, or 22 percent of the deposit account balance, has been held by NOAA for at least 4 years (see figure 3).

Figure 3. **Deposit Account Balances (as of March 31, 2011) by Age of Deposit**



Source: OIG analysis of NOAA data

As a result of our findings, NOAA reviewed the deposit account balance and identified 113 cases that had received final dispositions from as far back as 2002. Of these, 13 require NOAA to refund respondents over \$41,000, and the other 100 dispositions require NOAA to transfer more than \$830,000 from the restricted deposit account to the unrestricted asset account of the AFF. This accounting should be reflected in the AFF financial statements.

*C. Enforcement Action Reports are not tracked and reconciled*

OLE agents prepare Enforcement Action Reports for marine resource violations but do not use these to identify all potential fines and penalties due NOAA. As a result, NOAA is unable to reconcile EARs to amounts recorded in the accounting system. NOAA managers can use EARs to identify and monitor all enforcement activity conducted either by OLE agents, joint enforcement partners, or the U.S. Coast Guard, and to anticipate fines, penalties, and seized property that should be remitted to NOAA. However, before April 2011, NOAA had not inventoried these reports and was not tracking their use. This significantly limits NOAA’s ability to monitor OLE operations and collections, and increases the risk that funds can be misappropriated without detection.

*D. LEADS lacks controls to ensure data integrity and consistent case reporting*

OLE agents and technicians have unrestricted access to cases in LEADS and can readily and easily modify case information—of their own cases and those of other agents. As a result, NOAA cannot ensure the integrity of case data. Although NOAA does not consider LEADS a financial system of record, it is the first place that collections of fines and penalties are

recorded. With proper controls, the information recorded in LEADS could be relied on to supplement and/or verify the completeness of NOAA's accounting records.

OLE also has not established a protocol for consistently entering case information in LEADS, so data extracted from the system has limited value. OLE uses LEADS to track case information, including summary settlement payments. However, the system's drop-down menus provide multiple options to describe a case's status or other actions. Based on inquiries with OLE management, we found that an agent's selection on the drop-down menu is subjective; agents may choose different descriptions for the same case status. For example, when seized items are transferred to labs for testing, some agents will classify this item as "transferred," while others may classify it as "on hand."

## II. NOAA Has Not Accurately Recorded or Adequately Pursued the Total Amount Owed for Fines and Penalties

Although NOAA is required to record payments due as soon as NOAA has a claim to the money and it should<sup>6</sup> take prompt action to recover debts, our review found that NOAA does not consistently record, monitor, and pursue the collection of Notices of Violation and Assessment (NOVAs). As a result, NOAA was required to write off accounts receivable balances totaling approximately \$3.9 million, which represented accounts receivable more than 2 years past due. The total owed to NOAA prior to the write-off was \$4.9 million.



Figure 4. Issues by Office for Finding II

Figure 4 provides a summary of the recording control weaknesses we identified during our review.

### A. Debts due NOAA are not always recorded accurately or in a timely manner

The Enforcement Section does not inform NOAA Finance in a timely manner when NOAA has a claim to the fine levied in a NOVA, which should be recorded as an outstanding accounts receivable. A marine resource fine or penalty in a NOVA becomes effective if no response is received by 30 days after a NOVA is served or by the end of any extension period. In such cases, those fines are due 30 days after the effective date. Marine resource fines or penalties may also come due if a settlement agreement is reached. Enforcement Section attorneys forward case information, including balances owed, to NOAA Finance once a debt is final and therefore legally enforceable. However, only the Enforcement Section attorneys assigned to the case know when the fine becomes final. There is no independent method of monitoring whether cases are submitted to NOAA Finance in a timely manner. For example, although one NOVA we identified became past due in June 2007, the Enforcement Section did not request that NOAA Finance establish a receivable until December 2007, when the NOVA was another

<sup>6</sup> The Federal Accounting Standards Advisory Board SFFAS I, Accounting for Selected Assets and Liabilities, states that a receivable "should be recognized when a federal entity establishes a claim to cash or other assets against other entities, either based on legal provisions, such as a payment due date, (e.g., taxes not received by the date they are due), or goods or services provided."

6 months past due. Because of this delay, NOAA's accounts receivable were understated for two consecutive quarters.

NOAA also has not developed adequate process controls over AFF accounts receivable balances to ensure that what is recorded in its financial system accurately reflects the balance due the government. For example, one case recorded in the Commerce Business System (CBS), NOAA's financial recording system, in 2008 remains outstanding even though the Enforcement Section accepted a modified settlement agreement that forgave the remaining balance. The respondent fulfilled the terms of the agreement in June 2010.

