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HOW IS NOAA MANAGING FUNDS TO PROTECT THE DOMESTIC FISHING INDUSTRY

HEARING

BEFORE THE

FEDERAL FINANCIAL MANAGEMENT, GOVERNMENT INFORMATION, FEDERAL SERVICES, AND INTERNATIONAL SECURITY SUBCOMMITTEE

COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

FIELD HEARING IN BOSTON, MASSACHUSETTS

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HOW IS NOAA MANAGING FUNDS TO PROTECT THE DOMESTIC FISHING INDUSTRY

MONDAY, JUNE 20, 2011

U.S. SENATE,
SUBCOMMITTEE ON FEDERAL FINANCIAL MANAGEMENT,
GOVERNMENT INFORMATION, FEDERAL SERVICES,
AND INTERNATIONAL SECURITY,
OF THE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10 a.m., in Faneuil Hall, Boston, Massachusetts, Hon. Thomas R. Carper, Chairman of the Subcommittee, presiding.

Present: Senators Carper and Brown.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. Well, I understand, Senator Brown, when Sam Adams held forth here, they did not have a public address (PA) system, but I am also told they did not need it.

Everyone, welcome to Faneuil Hall, your hall and in a way America's hall. My wife, Martha, who is sitting in the back of the room, she and I were here yesterday and came up from Delaware on Saturday. We have a son who graduated from one of the schools over in Cambridge last year. It does not start with an "H." It is that other one that goes by its initials. He is off into the world and has a younger brother who is going to be a senior at William and Mary and who is actually working here in the financial district this summer. So we have had a long and abiding interest in this State and in this city.

Congratulations to—I do not know if we have any Bruins fans, but you have done well and you ought to feel very proud. Also, the way the fans handle themselves here as compared to some other places where they did not handle themselves quite as responsibly should be applauded.

But I want to thank Senator Brown who serves on the Subcommittee, for suggesting that we have this hearing and for suggesting that we hold it here today.

Ours is a small Subcommittee, but we have learned over time to maximize our effectiveness by partnering with, among others, the Office of Management and Budget (OMB), with the Government Accountability Office (GAO), with the Inspector Generals (IGs) throughout the Federal Government. All of the Federal departments have Inspector Generals and we have especially enjoyed partnering over the years with Todd Zinser, who is here with us

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today and will speak on our second panel. And we partner with government watchdog groups across the country, too, in order to leverage and increase our effectiveness.

For the past half-dozen years or so, this Subcommittee has been singularly focused on how we can achieve better results for less money, and if not better results for less money, at least better results for not more money. And through the years, we have focused on issues like disposing of billions of dollars of surplus Federal properties that really are not used by the Federal Government as well as on eliminating $125 billion in improper payments and to also eliminate some $400 billion of major weapons system cost overruns. This hearing today continues with that theme, albeit on a smaller scale.

Our primary job on this Subcommittee, as Senator Brown knows well, is to try to ensure that taxpayers' dollars are not wasted. There have been some who have wondered why the Federal Financial Management, Government Information, Federal Services, and International Security Subcommittee (FFM) of the Homeland Security and Government Affairs Committee (HSGAC) would be holding a hearing about a National Oceanic and Atmospheric Administration (NOAA) program. Why would we be holding that hearing? That is a pretty good question. I have explained to those who have asked, though, that poor financial management is an unfortunate theme that runs throughout our Federal Government and all of us have an obligation to do something about it.

Let me note, however, that the point of this hearing is not to try to adjudicate the laws of the ocean or discuss what is right or wrong about how NOAA polices our fisheries. Those issues are the jurisdiction of the Senate Commerce Committee. What we are concerned about and what we are going to be focusing on here today is ensuring that the monies collected and spent by NOAA are managed effectively and in accordance with the law. This is not a hearing about fisheries management. This is a hearing about sound financial management.

And at a time when we are facing a massive Federal budget deficit and considering cuts across a broad range of Federal programs, we need to look into every nook and cranny of every agency, large and small, to find ways to make the most out of our scarce resources. We need to move our Federal Government away from what I call a culture of spendthrift toward a culture of thrift. And as Senator Brown has heard me say more than a few times, it is like turning the aircraft carrier. I am an old Navy guy. He is a not-so-old Army guy. But we are trying to turn an aircraft carrier here and it is not easy. But we know from my experience in the Navy, if you try hard enough long enough, you can turn an aircraft carrier, and what we need to do and want to do is change this culture from a culture of spendthrift toward a culture of thrift.

The money in NOAA's Asset Forfeiture Fund (AFF) is supposed to be used to protect our valuable natural resources and support the fishing communities that are vital to this region and, frankly, to our Nation. Our Subcommittee wants to help make sure that is what happens.

In June 2009, the Administrator of NOAA, Dr. Jane Lubchenco, first requested that the Office of the Inspector General (OIG) at the

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Commerce Department look into NOAA's enforcement activities in the handling of the Asset Forfeiture Fund. Since that time reports have been issued describing oversight and management of NOAA's National Marine Fisheries Asset Forfeiture Fund that too often have been abysmal.

For example, until recently—NOAA did not know the balance in the fund. They had trouble tracking how much money was coming into and going out of the fund. And the fund apparently was also being used to pay for things that it should not have been used to pay for. Cars were purchased when they should have been leased, for example. In addition, I understand that the Inspector General reported that NOAA actually purchased more cars than they had employees to drive them.

These problems are longstanding. In fact, I am told that this record of poor management goes back some 15 years, maybe more, and up until this past year, very little was done to set things right.

In the past year, however, the Department of Commerce and NOAA have taken important steps to address the concerns raised by the Inspector General and by many within the fishing industry. The Department and NOAA appear to have finally gotten a handle on the funds' day-to-day management. Clear guidelines have been set for how the money contained in the fund may be spent. And just as importantly, maybe more importantly, rules have been implemented making clear how funds are not to be spent from that fund.

For example, I am told that NOAA no longer allows monies in the fund to be spent on cars, boats, or cell phones. In addition, any fund expenditure over $1,000 from the fund now has to be approved by the NOAA Comptroller. NOAA apparently is also working to rightsize its vehicle fleet, a welcome example that probably could be followed in a number of other agencies across the Federal Government.

The fund's balance and accounting methods are also more transparent. Last week, I am told, the independent audit firm Clifton Gunderson, is one of the top 15 independent accounting firms in the country, gave the Asset Forfeiture Fund an unqualified clean opinion. In the accounting world, that is the Good Housekeeping Seal of Approval.

I might add that, as Senator Brown knows, we have been beating on the Department of Defense (DOD) for years to get them to get a clean audit from the Department of Defense, or even for the Navy, or for the Army, or for the Air Force. They are still years away from coming up with a clean audit and we have one here, at least on this fund as of last week. And again, that might serve as an example to the folks who run our Department of Defense and the separate services that are part of it.

I might also add, in addition, the independent auditor has confirmed that the fund's balance as of last week or so was $7.5 million.

All this progress would not have happened without a chorus of complaints from citizens like those that are gathered here today. In fairness, this progress probably would not have been made without the request made 2 years ago by Dr. Lubchenco for an investigation by the Inspector General and the tireless efforts since that

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time by the IG and the IG's staff. I believe that NOAA also deserves some credit for taking steps to address many—not all, but many of the problems that the Inspector General has identified.

And while a number of needed steps have been taken over the past year, the auditor has also identified several other areas of concern that NOAA still needs to address. Specifically, the auditor believes that some problems remain with the way liabilities and expenditures are tracked from the fund. I know that Senator Brown has heard me say this more times than he wants to remember, but I am going to say it again. Everything I do, I know I can do better. I think that is true for everybody in this room, probably everybody in this State and everybody in this country. That is probably true for all of us, and also, that includes NOAA. I like to say, if it is not perfect, make it better. And I would strongly encourage the folks from NOAA that are here today and those that are not to continue doing just that. If it is not perfect, make it better as we go forward.

I understand that NOAA's recent budget submission makes proposals that might further improve the management and oversight of this fund. I want to hear some more about that today and to learn what we in Congress can do to help.

Before I close, I should note that the Department of Commerce has also made a commitment to get to the bottom of what has gone wrong with the fund. Secretary Gary Locke appointed a Special Master to examine cases identified by the Inspector General that may have been mishandled. Finding flaws in some of them, the Secretary is worried that some $650,000 be given back to the fishermen who were affected.

Now, one could argue that previous Secretaries of Commerce should have taken these steps years ago. They did not. I think Secretary Locke should be recognized for his commitment to right the wrongs of the past and to try to make them better.

