



July 15, 2015

MEMORANDUM FOR: Office of Law Enforcement, NMFS
Enforcement Section, Office of General Counsel

FROM: Paul Doremus, 
NMFS Deputy Assistant Administrator for Operations

SUBJECT: Updated Policy on Prohibited and Authorized Uses of the Asset
Forfeiture Fund

Introduction

On February 28, 2011, the Department of Commerce and NOAA General Counsels issued a joint Legal Opinion Regarding Collection and Use of Fines, Penalties, and Forfeiture Proceeds Pursuant to Section 311(e)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (Legal Opinion). Shortly thereafter, on March 23, 2011, NOAA issued a public Notice on NOAA's Policy on Prohibited and Approved Uses of the Asset Forfeiture Fund (Policy). 76 Fed. Reg. 16386 (March 23, 2011).

On April 27, 2015, Kathryn D. Sullivan, the NOAA Administrator, authorized three substantive changes to the Policy and one procedural change. This memorandum will serve as an updated Policy for the Office of Law Enforcement and the NOAA Office of General Counsel, Enforcement Section on the prohibited and authorized uses of the Asset Forfeiture Fund (AFF). The substantive changes to the authorized uses of the AFF are highlighted below. In addition to those three substantive changes, one procedural change is also being made. The threshold is being increased from \$1,000 to \$3,000 for expenditures that require approval by the NMFS CFO's office.

This updated Policy replaces the Policy published in the Federal Register on March 23, 2011. A Federal Register Notice will be published notifying the public that the prior version of the Policy has been rescinded. This updated Policy is effective as of July 15, 2015.

Strong management and oversight of the AFF is essential to maintaining the public's trust in NOAA's Enforcement Program. Monies within the AFF are derived from fines, penalties, and property forfeitures associated with violations of marine resource laws (Magnuson-Stevens Act, Endangered Species Act, Marine Mammal Protection Act, and Lacey Act, among others). It is the goal of the Department of Commerce and NOAA to establish a stringent policy for effective oversight of the AFF that will ensure no conflict of interest - real or perceived - associated with its use while continuing to promote a sound enforcement program dedicated to



conserving and protecting our nation's marine resources. This Policy provides clear guidance on the approved uses of the AFF that are consistent with applicable legal authority.

The Department believes, as did the Congress in establishing the AFF and specifying the allowable uses, that it is appropriate to use the proceeds of NOAA's enforcement program to offset in part the costs of administering that program. Those who violate these laws should help offset the cost of protecting our marine resources in lieu of those costs being borne by taxpayers. Further, the availability of these funds for enforcement reduces the requirement for additional appropriations and expands NOAA's ability to respond to violations of the laws it is charged with enforcing. The Office of Law Enforcement's and the Office of the General Counsel, Enforcement Section, will incorporate this Policy into their existing policies and procedures.

To ensure accountability and transparency in AFF accounting, NOAA has taken a number of actions. The Agency identifies and tracks AFF monies received and expended, and has centralized the AFF approval processes for expenditures. Starting with the FY 2012 budget submission, NOAA has identified and accounted for the AFF in its annual budget. Beginning in FY2011, an annual operating budget has been developed for the AFF based upon the policy, and proposed modifications to that budget must be approved by the NOAA Chief Financial Officer.

Policy

Prohibited Uses of the AFF:

Use of the AFF to fund the following activities is prohibited:

- Funding for any NOAA employee labor, benefits, or awards;
- Funding for any vehicle purchases or leases, including patrol vehicles, undercover vehicles, all terrain vehicles assigned to agents to carry out their enforcement duties, or associated equipment, upgrades, modification, or maintenance of current vehicles;
- Funding for any vessel purchases or leases, including patrol vessels, undercover vessels, or associated equipment upgrades, modification, or maintenance of current vessels; and
- Funding for the purchase of any weapons or ammunition.

Approved Uses of the AFF:

Use of the AFF to fund the following activities is authorized (new approved uses are in *italics*):

- Compliance assistance as discussed further below;
- Costs directly related to the proper storage of seized fish, vessels, or other property during a civil or criminal proceeding;
- Rewards of not less than 20 percent of the penalty collected or \$20,000, whichever is the lesser amount, for information related to enforcement actions;
- Valid liens, mortgages, and claims against, or interest in, seized or forfeited property;
- Reimbursement to other Federal or State agencies for enforcement related services provided pursuant to an agreement entered into with NOAA;

- Expenditures directly related to specific investigations and enforcement proceedings; such as travel specific to an individual investigation or individual case or enforcement proceeding, interviewing expert witnesses, witness participation at trials, hearings or depositions, expert witness fees, case support contracts, forensic examinations, or required forensic or evidence handling supplies;
- *Expenditures for specialized and technical equipment used in support of investigations and enforcement proceedings, including copiers, printers, computers, software, cell phones, cameras, video recorders, navigational plotting equipment, forensic equipment, and protective gear;*
- Attendance at international and domestic bi- or multi-lateral meetings and negotiations to discuss enforcement specific agenda items;
- *Attendance at domestic and international meetings directly related to enforcement issues, activities, or priorities, including Regional Fishery Management Council meetings, Interstate Fisheries Commission meetings; Sanctuary Advisory Council meetings and Enforcement Committee Meetings;*
- Training and associated travel required by policy for all enforcement personnel, mandatory courses at the Federal law Enforcement Training Center and required field training assignments;
- Annual in-service or national training for OLE and GC Enforcement Section employees;
- *Training programs and associated travel related to skills, knowledge and abilities used in investigating and enforcement of violations, including GC Enforcement Section and OLE participation in, sponsorship of, and coordination of capacity building efforts, training sessions, seminars and conferences related to enforcement;*
- Training for Federal and State partners regarding Federal statutes and regulations under NOAA's authorities;
- Enforcement unique information technology infrastructure, including hardware, software and maintenance, required specifically for NOAA's enforcement and legal systems and databases;
- Interagency agreement and contract costs for the administrative adjudication process, including Administrative Law Judges;
- Costs associated with review of past enforcement actions in the aggregate (e.g. hiring a third party to review past investigations and enforcement proceedings conducted by NOAA);
- Efforts to combat illegal, unreported and unregulated fishing through annual funding to the International Monitoring, Control and Surveillance Network; and
- Costs related to independent audits of the fund to ensure proper collection and use of fines, penalties, and forfeiture proceeds.

Compliance Assistance:

The Department is implementing activities to better serve the needs of its stakeholders and improve the way NOAA engages and interacts with its regulated community. This new component is aimed at improving and expanding NOAA's compliance assistance, collaboration, and outreach activities. Activities funded from the AFF may include, but are not limited to:

- Regional enforcement workshops and training sessions to bring together and educate stakeholders on regulations and other requirements associated with fishery management plans, National Marine Sanctuaries, and activities related to the protection of endangered species and marine mammals;
- Educating and involving fishermen in the development of potential solutions to regional and national enforcement-related issues; and
- Improving communication with regulated communities and the general public relative to enforcement issues through increased OLE and GC Enforcement Section participation in Regional Fishery Management Council meetings or Sanctuary Advisory Committee meetings, improved websites, easy to understand compliance guides, and timely electronic or other notifications of changes in regulations.

Consistent with section 311(e)(1)(F) of the Magnuson-Stevens Act, these compliance assistance activities would likely be funded by the AFF through agreements with Federal and State partners, or in the case of efforts addressing Northeast Multispecies specifically, through enforcement proceeds available to the Secretary under section 311(f)(4) of the Magnuson-Stevens Act.