

REDELEGATION OF AUTHORITY FROM
THE NOAA GENERAL COUNSEL
DELEGATIONS OF AUTHORITY

TYPE OF ACTION: Add _____ Change X Abolish _____

AUTHORITY DELEGATED TO: Deputy General Counsels
Section Chiefs
Deputy Section Chiefs

TYPE OF AUTHORITY: Statutory, Regulatory and Administrative

SOURCE OF AUTHORITY: Reorganization Plan No. 4 of 1970, as amended;
Department Organizational Order 10-15;
Redelegation from the Under Secretary of Oceans
and Atmosphere to the NOAA General Counsel
(Feb. 22, 2013) (Transmittal # 81); NOAA
Administrative Order 202-451, §§ 6.02(b), 6.07,
7.03 (incentive awards); 5 C.F.R. § 15.12(a)
(Department *Touhy* regulations).

AUTHORITY TO DO WHAT: In carrying out the duties and responsibilities of
their positions, each Deputy General Counsel, each
Section Chief, and each Deputy Section Chief are
delegated authority to perform certain functions as
detailed below:

A. Federal Register Notices – Each Deputy General
Counsel is authorized to provide legal clearance on
the following *Federal Register* notices:

- (i) advance notices of proposed rulemaking
identified as noncontroversial by the
relevant NOAA line or staff office;
- (ii) proposed rules identified as noncontroversial
by the relevant NOAA line or staff office;
- (iii) final rules where there were no adverse
comments on the proposed rule and no
concerns were identified by the NOAA
General Counsel during clearance of the
proposed rule;
- (iv) notices relating to approval by the Office of
Management and Budget of information

- collection under the Paperwork Reduction Act; and
- (v) notices regarding the setting of control dates for future regulatory action identified as noncontroversial by the relevant NOAA line or staff office.

B. Enforcement Actions– Each Deputy General Counsel is authorized to approve enforcement actions and settlements or resolutions of enforcement actions, consistent with the Interim Procedures established by the NOAA General Counsel in a memorandum dated March 16, 2010, and any superseding guidance. Enforcement actions include all administrative/civil enforcement actions (including written warnings), proposed referrals for criminal enforcement actions, proposed referrals to state, local, Tribal, or foreign governments for disposition, and referrals for civil forfeiture actions.

Each Deputy General Counsel is authorized to review and decide appeals of any written warning. The Section Chief for the Enforcement Section is authorized to review and decide appeals of written warnings issued by an authorized officer of the NOAA Office of Law Enforcement, the U.S. Coast Guard, or state, local, or Tribal law enforcement officer when issued under NOAA authorities.

C. Approval of Fee Claim Settlements – Each Deputy General Counsel is authorized to approve the following settlements, if also concurred in by the appropriate NOAA Assistant Administrator or his/her delegee: (i) settlements of fee claims payable from the Judgment Fund for amounts equal to or less than \$1,000,000; and (ii) settlements of fee claims payable from agency funds for amounts equal to or less than \$500,000.

Each Section Chief is authorized to approve the following settlements, if also concurred in by the appropriate NOAA Assistant Administrator or his/her delegee: (i) settlements of fee claims payable from the Judgment Fund for amounts equal to or less than \$500,000; and (ii) settlements of fee

claims payable from agency funds for amounts equal to or less than \$250,000.

The authority delegated to approve fee claim settlements does not apply if:

- (i) the compromise of a particular claim, as a practical matter, will control or adversely influence the disposition of other claims; or
- (ii) a novel question of law or policy is presented.

D. Actions under 5 C.F.R. Subpart B (Department's *Touhy* regulations) – Each Deputy General Counsel and the Section Chief for the Weather, Satellite and Research Section are authorized to act for the NOAA General Counsel under 5 C.F.R. Subpart B (§§ 15.11-.18) (referred to as the Department's *Touhy* regulations) with respect to subpoenas served upon, and other demands for testimony or documents submitted to, NOAA or its current or former employees.