With that, I will turn it over to Senator Brown. Let me just say, before I do that, I understand that—correct me if I am wrong, but I think Secretary Locke has also directed that his staff go back to as far as, I think, 1994, before the period covered for the $665,000 that has been paid back. But he said, go back to 1994 and let us look all the way back there to see if there are not other examples of instances where funds were taken from fishermen, from the fishing industry, and to see if we should not turn those funds over, as well.

With that, I am going to turn it over to Senator Brown. I want to thank you, for inviting us to come here today, giving us a chance to spend this Father's Day here on a beautiful weekend, to get here at the end of a huge celebration of the Bruins' victory, and have a chance to see our youngest son, Ben, and to enjoy one of the most beautiful weekends I can remember in a long time, and to be here with all of you in this very special place today. Senator Brown, thanks so much.

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OPENING STATEMENT OF SENATOR BROWN

Senator BROWN. Thank you, Mr. Chairman. I am honored that you are here, as well. I know you and your family have very close ties here in Boston. It is good to see your wife again.

I appreciate you taking the opportunity to hold this hearing and trying to address a lot of the things we have talked about, which is the waste, fraud, and abuse, and how to do it better, as you have noted. And I want to thank Mayor Thomas Menino for allowing us to hold this hearing in such an historic venue. Also, I would like to obviously thank you and your team. They have been very zealous and gracious in dealing with me and my staff and trying to zero in on this very important issue.

I have said publicly many times, I commend your bipartisanship in Chairing this Subcommittee. There has never been a time where we felt that we have not been getting a fair shake. And through the hearings that we have had, we have done a tremendous amount to change the culture in Washington in forcing many of these entities to do it better.

As you know, protecting our national fish stocks from over-fishing is a national imperative that requires good management backed by consensus science. Today, I will try to provide a voice to the many fishermen throughout New England and echo the voices of many other elected officials in this State, including Congressman Barney Frank and John Tierney. I know Congressmen Tierney is going to speak in a moment. Mayor Scott Lang is here. I know Mayor Carolyn Kirk is coming. Senator Bruce Tarr, Representative Ann-Margaret Ferrante, and many others who have worked tirelessly in bringing attention to us the plight of the New England fishermen and the abuses of the Washington agency, NOAA, in dealing with some of these issues.

As you all know, fishing is a centuries-old Massachusetts tradition, but more importantly, it is a home-grown modern industry that employs thousands of hard-working people who put food on America's tables. NOAA's history of overzealous enforcement in the New England fisheries has come at the cost of fishermen's trust and their livelihood, and many of them tell me that the folks in Washington regard them as criminals instead of a legitimate and valued regulated industry.

While I want to emphasize that our fishing regulations must be enforced, we must not forget that fishing is about catching fish, where 96 percent of the violations are, in fact, civil matters. The tone and tenor of enforcement must reflect this. For example, Washington sanctioned agents to carry guns and 90 percent are criminal investigators. So we have a situation where armed criminal investigators are primarily enforcing non-criminal regulations, essentially issuing tickets. The Federal Aviation Administration (FAA), for example, Mr. Chairman, which regulates an industry where an error can lead to a large-scale disaster, has zero criminal investigators. That is none. And if they do not need them, I have to wonder why they are being used so prominently in the fishing industry.

So it is clear to me that some of the abuses we will hear about today, which have been discussed long before I got involved, incentivized NOAA to fill the coffers of the Asset Forfeiture Fund,

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which uses the proceeds from enforcement activities to fund further enforcement action. The AFF was treated like a piggy bank, almost. We have seen this before in other agencies, by the Washington headquarters and overseers of the NOAA Office of Law Enforcement (OLE) and the Office of General Counsel for Enforcement Litigation (GCEL), which had accounting practices that would have made Enron and other entities blush. In fact, the KPMG review found the fund to be in disarray, with no one at NOAA able to explain how it worked.

And predictably, NOAA's law enforcement officers and attorneys went on a spending spree funded by the hard working fishermen. For example, as you referenced, they purchased more than 202 vehicles, and yet only had an enforcement staff of 172, and a luxurious boat,[1] which you can actually see right here, at a cost of $300,000. CBS News says it was used for fishing. We know about the credit card abuse that was referenced in the report. And while we have asked for many documents, Mr. Chairman, for this hearing, we have only received about 20 percent, and the documents we actually received came late Friday.

I am encouraged, also, by the audit that was done. But remember, they only went from April 2010 to March 2011. They do not take into account the $96 million that have come in and the $49 million that have gone out. Where is the rest of the money? I think it is very important, as we do in every other hearing, with every other entity, that we have these hearings, to find out where that money is and how it is being used.

And you would think a fund like this would have tight supervision over the years, but it was only 16 months ago that the NOAA Comptroller was given control of this fund, which draws fines from many statutory sources established decades ago. And despite the unyielding exactness that NOAA used in collecting these fines, they could not tell the Inspector General the balance of the fund, except for the recent time period that you were referencing, or even a definition of the fund until last Thursday. So, finally, after ignoring the problem for decades and only when facing intense congressional scrutiny, not only by the House but by the Senate as well, was NOAA able to subject its AFF financial statements to an audit.

And as you referenced, I am encouraged by some of the steps that have been taken by NOAA and I want to continue to, as we have done in the past, provide any guidance or help that they need to do it better. I am hopeful that we will be able to continue to work with them in the future.

However, the fact that NOAA's Washington leadership is celebrating the absolute bare minimum of financial transparency, just by the lack of documentation that they provided our office, some very basic things, tells me just about where they are coming from. I feel it is incumbent upon NOAA to rebuild the trust of fishermen and the elected officials that represent them. To do that, NOAA must account for the money paid by the fishermen's fines and examine if it has been used properly, and we must do more, as you have referenced.

[1] The chart referenced by Senator Brown appears in the appendix on page 225.

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I know I will followup and will continue to followup in order to find out exactly where the monies are and how they are going to be spent and what we can do to do it better.

And I will add for the record that I requested and gave NOAA 3 weeks to produce documents, as I referenced, and not a single page was produced until Friday afternoon, right before the Father's Day weekend. I cannot help but wonder whether NOAA would tolerate the same kind of behavior out of a Massachusetts fisherman if they were asked to provide the same type of documentation.

We have seen stonewalling like this before, Mr. Chairman, in Congress with other entities. It is even more concerning given NOAA's history of making documents disappear. And you have read, in November 2009, while facing litigation and an Inspector General review, NOAA's Chief Law Enforcement Officer directed the shredding of 75 to 80 percent of the files in his office. So when we talk about going back to help other fishermen, I am hopeful we can do that despite the shredding of many of those documents.

The Inspector General also confirmed nine complaints against NOAA involving false information in an affidavit, entry into a facility for other than authorized purposes, excessive fines, and steep assessed penalties in the Northeastern region to basically deter respondents from taking the cases to a hearing.

I also reference, as you do, that Secretary Locke has appointed a distinguished retired Federal judge as a Special Master to review a lot of these cases, and in two cases, he found that NOAA, in fact, abused its power. We have the case of Captain Lawrence Yacubian. The Special Master found that the NOAA lawyers had unduly pressured him by unfairly delaying the sale of his vessel and extracting an oppressive penalty. And then, in turn, he had to sell the family farm, and I know you will hear that testimony and I am looking forward to it.

There are many other stories, Mr. Chairman, and I recognize, as you do, we are not here to talk about fishing per se. We are here to talk about the money that was collected, where it is, where it is going, what it is doing, and we need to find a way to do it better. We have to reestablish that trust between the Washington bureaucrats who deal in this issue and the fishermen. It is very important to do that, and I feel if we do not, Mr. Chairman, we are going to be in deep trouble.

So I want to thank you once again for your hearing about changing the culture in Washington. You say it many times and I take it to heart. Thank you for your leadership, and I do appreciate you taking time to come out and visit our fine city and look forward to the remaining part of the hearing. Thank you.

Senator CARPER. Thanks very much for that statement, Senator Brown, and again for helping convene us here today.

We have three panels. The first panel will be one person, and he is the Congressman from the Sixth District. Let me just add, what district do you live in, you and your family live in?

Senator BROWN. My old State Senate district is actually split between Congressman Barney Frank—I used to have Congressman Stephen Lynch—and we also have Congressman James McGovern.

Senator CARPER. But who is your family's actual Congressman?

Senator BROWN. Congressman McGovern.

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Senator CARPER. Congressman McGovern. OK. Well, if he had been your Congressman, I would just say, well, a lot of times in the Senate, when you have Committee testimony and you have somebody from a Committee Member's home district, we actually ask the Senator to make the introduction. I will just make some brief comments, and Senator Brown, if you want to add to that——

Senator BROWN. Yes, I will.