Issues related to the timely and accurate recording of receivables may continue until process controls are adequately addressed in policy and enforced. Enforcement Section's written guidelines do not contain adequate internal controls for monitoring case payments prior to debts becoming legally enforceable. Currently, Enforcement Section attorneys are solely responsible for monitoring the status of NOVAs before the balance is recorded in NOAA's financial system. The guidelines, however, do not describe how, or how often, Enforcement Section attorneys should monitor cases; nor do they provide a method for independent monitoring of case resolution. Most attorneys interviewed did not use the Enforcement Section's case-tracking software (JustWare) to monitor cases. JustWare is the Enforcement Sections's web-based case management software used to record pertinent case information. Instead, attorneys tracked the status of open cases with other methods, such as individual worksheets or hard copy files. Monitoring cases this way does not permit independent oversight of collection status by Enforcement Section management or NOAA Finance.

#### *B. NOAA failed to pursue collection of overdue fines and penalties*

The Debt Collection Improvement Act of 1996 "requires agencies to take prompt action to recover debts, aggressively monitor all accounts . . . [and] transfer all non-tax debts delinquent more than 180 days to the Department of the Treasury."<sup>7</sup> NOAA has not implemented sufficient practices to ensure compliance with the requirement and to follow up on cases in which payment has not been received.

As a result of Clifton Gunderson's independent audit, NOAA has written off accounts receivable balances totaling \$3.9 million. The write-offs occurred because NOAA was not pursuing collections of amounts owed by respondents. Our review of the AFF accounts receivable balance indicates that as of March 31, 2011, nearly all balances reported in the financial statement were more than 360 days past due. NOAA's past attempts to pursue collection—including hiring a contractor for this purpose—were ineffective.

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<sup>7</sup> Office of Mgmt. & Budget, Executive Office of the President, OMB Memorandum M-04-10, Debt Collection Improvement Act Requirements (2004).

## Other Matters

### I. The AFF Does Not Contain All Fines, Penalties, and Forfeited Proceeds Collected by NOAA for Marine Resource Violations

NOAA defines the AFF as marine resource violation proceeds that can be expended according to the Magnuson-Stevens Act, section 311(e)(1). However, this definition does not encompass all marine resource violation proceeds that NOAA collects. OLE enforces approximately 32 statutes related to marine resources and most of these statutes are silent on how to expend collected proceeds. For marine resource statutes silent on how to expend proceeds, NOAA applies Magnuson-Stevens Act, section 311(e)(1), and includes the proceeds in the AFF. However, some marine resource statutes include language that NOAA interprets to exclusively control how NOAA disposes of fines, penalties and forfeited property. See table 4 for a list of other statutes identified by NOAA as having similar characteristics.

Table 4. **NOAA's Classification of Marine Resource Fines, Penalties, and Forfeitures**

AFF Fines, Penalties, & Forfeitures	Other Fines, Penalties, & Forfeitures NOT Included in AFF
Fines, penalties, and forfeited proceeds that can be retained under Magnuson-Stevens Act, § 311(e)(1)	Fines, penalties, and forfeited proceeds for violations of the South Pacific Tuna Act
Marine Sanctuaries <b>criminal fines</b>	Marine Sanctuaries <b>civil penalties and forfeited proceeds</b>
<b>Direct cost</b> related to fines, penalties, and forfeited proceeds from American Samoa, Guam, or Northern Mariana Islands	Fines, penalties and forfeited proceeds, <b>less direct costs</b> , for American Samoa, Guam, or Northern Mariana Islands
<b>Forfeited proceeds</b> by foreign vessels within the exclusive economic zones of Midway Atoll, Johnston Atoll, Kingman Reef, Palmyra Atoll, Jarvis, Howland, Baker, and Wake Islands	<b>Fines and penalties</b> by foreign vessels within the exclusive economic zones of Midway Atoll, Johnston Atoll, Kingman Reef, Palmyra Atoll, Jarvis, Howland, Baker, and Wake Islands

Source: OIG summary of NOAA's *Chart of Statutory Provisions and Fund, Project and Task Code Crosswalk*, December 20, 2010

NOAA does not consider proceeds collected under statutes that it interprets to have specific, exclusively controlling expenditure language as part of the AFF since the funds cannot be spent under Magnuson-Stevens Act, section 311(e)(1). NOAA segregates these proceeds from the AFF in its financial accounting system.

Because some proceeds are not considered part of the AFF, they are subject to different controls. For example, NOAA developed policies and procedures to improve the AFF expenditure process; however, marine sanctuary civil penalties are not covered because they do not fall within NOAA's definition of the AFF. In addition, non-AFF proceeds were not subjected to an independent audit of the AFF in March 2011. While NOAA's current definition of the AFF includes the collections for a majority of the marine resource statutes which NOAA enforces, the disparity in how they are monitored may be misleading to the public.

