

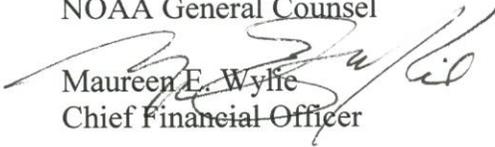


UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
CHIEF FINANCIAL OFFICER

September 23, 2010

MEMORANDUM FOR: Eric Schwaab
Assistant Administrator, National Marine Fisheries Service

Lois J. Schiffer
NOAA General Counsel

FROM: 
Maureen E. Wylie
Chief Financial Officer

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

On June 2, 2009 the Under Secretary of Commerce for Oceans and Atmosphere asked the Office of Inspector General (OIG), Department of Commerce to initiate a nationwide review of the policies and practices of NOAA's Office of Law Enforcement (OLE) and the NOAA General Counsel Office for Litigation and Enforcement (GCEL); collectively, NOAA Fisheries Enforcement. As a result of the findings of the nationwide review (OIG-19887, January 21, 2010) a forensic audit was commissioned. The OIG issued its report on the forensic audit on July 1, 2010. Corrective action plans were developed to address the observations, findings, and recommendations cited in the July 1 OIG report. Two key components of the corrective action plan are the legal interpretation of the Magnuson-Stevens Act provision that permits usage of the Asset Forfeiture Fund (AFF) for law enforcement-related expenses and policy on prohibited and authorized uses of the AFF.

The purpose of this memorandum is to provide the policy to OLE and GCEL on the prohibited and authorized uses of the AFF.

Effective October 1, 2010 your offices will operate under the attached new authorized uses policy until further notice. The policy will be available for public comment for a 60 day period. After the 60 day comment period, revised policy on the prohibited and authorized uses for the AFF will be issued, if necessary.

If you have any questions concerning this matter, please contact Jon Alexander, Director, Finance Office/Comptroller, by phone on (301) 444-2102 or by email at Jon.P.Alexander@noaa.gov.

Attachment

cc: DOC/OFM - Lisa Casias
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**NOAA Proposed Policy
on
Prohibited and Authorized Uses of the Asset Forfeiture Fund**

Strong management and oversight of the Asset Forfeiture Fund (AFF) is essential to restoring the public's trust in the National Oceanic and Atmospheric Administration's (NOAA) Enforcement Program. 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 statement provides clear guidance on the approved uses of the AFF that are consistent with applicable legal authority and that will help assure those regulated that all fines and penalties are fairly and equitably assessed based solely on the severity of the violation. This policy statement also prohibits funding for specific activities. In addition, the Department will expand the use of AFF funding to include compliance assistance to better serve the needs of our stakeholders and improve the way NOAA engages and interacts with its regulated community.

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). 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. NOAA's Office of Law Enforcement's (OLE) National Enforcement Operations Manual and the Office of the General Counsel for Enforcement and Litigation's (GCEL) Operating Procedures Manual will include the new policy, along with detailed guidance.

To ensure accountability and transparency in AFF accounting, NOAA will take a number of actions. The Agency will clearly identify and track AFF monies received and expended, and centralize the AFF approval processes for expenditures. Starting with the FY 2012 budget submission, NOAA will identify and account for the AFF in its annual budget. Beginning in FY2011, an annual operating budget will be developed for the AFF based upon the policy, and proposed modifications to that budget must be approved by the NOAA Chief Financial Officer.

Separately, NOAA will establish appropriate uses of other enforcement proceeds retained by the Secretary but not part of the AFF. In particular, NOAA will examine the use of fines and penalties collected for violations of the Northeast Multispecies Fishery Management Plan, which under section 311(f) of the Magnuson-Stevens Act must be used to enforce the Plan.

Prohibited Uses

The policy prohibits the use of the AFF for the following activities:

- Funding for any NOAA employee labor, benefits, or awards;
- Funding for any vehicle purchases or leases, including patrol vehicles, undercover vehicles, all terrain vehicles, 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;
- Funding for any domestic or foreign travel that is not related to specific investigations, enforcement proceedings, or required training, such as attendance at general conferences or seminars except as specifically authorized below;
- Funding for any training that is not specifically required by policy as an integral part of an employee's job as detailed below; and
- Funding for the purchase of any equipment that is not directly related to a specific investigation or enforcement proceeding, including weapons and ammunition, uniforms, copiers or facsimile machines, desktop or laptop computers, Blackberries or other PDAs, cell phones or radios, video or audio recording equipment; or office furniture.

Authorized Uses

The policy authorizes funding for certain specific enforcement-related activities:

- 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 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 the Secretary;
- Expenditures related directly to specific investigations and enforcement proceedings; such as interviewing expert witnesses, witness participation at trials, hearings or depositions, expert witness fees, case support contracts, or required forensic or evidence handling supplies;
- Attendance at international bi- or multi-lateral meetings and negotiations to discuss enforcement specific agenda items;
- 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;
- Mandatory annual in-service or national training for OLE and GCEL employees;
- 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;
- Annual interagency agreement and contract costs for the administrative adjudication process, including Administrative Law Judges; and,
- Efforts to combat international unregulated and unreported fishing through annual funding to the International Monitoring, Control, and Surveillance Network.

Compliance Assistance

The Department will implement activities to better serve the needs of our stakeholders and improve the way NOAA engages and interacts with its regulated community. This new component will be aimed at improving and expanding NOAA's compliance assistance, collaboration, and outreach activities. The Department will work with the Marine Fisheries Advisory Committee (additional information at: <http://www.nmfs.noaa.gov/ocs/mafac/>) to develop proposals for activities or program enhancements that will improve compliance with all marine resource statutes. Activities may include, but are not limited to:

- Placing a full or part-time Compliance Assistance Liaison in NMFS Regional Offices as needed, beginning with New England;
- Expanding the use of 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 GCEL 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.

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 NE Multispecies, through enforcement proceeds available to the Secretary under section 311(f) of the Magnuson-Stevens Act.