Senator CARPER [continuing]. Feel free. But Representative John Tierney, whom I have had the pleasure of knowing for a while—I did not get to serve with him in the House before I was Governor. I had left to go off and become Governor, I think, just about the time that he was getting there, so I did not have a chance to serve with him. As I recall, he was born in Salem, Massachusetts. Is that true?

Mr. TIERNEY. Right.

Senator CARPER. OK. And I believe that among the places that are included in his district, the Sixth District, are Gloucester and Cape Ann and a bunch of other places. I understand that the issues that are before us today that Senator Brown has urged us to examine are of great interest to him. We are just delighted that you could be here, grateful for your testimony, and ask you to proceed.

Mr. TIERNEY. Thank you.

Senator CARPER. Thank you.

Senator BROWN. Thank you. I just want to say a thank you for your effort on this issue. It is something that you and Congressman Frank have been working very hard on, along with Senator John Kerry, to try to bring these issues up, and as a result of the congressional hearing you have had and what we are doing and what the Commerce Committee is doing, hopefully, we will be able to bring these issues to light and do it better. So thank you, Congressman, for being here today.

STATEMENT OF HON. JOHN F. TIERNEY,[1] A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. TIERNEY. Well, thank you. Thank you both, Chairman Carper and Senator Brown. Frankly, I think most of us do not care how it is you got the jurisdiction to have the hearing. We are just pleased that you are focusing some light on this issue, as we have been trying to do for some time. And this has been a bipartisan effort, and Senator Brown, we have really welcomed your attention to it. We knew when you brought Vito Giacalone on board that you were really focusing like a laser beam and making sure that we are all on the same page.

I see a lot of familiar faces out in the audience today that were at the hearing that we held in Gloucester a little over a year ago. I know Mayor Kirk and Representative Ferrante and Senator Tarr and all of the others that have been so involved in this issue are pleased that you are here, and they deserve a large part of the credit for actually inducing Dr. Jane Lubchenco Under Secretary of Commerce for Ocean and Atmosphere and NOAA Administrator to originally ask for an Inspector General's report. It took quite a bit

[1] The prepared statement of Mr. Tierney appears in the appendix on page 58.

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of agitation from the community, from elected officials, through people working in the industry, to make sure that happened.

I am disappointed that Dr. Lubchenco is not here today, as I am sure you are. I am not surprised, unfortunately, given the reactions that we have had. I think it shows an attitude that we have experienced throughout, right up and including the recent alleged apologies that were made. I think they could have been done entirely better and more effectively on that. But it lends me to continue to question whether or not she is the right person to head NOAA going into the future on these important issues.

But I appreciate everybody that is here today that is going to testify. I want to thank the Inspector General Todd Zinser and his team for having done such a good job on this, showing their dedication and their interest in making sure that we get to the bottom of a lot of these very important issues.

We are now in the second year of the catch-share program and it has really caused a lot of agitation and concern to members of the community. They are enduring numerous challenges and economic hardship, and so when we know the individual fishing men and their family are suffering this, but it also goes beyond to related industries, and repair and maintenance, fuel and boats, ice to preserve the catch, just to name a few.

And I think of just three of those, the Gloucester Marine Railways, a Massachusetts Shipyard that used to have 40 boats in its yard at any given time now has about six. They have been in business since the Civil War. We have Cape Pond Ice Company that started as a Gloucester company in 1848. It used to do 350 tons of ice for the fleet. Now its capacity is down to 200, but they are actually doing only five tons for the fleet at any given time. And so those are concerns on that.

But the third is the Gloucester Seafood Display Auction. I think that they have, probably as much as anybody, suffered as a result of the overregulation of the fish stocks, but more so the overzealous action of the Office for Law Enforcement on that. I know Larry Ciulla is, I think, going to testify here later today and I think that we would do well to listen to his experience and the company's experience and the people that go there for a fair deal, being able to buy and sell their product, including right through, Senators, if you would, the recent appearance by Dr. Lubchenco and the so-called apologies and reparations on that. I think it would be an interesting discussion.

But I know the focus of this hearing is, in fact, on the Asset Forfeiture Fund, and we tended to that a bit a little over a year ago when Inspector General Zinser and his group filed a report that evidenced the materials Senator Brown was pointing out here, the improper accounting, the lack of accountability, the improper expenditures on that, and I think that it has been helpful for us trying to get the most recent audited report that covers that short period of time that Senator Brown mentioned. But it had weak internal controls. They had difficulties in a number of other areas, and followed by a report last July on the fund. Even then, it found that NOAA had administered the Asset Forfeiture Fund in a manner that was neither transparent nor conducive to accountability, thus rendering it susceptible to both error and abuse.

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Now, I know they have taken some correction. I agree with Senator Brown on this. I think they need to do a lot more, and that is why it is good that you are having this hearing and that Mr. Zinser and others will be able to discuss just what more they might be doing.

But I pose to the Senate panel a fundamental question that I hope they ask today and then delve into a little bit further when you get the documents that have been requested. Should this fund even exist? Should this fund exist, or is it not a perverse incentive for an agency that has been shown to be out of control to actually go out and increase its own resources by affecting forfeitures and collecting assets and cash and then turning them into an asset that they can use in their investigations?

Nobody disputes what I think Mr. Eric Schwaab said when he talked about the people that commit violations should pay for some of the enforcement, if not all of it, if you could do that. I do not think that is the question. I think the question is whether this Asset Forfeiture Fund has been run so poorly, has been so unaccountable, and has been used as such a vehicle in the way it has, whether or not we ought to just collect those fines, forfeit the assets, and turn them into cash and then put it in the Treasury and have the Department come through NOAA every year and get an appropriation for what they want to spend so that we do not have this perverse incentive out there and a concern that people are being abused for the betterment or the enhancement of the enforcement on that.

Last year, we were trying to give them an opportunity—NOAA an opportunity—to clean up their own house. We filed legislation. I filed legislation that would have done some of that. It would have taken away their ability to reward persons who provide information leading to arrest, conviction, civil penalty assessments, or forfeiture of property. We thought that was an inducement that might be going the wrong way. It would have stopped them from paying the expenses directly related to the investigation, again, thinking that would be a bad inducement for them. It would have left them the ability to reasonably and necessarily pay for costs for primary storage and those matters, valid liens and mortgages, claims of parties that the property is being disposed of, and reimbursement for Federal and State agencies that they brought on to help.

But I think that one or the other. Either we take a look and just say, this fund should not exist and the money should go directly to the Treasury and people should come in and make sure they get an appropriation, or at least limit it so that we take away that perverse incentive for them to maximize the receipts that they get in order to continue on in that basis.

The other reason legislation may be warranted on this is the provision we put in that legislation that would allow for some of those assets to be spent for reparations and for attorneys' fees and costs. Even after the apology of more recent days was made, some people that were involved in this did not feel as though they got the reparations they deserved, and certainly even after reparations, others, there were out-of-pocket attorneys' fees and costs of substantial amounts, leaving them, besides the heartache and the emotional trauma and the agitation that they have gone through, leaving

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them with sizable amounts of money that they are out of pocket that impacted adversely on their businesses, but also on their personal life and their family support systems on that.

So I would hope that this Subcommittee would give some consideration to those aspects on that, and I know that, going forward, we have to have a renewed commitment about this Asset Forfeiture Fund and how it is operated, but also about all the other issues on catch-shares and reasonable law enforcement.

And I am glad that you are here. I am thrilled that you are going to get those documents that we can look into making sure that we get this done thoroughly, complete, and in a manner that restores some professionalism to the Department and hopefully the confidence of the people that are being regulated by the agency, as well.

I thank both of you again for being here and for doing this work and we look forward to working with you in any way that we can. Thank you.

Senator CARPER. I just want to say, thanks so much for making the time to join us today and for providing really an excellent statement. It is obvious that you have spent a lot of time on this issue and know it well.

We are not going to ask, I do not think, unless Senator Brown would like to ask a question——

Senator BROWN. No.

Senator CARPER. I just would like to note, my understanding is that in their budget submission to Congress from the President from NOAA, I think they have asked for additional monies that previously they would have used—drawn monies from the fund to pay for. And given the new stipulation that has been issued, I think, as part of this ongoing investigation by the IG, I believe that there are a number of expenditures which previously had come from the fund, including the purchase of cars, boats, and stuff like that, from now on, basically, you cannot do that. And I think that comes from an internal directive.

But I understand, at the same time, the agency will be—instead of taking monies from that fund, will be asking us to consider providing monies through the budgetary process, which is a more appropriate way to do that. So I think that is where we are going and I hope that is the case. We will have an opportunity to ask our witnesses when they come up.