Another account outside of NOAA's definition of the AFF, and therefore not included in the independent audit, is the Special Operations Fund. NOAA agents use the Special Operation Fund to perform undercover operations. The Special Operations Fund is comprised solely of AFF monies and is maintained in multiple commercial bank accounts.<sup>8</sup> We did not conduct a detailed review of the Special Operation Fund's activity, but acquired an understanding of the location of accounts and method of account replenishment and withdrawal. Even though this fund contains only the proceeds of fines, penalties and forfeitures under the Magnuson-Stevens Act, the fund's transactions are not recorded in NOAA's financial system and therefore are not subject to the AFF's new accounting policies. This separation could result in Special Operations Fund monies being used for activities outside of what the Magnuson-Stevens Act allows.

## II. NOAA's Accounting for the Use of Fines and Penalties from the Northeast Multispecies Fishery Management Plan

The Magnuson-Stevens Act, section 311(f)(4), states that proceeds attributable to fines and penalties for violations of the Northeast Multispecies Fishery Management Plan (the Plan) shall be expended for further enforcement of the Plan. As part of NOAA's effort to define the AFF, NOAA requested Department of Commerce Office of General Counsel (OGC) interpret the statute and specifically identify restrictions placed on proceeds collected pursuant to the section. OGC concluded in its February 28, 2011, Legal Memorandum that fines and penalties collected for violations of the Plan can also be expended according to the broader guidelines of the Magnuson-Stevens Act, section 311(e)(1).

While the February 28, 2011, Legal Memorandum provides NOAA with the flexibility to use Plan proceeds against the broader guidelines of the Magnuson-Stevens Act, NOAA has developed accounting project codes that track Plan proceeds separately. In our July 2010 report, we noted that NOAA used the AFF for wide-ranging purposes and that it comingled AFF funds with other bureau funds. In response to this report, NOAA Finance implemented an accounting structure that separately tracks AFF proceeds and expenditures and that further identifies proceeds specifically collected pursuant to the Plan, section 311(f)(4). Because the accounting project codes remain and are being used in FY 2012, we expect that the separate tracking of previously comingled funds will continue.

## III. Further Clarification of AFF Inflow and Outflow Data

In July 2010, we reported that KPMG was unable to discern the current balance of the AFF because it found that NOAA did not have a consistent definition of the AFF, and indicated the AFF was more of an abstract concept than a tangible entity within NOAA. As a result, KPMG needed to develop a methodology so that all potential AFF activities would be included in its forensic review. Because AFF was not reliably defined, KPMG's criteria were intentionally broad to ensure that all potential AFF transactions were subjected to their forensic review. While this is a common technique that auditors use to address concerns about the completeness of a

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<sup>8</sup> The statute governing the Special Operations Fund provides that NOAA may obtain appropriations for the Fund. Despite this, the Special Operations Fund monies currently derive solely from AFF accounts.

population, KPMG's criteria caused some confusion about the true balance of the fund. KPMG's criteria included all transactions

- identified as civil monetary penalties,
- made by OLE and the Enforcement Section, and
- included in the deposit account.

From these criteria, KPMG identified \$96 million of inflows and \$49 million of outflows from 723 project codes between January 1, 2005, and June 30, 2009. However, the inflows and outflows identified by KPMG should not be subtracted to calculate the AFF activity for this time period. These values represent all transactions—including journal entries and accounting adjustments—not just AFF inflows and outflows of fines, penalties, and forfeitures. Additionally, the 723 project codes contain non-AFF activity made by OLE and the Enforcement Section. In March 2011, Clifton Gunderson, an independent audit firm, audited the AFF and determined the unrestricted cash balance to be \$7.5M.

## Recommendations

We recommend that the Under Secretary of Commerce for Oceans and Atmosphere require that

1. OLE and Enforcement Section develop policies and procedures that ensure payments due to the government are recorded accurately and in a timely manner, and implement a segregation-of-duties matrix identifying compatible and incompatible functions associated with the collection, recording, deposit, and reconciliation of fines, penalties, and forfeitures;
2. OLE train agents and enforcement technicians on collection procedures and policies;
3. Enforcement Section headquarters work with the Enforcement Section Northeast division to improve the timeliness of the division's lockbox submissions;
4. OLE, the Enforcement Section, and NOAA Finance implement a process to ensure that deposit account cases are periodically reviewed and that legally resolved cases are transferred from the deposit account or returned to a respondent in a timely manner;
5. OLE implement procedures to track and reconcile how Enforcement Action Reports are used and issued, including those issued to joint enforcement partners and the U.S. Coast Guard;
6. OLE evaluate LEADS internal control weaknesses, develop specific protocol for recording information, and restrict LEADS user access to cases;
7. Enforcement Section develop policies and procedures to ensure that debts are recorded in CBS as soon as legally enforceable, and that will include independent monitoring for amounts not yet recorded in CBS;
8. Enforcement Section standardize its case monitoring process and reinforce use of the JustWare system; and
9. Enforcement Section and NOAA Finance develop policies and procedures to consistently pursue collection of fines and penalties in a manner that treats all respondents uniformly, and in compliance with the Debt Collection Improvement Act of 1996.