E. Actions under the Coastal Zone Management Act – Each Deputy General Counsel and the Section Chief for the Oceans and Coasts Section are authorized under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA) as amended, 16 U.S.C. § 1456(c)(3)(A), to perform the following procedural functions or make the following procedural decisions:

- (i) establish and notify parties of briefing schedules;
- (ii) decide requests for extensions of time and other post-briefing-schedule procedural matters except for requests to stay an appeal for more than 30 days;
- (iii) determine and notify the Appellant of fee payment requirements, fee payment delinquencies and fee waivers;
- (iv) publish Federal Register notices regarding an appeal;
- (v) solicit comments from affected Federal agencies;
- (vi) dismiss a consistency appeal for good cause, pursuant to 15 C.F.R. § 930.129, in cases in

- which the Appellant fails to timely pay a filing or the Appellant withdraws or abandons the appeal; and
- (vii) maintain the administrative record, supervise administrative procedures, prepare all documents necessary for the administration of an appeal, review the record of the appeal, and prepare findings.

F. Actions under the Endangered Species Act – Each Deputy General Counsel, each Section Chief, and each Deputy Section Chief are authorized to provide legal clearance on biological opinions and letters of concurrence issued under Section 7 of the Endangered Species Act (ESA), 16 U.S.C. § 1536.

G. Natural Resource Damages Claims Under Relevant Authorities – With respect claims for natural resource damages other than damages in a National Marine Sanctuary, each Deputy General Counsel and the Section Chief for the Natural Resources Section are authorized to refer, and to recommend approval of a proposed settlement of, such claims to the U.S. Department of Justice (i) if also concurred in by the Chiefs of the Restoration Center Division and the Assessment and Restoration Division, and (ii) as long as s/he simultaneously transmits the referral of the claim or recommended proposed settlement to the NOAA General Counsel and the relevant Deputy General Counsel.

With respect to claims for natural resource damages in a National Marine Sanctuary, each Deputy General Counsel and the Section Chief for the Natural Resources Section are authorized to refer, and to recommend approval of a proposed settlement of, such claims to the U.S. Department of Justice (i) if also concurred in by the Director of the National Marine Sanctuaries Program, and (ii) as long as s/he simultaneously transmits the referral of the claim or recommended proposed settlement to the NOAA General Counsel and the relevant Deputy General Counsel.

These procedures are in the spirit of the Framework for Trustee Management: Damage Assessment, Remediation, and Restoration Program (Oct. 27, 2005).

H. Approval of Incentive Awards – Each Deputy General Counsel and each Section Chief are authorized to approve Special Act Awards (Deputy General Counsels up to \$5000 per award and Section Chiefs up to \$3000 per award), Cash in Your Account Awards, and Time Off Awards consistent with the guidelines provided in Appendix C to Chapter 6 of the Department's Performance Management Handbook at http://hr.commerce.gov/Practitioners/PerformanceManagementandAwards/DEV01_006331.

I. Approval of Summary Level Transfers – Each Deputy General Counsel is delegated any authority the General Counsel has to sign Summary Level Transfer Approval Forms on behalf of the NOAA General Counsel. The NOAA Comptroller has authorized this delegation of authority by email dated February 5, 2013.

RESERVED AUTHORITY:

The Deputy General Counsels, Section Chiefs and Deputy Section Chiefs may not further delegate the above authorities without written concurrence of the NOAA General Counsel. Any further delegation shall not be effective unless it is in writing and included in the collection of official delegations maintained by the NOAA Chief Administrative Officer (and posted on the official NOAA webpage for official delegations).

Nothing in this Delegation shall preclude the NOAA General Counsel from exercising any of the authority so delegated.

EFFECT ON OTHER DELEGATIONS:

All prior delegations by the NOAA General Counsel to any employee of the NOAA General Counsel's Office are superseded including the following: Redelegations by the NOAA General Counsel dated March 3, 1992, at Transmittal # 29 in the NOAA Organizational Handbook, and amendments thereto at Transmittal # 62 (Aug. 30,

2006) and Transmittal # 72 (Jan. 18, 2008); Memorandum from NOAA General Counsel Lois J. Schiffer to Deputy General Counsels Ben Friedman and Mary Beth Ward (Feb. 7, 2013); Memorandum from Acting NOAA General Counsel Jane Chalmers to NOAA GC Managers (May 21, 2009); and Settlement Delegations contained in Memorandum from Deputy General Counsels Jane Chalmers and Mary Beth Ward to NOAA GC Managers (Oct. 26, 2004).

This Delegation does not affect the memorandum from the NOAA General Counsel regarding Interim Procedures Requiring Approval of All Enforcement Actions dated March 16, 2010.

APPROVING OFFICIAL:



Lois J. Schiffer
NOAA General Counsel

EFFECTIVE DATE:

2 - 22 - 13