Mr. TIERNEY. I hope it is, as well. Thank you again.

Senator BROWN. Thank you, Congressman.

Senator CARPER. Thanks so much. All the best.

And with that, we invite our second panel to come forward, Mr. Zinser and Mr. Schwaab.

Our first witness on our second panel is the Hon. Todd Zinser, good morning, who serves as the Department of Commerce's Inspector General, no stranger to this Subcommittee, no stranger to us in the Senate, either. Prior to his appointment as Inspector General, Mr. Zinser spent 24 years as a civil servant, including a long tenure at the Department of Transportation (DOT), where he was named Deputy Inspector General in 2001. We thank you for being here today. We thank you for your service to our country very much.

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Our next witness is Eric Schwaab, Assistant Administrator for Fisheries at NOAA. He is responsible for the management of NOAA's National Marine Fisheries Service (NMFS). Mr. Schwaab spent the majority of his career at the Maryland Department of Natural Resources, and they are our neighbor right across the line there, and we have had an opportunity to work with him in that previous role. I think he may have begun his service as a Natural Resources Law Enforcement Officer. And he served as Deputy Secretary of that Department until his appointment to serve at NOAA.

So we thank you both for joining us today. I am going to ask you to try to keep your testimonies to about 5 minutes or so. You have an opportunity to summarize your statement if you wish and the rest of it will be made a part of the record, and then Senator Brown and I will ask you some questions.

Please proceed, Mr. Zinser.

STATEMENT OF TODD J. ZINSER,[1] INSPECTOR GENERAL, U.S. DEPARTMENT OF COMMERCE

Mr. ZINSER. Mr. Chairman, Senator Brown, and Members of the Subcommittee, thank you for inviting us to testify today.

Over the past 2 years, beginning in June 2009, we have carried out a review of NOAA's Fisheries Enforcement Program at the request of Under Secretary Lubchenco. Our review resulted in three publicly released reports.

Our first report, in January 2010, included findings and recommendations concerning NOAA's overall enforcement program.

Our second report, in July 2010, included findings and recommendations concerning NOAA's Asset Forfeiture Fund. The Asset Forfeiture Fund is authorized by the Magnuson-Stevens Fishery Conservation and Management Act (MSA). It allows NOAA to retain fines and penalties collected as a result of enforcement actions for violations of the Act and other statutes.

Our third report, in September 2010, included findings and recommendations related to 27 specific cases brought to our attention, in which there were allegations against NOAA's Office for Law Enforcement or General Counsel for Enforcement and Litigation concerning how those offices conducted their enforcement activities.

In all, our review of NOAA's enforcement program led to 28 recommendations for improving the transparency and accountability of the program. In addition to Under Secretary Lubchenco, our findings and recommendations have received the attention of Secretary Locke. The reforms directed by the Secretary and the Under Secretary have been responsive, substantial, and—if effectively implemented—will go a long way toward fixing the mismanagement and other problems identified in our review. Many of our recommendations are now the responsibility of Assistant Administrator Schwaab to implement.

Mr. Chairman, my testimony today will focus on our findings with respect to NOAA's Asset Forfeiture Fund and can be briefly summarized in three points.

First, the fund and its operation are very complex. A major finding is that, for years, the fund's purpose and proper usage were not

[1] The prepared statement of Mr. Zinser appears in the appendix on page 61.

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well defined, and the fund received very little attention from NOAA's senior management. NOAA enforces over 37 different statutes related to conservation and protection of marine resources and is authorized to retain proceeds from other statutes in addition to Magnuson-Stevens. However, we found that it was not clearly defined as to which enforcement proceeds were being deposited into the fund and which were not. We also found that no one person at NOAA had central authority or an overall understanding of the fund. As a result, calculating the revenues, expenditures, and balance of the fund proved very problematic.

For example, NOAA reported to us in December 2009 that the balance of the fund was approximately $8.4 million. But the audit firm we hired reported in July 2010 that it had calculated revenues of the fund over the previous 5 years amounting to $96 million and expenditures of $49 million, suggesting that the balance of the fund could be significantly higher. NOAA has since retained its own accounting firm to render an opinion on the fund's financial statements, and we will be reviewing the audit report to understand what makes up the fund's balance.

In addition to the complexity surrounding the definition of the fund and its balance, other complexities include the decentralized nature of the internal controls and management of the fund.

My second point, Mr. Chairman, is that there is no argument that the fund was severely mismanaged. The fund did not receive the careful management you would expect and that is characteristic of such funds maintained at other Federal agencies. For example, despite the sensitive nature of the fund activities, it had not received a stand-alone audit in all its years of operation. This stands in stark contrast to the annual audits required of similar funds at the Treasury or Justice Department.

We also found a serious lack of internal controls, including a disturbing lack of uniform procedures, documentation to support expenditures from the fund, and documented approvals for expenditures. As noted, our July 2010 report goes into greater detail about these issues.

My third point, Mr. Chairman, is that the reforms initiated by NOAA for managing the fund, if effectively implemented, should provide greater confidence that the problems found in the fund's past management and use will not be repeated in the future. Upon receiving our report, the Secretary and Under Secretary ordered some immediate actions, including placing restrictions on the use of the fund and transferring responsibility of the fund from the Office for Law Enforcement to NOAA's Chief Financial Officer (CFO). NOAA is continuing to implement the 13 recommendations we made specifically concerning the operation of the fund, and we are following up to track the progress of their efforts.

Mr. Chairman, Senator Brown, that concludes my statement. I would be happy to answer any questions.

Senator CARPER. Thanks very much for the statement, Mr. Zinser, and thanks even more to you and your team. Is anybody here from your team, the Inspector General's Office? Is anybody here?

Mr. ZINSER. I have two folks sitting behind me, sir.

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Senator CARPER. Would you raise your hand, please, those of you with the IG? No? Nobody raises their hand. Thank you. Just convey our thanks to those with whom you work for the good work that has been done. All right. Thanks.

Mr. Schwaab, you are recognized. Please proceed.

Mr. SCHWAAB. Good morning, Chairman Carper.

Senator CARPER. I was afraid that maybe nobody wanted to be recognized as part of your team but in this case, they can be proud of it, so——

Mr. SCHWAAB. The acoustics—I do not know if you have noticed—are really hard to hear what you are saying over here.

Senator CARPER. No kidding.

Mr. SCHWAAB. Yes.

Senator CARPER. What did you say? [Laughter.]

We can hear you just fine. All right.

Mr. SCHWAAB. So, if you would like me to introduce the folks with me——

Senator CARPER. Yes, please do.

Mr. SCHWAAB. Alan Risenhoover, who runs our Office of Sustainable Fisheries but for the last year has been serving in an acting capacity as the Director of our Office for Law Enforcement, and Stephanie Hunt, who is with our Legislative Office.

Senator CARPER. Welcome.

Mr. SCHWAAB. Thank you, sir.

Senator CARPER. Please proceed.

STATEMENT OF ERIC C. SCHWAAB,[1] ASSISTANT ADMINISTRATOR FOR FISHERIES, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Mr. SCHWAAB. Good morning, Chairman Carper, Ranking Member Brown. It is a pleasure to be here with you this morning.

The fishing industry is, of course, an important part of the Nation's culture and economy. Nowhere is that more evident than here in Massachusetts. Gloucester is America's oldest seaport, and Boston, New Bedford, and other coastal towns have fishing industries that have supported families, businesses, and communities for hundreds of years. According to our most recent estimates, nationwide, commercial and salt water recreational fisheries support almost two million jobs and generate more than $160 billion in sales.

Making sure that there are enough fish to sustain those fishing industries is a part of NOAA's job. Another part of NOAA's job is to make sure that fishermen have a level playing field so that their businesses are not compromised by others who choose to violate the rules. Fishermen want a level playing field and regulations that are easy to understand and fairly enforced. They also want to know that if others break the rules, they will be caught.

Following the Department of Commerce Inspector General reports, this Administration conducted a top to bottom review of NOAA's enforcement program and instituted sweeping reforms to ensure that the program is both fair and effective. Some of the highlights of those reforms include new enforcement leadership at headquarters and in the New England Regional Office; transfer of

[1] The prepared statement of Mr. Schwaab appears in the appendix on page 71.

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authority to issue charges and settle cases from the field staff to supervisors in headquarters; a new, more transparent penalty policy that ensures consistency in charging decisions nationwide and provides greater clarity for fishermen and fishing businesses; revised regulations that now place the burden on NOAA rather than a fisherman to justify the proposed penalty and permit sanctions in hearings before Administrative Law Judges.