## Summary of Agency and OIG Comments

We reviewed NOAA's response, included in appendix C, and considered NOAA's comments in preparing this final report. NOAA concurred with the recommendations in our report and noted that corrective actions are already under way to address many of the recommendations in the report.

We look forward to reviewing NOAA's action plan to address our report recommendations.

## Appendix A: Objectives, Scope, and Methodology

The objective of this review was to determine (1) if NOAA properly defined assets comprising the asset forfeiture fund, including the completeness and accuracy of funding sources; (2) if NOAA appropriately defined allowable uses of fund assets and developed controls over collections and disbursements; and (3) if the audit plan from Clifton Gunderson, the independent auditor of the AFF, is designed to provide reliance on the AFF cash balances as of March 31, 2011, and if the firm can provide an opinion on the balance.

We obtained an understanding of the definition of the fund and the assets that comprise the fund by interviewing NOAA Finance management and NOAA headquarters general counsel and reviewing newly established NOAA policies and other relevant documents. In addition, we obtained and reviewed data from the general ledger, the Commerce Business Systems (CBS), NOAA's financial accounting system. To assess the reliability of the CBS data, we reconciled the detailed data files with general ledger reports to ensure accuracy and completeness. We also reviewed supporting documentation for collection and disbursement transactions selected for control test work, which was provided by NOAA Finance, OLE, and the Enforcement Section. For our third objective, we reviewed a copy of the audit plan used to support Clifton Gunderson's opinion.

We conducted our review from February through August 2011 at the Department's and NOAA's offices in the Washington, D.C., area. OIG focused its review on AFF activities occurring from October 1, 2010, to March 31, 2011.

The review was conducted under the authority of the Inspector General Act of 1978, as amended, and Department Organization Order 10-13, dated August 31, 2006. We conducted the evaluation in accordance with Quality Standards for Inspection and Evaluation, January 2011, issued by the Council of Inspectors General on Integrity and Efficiency.

## Appendix B: Monetary Benefits

	Questioned Costs	Unsupported Costs and Write-offs	Funds Put to Better Use
Accounts Receivable Processing	\$ 0	\$ 3,900,000	\$ 0
Deposit Account Balances	\$0	\$0	\$871,000

Source: OIG prepared (Findings and Recommendations Section II.B and Recommendation 9)

# Appendix C: Agency Response



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

**FROM:** *for* Samuel D. Rauch *SDR*  
 Acting Assistant Administrator  
 National Marine Fisheries Service

**SUBJECT:** Comments on the Draft Report Entitled, "*More Action Needed to Improve Controls in Asset Forfeiture Fund*"

JAN 27 2012

This memorandum responds to the Draft report from the Office of Inspector General (OIG), entitled "More Action Needed to Improve Controls in Asset Forfeiture Fund" (the "report") issued on December 20, 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 27, 2012," and that these comments would be considered by the OIG and attached as an appendix to the final report. To complement the record offered by the OIG's Draft report, NOAA provides the following comments on the report's recommendations.

At the outset, NOAA appreciates the OIG's recognition that NOAA has formally defined the Asset Forfeiture Fund (the "Fund") and improved internal controls over disbursements from the Fund. NOAA has made significant efforts to improve the management and oversight of the Fund since February 2010.

NOAA concurs with recommendations 1 through 9 of the report. These recommendations identify areas that we can and continue to work to improve through greater management oversight of the Fund. As a result of the 2011 audit of the Fund, NOAA has corrective actions already underway that will address many of these recommendations, such as efforts to improve the monitoring of deposits associated with the Fund and to pursue and record fines and penalties owed to the government. In addition, NOAA has referred all debts to Treasury in accordance with the Debt Collection Improvement Act of 1996, as appropriate, and the National Marine Fisheries Service Office of Law Enforcement is implementing procedures to track and reconcile how Enforcement Action Reports are used and issued. To the extent that the report provides recommendations for actions not already underway, NOAA will modify its corrective action plan and begin implementing these further improvements.

We value the contribution that the OIG has made in identifying opportunities to further improve the management and oversight of the Fund, and remain committed to improving our Enforcement Program.



THE ASSISTANT ADMINISTRATOR  
 FOR FISHERIES



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