We are also reshaping our enforcement workforce by increasing the number of enforcement officers to emphasize compliance, dockside problem solving, and enhanced communication with fishermen. These actions will increase our dockside presence and also enhance already effective enforcement partnerships with the States.

NOAA has also instituted a number of important reforms to our Asset Forfeiture Fund. We instituted greater oversight of fund expenditures, and now the NOAA Fisheries Chief Financial Officer must approve any expenditure of $1,000 or more from the fund. We implemented a new policy for use of the fund. The policy prohibits approximately half of the fund's historical uses, including the purchase of vehicles and vessels. The new policy eliminates even the appearance of conflict of interest with respect to use of the fund.

NOAA has also, as you have heard, initiated a financial audit of the fund by an independent auditing firm. We received the results of that audit last Wednesday and I am pleased to say that we received an unqualified, or clean, opinion, the best type of audit one can receive. In issuing their clean opinion on the financial statements, the auditors confirmed the fund's overall balance at $7.5 million as of March 31, 2011.

NOAA has also contracted with the same independent accounting firm to test fund transactions more susceptible to fraud, waste, and/or abuse. The firm is directly testing purchase card transactions and travel vouchers for fiscal years (FY) 2005 through 2010. This special transaction review is scheduled to be completed by July 15, 2011. Should this review find any misuse of funds, the agency will take appropriate action.

Also, I want to note that after requests from fishermen and elected officials, Secretary Locke appointed a Special Master to review past cases identified by the Inspector General. On May 17, 2011, the Secretary announced remittance of $650,000 in penalties to 11 fishermen in the first set of cases under review. A second set is also now under review.

Also at the request of the Secretary, NOAA is now looking at one final matter regarding closure days in some of those penalty actions. These are just a few of the many reforms underway to create a more effective and transparent enforcement program.

I would like to turn now briefly to the issue of funding for the transition to groundfish sector management. For many years, the New England groundfish fishery has been underperforming, both ecologically and economically. Under sector management, a group of fishermen are allotted a portion of a fish stock's total allowable catch. This provides greater flexibility about where and when to fish, allowing fishermen to maximize capture of healthy stocks and avoid or minimize the capture of weaker stocks. Although it is still early and not everyone has seen gains, the sector system is showing promise.

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Additionally, in 2011, catch levels have gone up for 12 groundfish stocks over the past fishing year. This is, of course, a part of or reflective of the rebuilding process that is underway.

To aid the transition to sectors, NOAA has allocated more than $47 million, which, among other things, is supporting research with the fishing industry on developing more selective fishing gear, for the fishery to avoid weaker stocks. This investment also helped to defray startup costs for sectors and is supporting the development of permit banks that provide fishing opportunity for small-scale fishermen.

Fishermen are the lifeblood of so many of our coastal communities, and America's fishermen support vital jobs in our coastal communities. Effective management and enforcement ultimately protects the business interests of fishermen as well as the marine environment.

Thank you again for the opportunity to be here today. I welcome your questions.

Senator CARPER. And I am going to suggest, Senator Brown, that we use maybe 7 minutes——

Senator BROWN. Sure.

Senator CARPER [continuing]. Take turns every 7 minutes and do, maybe a couple of rounds with this panel.

First of all, thank you both very much for what I thought was excellent testimony. I want to lead off with you, Mr. Zinser. This fund was a mess, and what I think happened, just as someone looking at this from the outside, is you had a diminished amount of trust between the community, the fishing community, and NOAA, the administrator, because of the view that monies were being taken into this Asset Forfeiture Fund in ways that were inappropriate and unfair, expended in ways that were inappropriate, too, and it helped undercut whatever trust, diminish whatever trust might have existed.

Senator Brown and I work in an environment in Washington where we are trying to deal with these huge budget deficits, and one of the things that is most important is that Democrats and Republicans in the Senate and in the House find a way to trust each other again, and out of that trust hopefully will emerge a consensus of how, what combination of spending cuts across the board, or maybe not across the board but in domestic spending, defense spending, entitlement spending, tax expenditures, but maybe with that trust restored or being restored across the aisle, we can actually get something done.

I used to serve on the Merchant Marine and Fisheries Subcommittee in the House before I was Governor and these fishery issues, fisheries management issues are very difficult. Change is difficult. And to try to do that change or implement that change, even if it is thoughtful and the right thing to do in the long term, if you do not have the trust between, in this case, the commercial fishermen and the agencies whose job it is to oversee it, you make that change all the more difficult.

So that is why this is, I think, such an important hearing, and I am pleased that Senator Brown suggested that we hold it.

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Let me just ask of the Inspector General, how did this get so messed up? Why was something not done 10 years ago, 15 years ago, to fix it? Why did it take so long?

Mr. ZINSER. When this allegation first came to us, sir, it was one of a nest of issues about fisheries enforcement, and I thought that we would just go in and tell people what the fund was used for and look at the accounting for it and that it would be very transparent. That is what I expected.

And very quickly, we learned that transparency and accountability were not there, and the best explanation I can provide for your question is that when the fund was authorized early on, it had very limited purposes. It was to pay for storage of fish that were seized or for rewards for people providing information. And then there were amendments to the Act in 1990 that expanded the authorized use of the fund or the proceeds to support investigations.

I think that the handling of that, the accounting of that, was just delegated too far down in the organization, and it was delegated to people who, frankly, were investigators or folks of that background and not financial managers. And then as we proceeded through time, the leadership that came into the fisheries enforcement organization were also law enforcement people who did not come from a Federal background—they came from a State background—and this whole idea of strategic planning and knowing how to maximize the use of resources was totally lost.

The operation of the fund remained decentralized. Different divisions had different procedures. We have an astounding lack of documentation for these expenditures. And even the expenditures where we have some documentation, there are missing approvals, and it is, sir, quite a challenge to go back and try to determine the appropriate use—whether all these funds were appropriately used.

Senator CARPER. We have a term in Delaware, maybe you do here in Massachusetts, for a situation like the one that you uncovered and have investigated and tried to straighten it out. We call it a dog's breakfast. That is what we call it, a dog's breakfast.

When you look at what is being done, the reforms that are being adopted and changes being made, what are some of the—three or four most important ones?

Mr. ZINSER. Well, I think in terms of the Asset Forfeiture Fund, the things that they are doing are very important and right on the money. The idea of setting up a separate code for the fund, to elevate the centralized control of the fund, to clarify the authorized uses, I think those are all right on the money.

Senator CARPER. In terms of the changes that are still to be adopted and implemented, would you mention a couple of those that are still a work in progress?

Mr. ZINSER. Well, I think the biggest thing, and this applies not only to the Asset Forfeiture Fund but the other aspects of the enforcement program that we have made recommendations on and that NOAA is working on, is that the political leadership is on board. Under Secretary Lubchenco and Mr. Schwaab, the Secretary, of course, the General Counsel's Office, the political leadership is on board. I think the more difficult thing that has to be done is to convince the career management that these are impor-

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tant reforms to implement and to forget about the acrimony or the defensiveness that comes with an IG investigation—forget about that and get on with making sure that these reforms are in place, because they will, if properly implemented, fix these problems.

Senator CARPER. In terms of what our responsibilities are, as Senator Brown knows certainly as well, maybe better than me, but we play an oversight role. Our job is to poke in every nook and cranny of the Federal Government, looking at what is going on and asking IGs, asking OMB, asking a number of interested parties what is going well here and what is not. And in this case, there is bad behavior, misbehavior that is being addressed, and part of our responsibility and our oversight role is to positively enforce the good behavior, the kind of behavior that we think and you think is appropriate, and to make sure we put a spotlight on that.

The other thing that we need to do and seek to do in hearing after hearing is to put a spotlight on bad behavior. And just a great example of this, and I mentioned in my opening statement and Senator Brown knows we have been trying for years to get the Department of Defense to give us audited financials—for years. They miss deadline after deadline after deadline. The Government Accountability Office holds them out as a very poor example in terms of missing their responsibilities in conducting in a fiscally appropriate manner. Now, we are told by the Department of Defense they are not going to give us audited financials until maybe 2017, and they may not be able to make it by then.

And I am encouraged that we have what looks like a clean audit out of a real independent auditing firm. We did a little bit of a background check and found that this firm is actually real. They do all kinds of audits. They are one of the top 15 in the country. They do a lot of audits for Federal agencies, so they are somebody that apparently we can trust.

In terms of their additional work and work that has to be done by the agency in response to that audit, are there any other points that you want to mention in terms of a work in progress or the "to do" list? I would ask either of you to respond to that. Do you want to take it first, Mr. Zinser, and then Mr. Schwaab?

Mr. ZINSER. Well, specifically on the Asset Forfeiture Fund, I think the continuing audit by Clifton Gunderson to look into some of the specific transactions. There were thousands of individual transactions over the last 5 years that will undergo some further investigation by Clifton Gunderson to determine whether the documentation is there, appropriate use. Those types of reviews will also provide some recommendations about internal controls that are needed, and so I would look forward to the results of that to identify not only any kind of misuse, but also internal controls that might be important but that are not in place yet.

I think that the definition of authorized use, there is still some ambiguity, for example, on what type of training and travel should be paid for out of the fund, and, for example, even if a training course is authorized, does the statute authorize the travel associated with that training to be paid for? So there are some ambiguities that are still present. Although the Department has done a good job defining authorized use, I think it could probably use another iteration.

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Senator CARPER. OK. My 7 minutes has expired, so Mr. Schwaab, I will just ask you to hold in abeyance. We will come back—no, that is OK. I want to be respectful of my colleague.

But I do want to say, one of my favorite saying is, the road to improvement is always under construction. Think about that. The road to improvement is always under construction. This is a road to improvement, and I think we are hearing today a lot of improvement has been made, but there is a lot of construction that lies ahead, so thanks very much. Senator Brown.

Senator BROWN. Thank you, Mr. Chairman.

It is good to see you again, Mr. Zinser. I appreciate the previous hearings you have testified at. When you were doing your investigation, did you find that the shredding that took place has hurt your ultimate determination as to what was right and what was wrong? Did that hinder your investigation and reporting?

Mr. ZINSER. I would say that by nature, it hindered the reporting, because we will never know what was in those documents. So, we will never know what was in those documents. We reconstructed a list of what the files were—what the file labels said—but we do not know what documents were in those files, so we do not really know.

We did not find that the Director had an intent to obstruct our audit in doing the destruction, and some people have questions about, well, how could that be? But my response is, the fact that leadership would destroy his records in the middle of an investigation is kind of consistent with the way the place was managed in general. It really suffered from very unsophisticated management.

Senator BROWN. And, Mr. Schwaab, what was actually done with that person that shredded? Was he fired or disciplined in any way?

Mr. SCHWAAB. Senator, as I think you are well aware, I cannot speak specifically to individual personnel actions because of Privacy Act considerations. I can speak to the position that he once held and the position that he holds now, but I cannot speak to——

Senator BROWN. Is he in that position now?

Mr. SCHWAAB. He is not.

Senator BROWN. So he has been relocated?

Mr. SCHWAAB. He is in a different position today.

Senator BROWN. Mr. Chairman, also, just for the record, we only received about 20 percent of our documents. For the record, and I would like to keep my request open for the completion of my document request and I also will have questions as we traditionally keep the period open to ask additional questions so we can continue getting the information.

Senator CARPER. Senator Brown, I think we will leave it open for the next couple of weeks——

Senator BROWN. Yes, that is all, just a couple of questions.

Senator CARPER [continuing]. For you and I to offer our questions, and we just ask for a prompt response. Thanks.

Senator BROWN. Yes, just so we have the appropriate documents so we can see if there is anything that we missed. And unfortunately, Administrator Lubchenco is not here today, yet in March 2010, she testified before the House Subcommittee prior to release of the IG's report that was referenced earlier, found that NOAA's Office for Law Enforcement lacked policy authorization for pur-

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chasing approximately 200 vehicles at a cost of $4.6 million, predominately with the Asset Forfeiture Fund monies, and that the vehicles exceeded its staffing of 172 personnel. Also, NOAA's OLE lacked policy authorization for acquiring 22 vessels at a cost of $2.7 million, including a luxurious $300,000 boat. I have a chart here that references a lot of the spending that took place.

In addition, the independent Special Master found that there was credible evidence that money from sanctioning fishermen was a motivating objective in NOAA's past enforcement objectives. Mr. Schwaab, do you agree with Administrator Lubchenco's March testimony concerning the AFF and that there is an appearance of perverse incentives operating here?

Mr. SCHWAAB. I am not—again, the acoustics are a little tough here. So you are asking me if I agreed with——

Senator BROWN. Yes. Do you agree with her testimony that there was an appearance of perverse incentives operating in that situation?

Mr. SCHWAAB. I think it is very clear that the way the fund was managed previously left open that possible interpretation, and taking steps to foreclose on many of those uses of the fund is intended to remove that appearance. Yes, sir.

Senator BROWN. Do you think that the purchases identified by the IG of all the cars and boats and everything, in your opinion, is the proper use of taxpayer funds?

Mr. SCHWAAB. The previous interpretation was that was consistent within the law and that using the fund for that purpose——

Senator BROWN. There was no——

Mr. SCHWAAB [continuing]. Was acceptable. I do believe and agree, sir, with the Secretary's new policy that substantially restricts the use of the fund, particularly as it pertains to use for the purchase of vehicles and vessels. So I agree that is a much better place for us to be.

Senator BROWN. Well, there was no policy. That is why we got into this mess. There was no policy authorizing it, according to the IG's report. There was no policy authorizing any of these purchases. And, as a matter of fact, the Magnuson-Stevens Act requires that AFF expenditures be directly related to investigations or criminal enforcement proceedings. So there really was not a policy before. There is a policy now, and that is one of the things that we have commended you publicly for, is establishing that. So there was not a policy before. That is why we are in this mess, is that not right?

Mr. SCHWAAB. I think the lack of policies and procedures is a big part of why we got to where we are, and putting those policies and procedures in place is a big part of moving forward more effectively.

Senator BROWN. Do you think that the new policy that you have in place now will eliminate a lot of the things that we have come to note in the past?

Mr. SCHWAAB. Yes, sir.

Senator BROWN. And Mr. Zinser, the $109,000 trip to Norway, I guess, 15 people including the contractor were actually brought there. Did you note that in your report as to questioning whether,

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in fact, that was an adequate use of the forfeiture fund and taxpayer money?

Mr. ZINSER. We did not make a judgment on whether that was an appropriate use of the fund. We did note that the funds were used for that purpose and tried to understand rationale for using Asset Forfeiture Funds for that trip. What was reported to us is that the trip involved a conference about international fishing treaties, that the NOAA staff who attended did so for the purpose of making presentations at that conference, and again, the difficulty for us is the absence of any kind of legal opinion from the Department or from NOAA as to what the authorized use of that is. This kind of an interpretation of the statute just did not exist.

Senator BROWN. Well, your report actually found nearly $580,000 in international travel that was charged to the fund and only 17 percent of that travel was directly related to specific investigations or enforcement proceedings. And as you also noted, Magnuson-Stevens requires that the expenditures be directly related to investigations or criminal proceedings. Does NOAA's new policy on the use of the AFF meet the specific prescriptions of the law mentioned in your report?

Mr. ZINSER. Well, I think one of the benefits of our work is that we finally do have an opinion from the Department's General Counsel. That opinion defines "directly related" very broadly and provides a legal analysis as to why that language can be interpreted very broadly. That is why I suggested that there is some ambiguity in there and that some further clarification may be needed.

Senator BROWN. Well, it is interesting, because we look at Magnuson-Stevens and to the letter of the law, we apply it to the fishermen. Yet when we have the language which says it is supposed to be directly related to investigations and criminal enforcement proceedings, it is like it is loosey-goosey all of a sudden.

Mr. Schwaab, I know that there have been new policies in place, but how do you justify taking—and I know there is going to probably be an argument, well, we use it to deal with other countries with treaties and this and that so we can come up with enforcement. But you are taking money, hard-earned money from fishermen, using it to send 15 people over to Norway in that previous instance with really no real oversight at all. I mean, is that still the policy? Is that something that you plan on still doing, is using money—I understand that you are still going on international trips with fishermen's money. Is that still happening?

Mr. SCHWAAB. No, sir. So we now use other sources of funds to pay for general trips of that nature—admittedly important trips in many cases, because achieving parity internationally in the way that fisheries are enforced is another large objective that we share and it is one that benefits our domestic fishermen. But as it relates to the use of travel funds, we only use travel funds—we only pay for travel out of the Asset Forfeiture Funds now related to specific cases, and the case number has to be identified in that paperwork.

Senator BROWN. Well, the new policy I have, it says that attendance at international and domestic bi or multi-lateral meetings and negotiations to discuss enforcement-specific agenda items is still al-

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lowed. It is still allowed pursuant to the policy that you folks provided us with. So which is it?

Mr. SCHWAAB. I am sorry. Mr. Risenhoover just clarified for me that we do still under the policy allow bilateral engagements with specific countries under the forfeiture fund.

Senator BROWN. So you still use fishermen's money to go overseas for these trips?

Mr. SCHWAAB. For particular bilateral engagements, yes, sir.

Senator BROWN. Well, what does that mean for the average listener, bilateral?

Mr. SCHWAAB. Country to country——

Senator CARPER. Just give us some clear examples. Just be real specific. Give us some clear examples of how these monies can be used for foreign travel. Please, just be very specific. Clear it up.

Mr. SCHWAAB. Country-to-country engagements as opposed to conferences and larger training venues.

Senator BROWN. OK. Mr. Zinser, in 2010, your office issued a report on the Office of General Counsel, the GCEL, which found that inattention by their management to completing performance appraisals, a pass-fail system contrary to the Department of Commerce's five-level system, and all attorneys currently employed were rating "meets" or "exceeds" performance levels. In Secretary Locke's May 17 decision memo on the Special Master, he cites that there was little management or supervision, which contributed to the overly aggressive conduct toward fishermen. Does your December 10 finding about weaknesses in the GCEL Performance Management System support Secretary Locke's contention?

Mr. ZINSER. Yes, it does. The reason we looked at the performance appraisals to begin with was to see whether or not the attorneys were doing what their bosses wanted them to do, because we could not criticize the attorneys for the way they conducted themselves if their performance appraisals said that was good performance. And what we found was a serious lack of executed appraisals. In many cases the employee did not sign their appraisals. In other cases, the supervisors were not signing them. It was a pass-fail system.

As a result of a pass-fail system, there were very few appraisals that provided any record of the work products that the attorneys worked on. So we felt it was important as part of these reforms to bring that to the attention of the Under Secretary to try to institute some reforms, and I believe they are running into some issues with the fact that the attorneys for NOAA are part of a collective bargaining unit and that this is caught up in their collective bargaining agreement, the way they get their performance appraisals.

Senator BROWN. Great. I had 10 minutes. I will turn it back to you, Mr. Chairman.

Senator CARPER. Thanks, Senator Brown.

I just want to come back one more time on the travel issue, which really grates on people. In some cases in this country, folks do not get to take a vacation at all this year. If they do not have a job, they do not get to take a vacation, and the idea that trips to a place like Norway and Malaysia have been taken that cost a lot of money and a lot of people get to go.

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So what I want to do is come back and say what we have been told is between January 2005 and June 2009, some $580,000 was charged to the Asset Forfeiture Fund for international travel, almost $600,000. I am told that just under 20 percent of that cost for this travel was directly related to specific investigations or to enforcement proceedings. Seventy percent of the cost for this travel was directly related to specific investigations or enforcement proceedings. And what I would like to hear is some assurance that going forward, we are not going to see this kind of money be used for those kinds of trips, and that the trips that will be taken, if there is foreign travel in the future, it would have to relate to specific investigations or to enforcement proceedings. I need that assurance. We need that assurance.

Mr. SCHWAAB. Yes, sir. Under the current policy, we will not use Asset Forfeiture Fund proceeds to pay for travel to conferences such as the two that you described. As I indicated, we will use it for followup on specific cases, and in some cases country-to-country engagements around specific management issues.

Senator CARPER. All right. Good. Well, not all travel is bad. Senator Brown and I actually got to know each other on a congressional delegation trip to Afghanistan and Pakistan, and that was a good learning experience for both of us, and I think taxpayers' expenditures that were valuable to us and I hope to our colleagues in the Senate. So not all travel is bad. But the appearance can be more damaging sometimes than the actual trip itself, so continue to be vigilant in that area for us, if you would.

I want to come back, if I could, I think to Mr. Schwaab and say, I understand, going back to what happened last week, the independent audit of the Asset Forfeiture Fund was released. There has been some discussion already, I think, back and forth with Mr. Zinser, but do you have any other comments about the audit findings? This would be for you, Mr. Schwaab. Do you have any other comments on the findings of the independent audit?

Mr. SCHWAAB. Yes, sir. So, obviously, I would emphasize again the followup review of specific expenditures that is an important second component of this particular audit.

In addition to that, as I think you have already heard indicated, one of the concerns raised was the lack of a specific line item in the Federal budget to account for the Asset Forfeiture Fund and its management. The President's fiscal year 2012 budget does include just such a proposal.

The only other concern or issue that was raised by the auditors was a concern that in some cases, we were found to have not turned over overdue bills to the Treasury for collection in as timely a fashion as is called for under law.

Senator CARPER. And there has been a little bit of discussion on this already. I want to come back and just make it clear, at least for me. As I understand it, another audit is in the works and I am told that the independent auditor is looking at individual purchases. You may have just mentioned this, but I missed it, but individual purchases. Can you give us some thoughts—either one of you, actually—about when that audit is expected to be completed and the results released?

Mr. SCHWAAB. July 15 of this year, sir.

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Senator CARPER. OK. Good. And this is a question really for either of you. I understand that NOAA has put in place a procedure whereby, as I understand it, the Comptroller has to approve expenditures of $1,000 or more. Is that out of the Asset Forfeiture Fund? Is that correct? Just yes or no.

Mr. SCHWAAB. Yes.

Mr. ZINSER. Yes, sir.

Senator CARPER. OK. Thank you. Mr. Schwaab, could you talk about how this new policy works and why it was put into place in the first instance. Why was it put into place? And, Mr. Zinser, once he responds, I am going to ask you for your thoughts on this new policy and whether it is the right move or not.

Mr. SCHWAAB. As indicated by Mr. Zinser, one of the previous concerns was that there was significant decentralization of spending authority. What this process requires is that any single expenditure over $1,000 be approved centrally in NOAA headquarters. In addition to that, we do have a regular review of all expenditures in NOAA headquarters, much more regularly than would have existed previously.

Senator CARPER. Do you want to add anything to that, Mr. Zinser? You do not have to if you do not want to.

Mr. ZINSER. No, I think that Mr. Schwaab is right. The thing that policy was trying to correct was the over-decentralization of purchasing authority. The only other thing I would add is on the audit—the audit report that Clifton Gunderson issued. I agree that it is progress.

The other thing that I think NOAA should consider is more of a report, like an annual report, on what the money has been used for. You can read the financial statement audit and see that they have accounted for their revenues and their assets and their liabilities and that the two lines equal each other. But I think what would be helpful to people is to know exactly what kinds of things that money was used for.

Senator CARPER. Good. All right. I would just ask both of our staffs, both Republican and Democratic, to especially note that point and we will just come back to you for a followup on that.

We had problems, actually across the range in Federal departments, with the use of credit cards for travel and other purchases by staff, in some cases honest mistakes, in some cases not. To what extent has this been a problem with purchases made by agency employees from this forfeiture fund? To what extent has that been a problem, the use of credit cards, travel cards, and misuse of those? Is that a problem? If it is, has it been addressed?

Mr. SCHWAAB. So, Senator, we looked at a subset of transactions last summer following the initial report on the Asset Forfeiture Fund. One of the things that we found was that there were some procedural problems that emerged. They emerged, at least as characterized to us, at a rate and of a nature that was very similar to what you would find in a similar review in any agency or any subsection of the agency. So we did not find any particularly anomalous behavior. We did find procedural problems that merited additional training and counseling for particular employees.

Senator CARPER. OK. Just keep in mind, if it is not perfect, make it better. Thanks.

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I think I have used my 7 minutes. Senator Brown.

Senator BROWN. Thanks, Mr. Chairman.

Mr. Zinser, in your opening statement, you said you found the fund complex, very little attention to the fund, no central authority. You noted that $96 million has come in, $49 million has come out. My question to you is where is the remaining $47 million of hard-earned fishermen's dollars?

Mr. ZINSER. Yes, sir. The figures that I cited came from the report from KPMG, and the problem they had was in defining the fund. There are civil penalties and seizures that come in from a number of statutes that NOAA enforces, and some of those proceeds—civil penalties—are put into accounts that comprise the Asset Forfeiture Fund. It is kind of a misnomer. It is actually a civil penalty fund. And some of those proceeds from civil penalties do not.

KPMG had such difficulty getting a definition from NOAA about exactly which of those proceeds constitute the Asset Forfeiture Fund that they provided basically a worst-case scenario. These are all the proceeds from enforcement activities that NOAA collected over those 4½, 5 years, and NOAA was not able to help us say which of those were actually part of the Magnuson-Stevens Asset Forfeiture Fund and which ones were just collected by NOAA and then remitted to the Treasury or put in some other account.

Senator BROWN. Mr. Schwaab, on the credit card issue, since the Chairman brought it up, how many credit cards are actually issued to employees? How many employees do you have, 172?

Mr. SCHWAAB. We have just slightly over 200, all told, in the Office for Law Enforcement.

Senator BROWN. And how many of those have credit cards?

Mr. SCHWAAB. I have those numbers here and I can pull it out for you momentarily. I can tell you this, that since the finding came out, we have drastically reduced the number of credit cards that are issued across the Office for Law Enforcement so that they are only issued to offices in a number that is needed to meet the requirements of those specific locations.

Senator BROWN. Yes, because what I noted in doing the work leading up to the hearing, I mean, there is an instance of a $2,500 cash withdrawal with no documentation. There was double-billing by agents submitting expense reports in the beginning of the month and the end of the month. Have any of those overpayments or duplicate—and we deal with duplicate payments in this Subcommittee. We just had a hearing, $125 billion just in improper payments alone. Has anybody repaid the money, or have you recouped any of that money from any of those people?

Mr. SCHWAAB. So not specific to credit cards, but I am aware that in some of the travel reviews, after issues were made aware to individual employees, that they did step forward and pay back discrepancies in travel payments.

Senator BROWN. Has all the money been paid back that has been found as being duplicative or incorrectly billed or whatever?

Mr. SCHWAAB. To my knowledge, sir, anything that we are aware of that was incorrectly paid out has been rectified.

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Senator BROWN. And in the body of your review and upcoming audits, if you find more, will you, in fact, seek reimbursement from those employees?

Mr. SCHWAAB. Yes, sir.

Senator BROWN. In looking at the—Secretary Locke actually—I know we had this Special Master's report. The Special Master cited that some of the attorneys he found abused their discretion by extracting excessive monetary penalties, which in one instance led to a coerced settlement, and then noted that Secretary Locke's response to the Special Master's report. Specifically his statement in the decision memo, he found after his own legal review that none of the conduct described in the report undertaken by any individual lawyer warranted disciplinary action against any employee mentioned in Judge Charles Swartwood's report. Has anyone been disciplined or moved or anything related to that particular report and Judge Swartwood's comments on the excessive monetary penalties being given?

Mr. SCHWAAB. Senator, I believe what the Secretary was getting at in his finding there was that this was largely a failure of procedure, a failure of policy to dictate standard approaches by which penalties would be applied for particular offenses across the country. And one of the important things that we have done since that time is put in place a standard penalty policy to prevent those kinds of things systematically from recurring and to provide the employees the kind of guidance that they need to avoid finding themselves in that situation.

Senator BROWN. And are there still Special Act or Service Award bonuses? For example, I know in one instance, it was referenced that someone got a $2,000 bonus and referenced in the award that it was a high-stakes game, and as a result, he received a $2,000 bonus. Are you still giving out these Special Act or Service Award bonuses?

Mr. SCHWAAB. I am not familiar with the particular situation that you are talking about. There are service bonuses of that sort for——

Senator BROWN. There still are? So they get a salary and a bonus if they do something——

Mr. SCHWAAB. There still are opportunities to provide that kind of a bonus. I think in the case of enforcement cases, one of the, obviously, challenges historically for lack of standard policy and procedure was to measure what you are measuring performance against, and I think the new policies and procedures will put us in a much better stead in that regard.

Senator BROWN. So they are getting a salary, and presuming the average salary is about $100,000, give or take, and then they are also getting a bonus on performance in enforcement and forfeiture, is that accurate?

Mr. SCHWAAB. Well, I would not say necessarily it was specifically related to an enforcement action or a particular penalty or forfeiture. I would say that those bonuses are generally related to job performance over the course of a year.

Senator BROWN. So can the attorney still get a bonus? Is that policy still in place?

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Mr. SCHWAAB. Well, I can speak generally to Federal agency process in that regard. I honestly cannot speak specifically to the performance structure for the attorneys in the General Counsel Office.

Senator BROWN. Mr. Zinser, I see you shaking your head there. What are your comments on that?

Mr. ZINSER. I believe that the policy that enabled NOAA to make that Special Act Award is pretty much a Department-wide policy and that those policies are common in the Federal service. But I think that in this case, the case that you referenced, the award seemed premature because the case had not been finally resolved yet——

Senator BROWN. It had not even been signed off on yet?

Mr. ZINSER. And that is also why, when people wonder why employees are not disciplined or harsher action is not taken for bad management or bad performance—when they are given performance awards for that conduct or that performance—it is hard now for the management to come back and say, you should not have done that and we are going to discipline you for it.

Senator BROWN. Is it common around other agencies to have that type of payment for the high stakes, supposedly "high stakes" games? Are there other agencies? I have never heard of somebody getting a salary and then getting a bonus on top of it for basically closing down cases. Is that common?

Mr. ZINSER. The language that you are referencing was in the justification for the award. We thought that was inappropriate, and when we learned of it, we brought it to the attention of the Administrator. And, in fact, I think it came to our attention from somebody from the public who had a hold of that justification through a FOIA request. So it is actually public information.

Senator BROWN. So it is inappropriate, but they are still doing it, apparently, from what we just heard.

Mr. ZINSER. Yes. I should say that particular award was a number of years ago, but it was in connection with one of the cases the Special Master reviewed.

Senator BROWN. When you are looking at, Mr. Zinser, the type of enforcement folks—apparently, from what we have received, 90 percent are criminal investigators—the workforce consists of approximately 90 percent criminal investigators while its caseload was 96.4 non-criminal. The Office for Law Enforcement considers it appropriate to operate from a criminal investigative standpoint and apply techniques used for criminal investigations. In your opinion, how adequately has NOAA addressed your recommendations that determine whether it should continue that type of approach or do it differently? Are you satisfied with the actions that have been taken thus far?

Mr. ZINSER. I think the action NOAA has taken includes commissioning a study of their workforce, a workforce analysis, and I think that is the proper step to take. I think it has taken a long time, that it has been in the works for several months now. But I think the point we were trying to make in our report was not that criminal enforcement is unnecessary; we think criminal enforcement capabilities are necessary; we just think the criminal investigators ought to be used to conduct criminal investigations and

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non-criminal investigators or inspectors should be used to enforce regulations, and NOAA has mixed the two up. So we think the criminal investigators ought to be out investigating those provisions that have real serious criminal implications and that the Magnuson-Stevens regulations should be enforced by regulatory inspectors.

Senator BROWN. Mr. Schwaab, so what does it take to actually get fired at NOAA? [Laughter.]

I have to tell you, watching the special that Dan Rather did, being on this for a year and a half now—I mean, some of the things we have heard, and I have not heard of one person being fired at NOAA. Is that going to change? Is there going to ultimately be somebody held accountable for some of these things?

Mr. SCHWAAB. Well, as I said before, without speaking to individual cases, I think there is a distinction between whether someone has been fired and whether someone has been held accountable.

To your question, what does it take to get fired at NOAA, pretty much the same thing as in many other agencies. There are two pathways. One is performance-based, and those are long-term failures to perform in the job indicated. That requires ongoing collaborations, discussions with the supervisor who sets forth corrective action plans, and if the person does not improve performance accordingly, then they can be certainly subject to termination under that process.

Another direction, of course, is conduct-related. Obviously, the severity of a particular incident is held against a number of different standards in making a decision ultimately to terminate. There are any number of things that could, on a first offense, reach that level of severity, but in our individual investigations, those are the kind of things that we look at in particular cases.

Senator BROWN. And the Chairman is nice enough to wrap me up. I am still just shocked that based on everything that we have heard, that there has only been some shifting of people. They have taken a small reduction in salary. No one has been fired. There is a complete lack of accountability in saying, sir or ma'am? You messed up and we are going to have to let you go, or we are going to have to put you—there is no history of any type of counseling. There is nothing.

So I am encouraged, as the Chairman is, that, based on the pressure we brought to bear, that you are doing it better, and I would once again just add in conclusion that I would hope that if there is something that you need us to do, if there is some type of clarification with the Magnuson-Stevens, let us know. We have a lot of good people who are willing to work on these types of things.

So thank you, Mr. Chairman.

Senator CARPER. As a recovering Governor, I will say that in State Governments, it is not always easy to hold people accountable. It is not always easy to fire people who, frankly, should have been fired. But if people in Delaware really behaved egregiously, we tracked their records, tracked their performance and eventually built a case and we were able to remove them from service. But it is not easy, and it is not easy in the Federal Government, either, and part of it is to protect the rights of the individual.

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I think you mentioned that in several instances, employees who should have been held accountable have been held accountable, and I would just ask that as you go forward, that this continue to be the standard that is set, whether they are fired or not, but that they are held accountable in ways that are appropriate.

The other thing I want to ask, and this is my last question, but after I ask this question, and I do ask you to respond fairly briefly, I am going to ask you to take maybe a minute or so apiece and just give us some closing comments. You gave an opening statement. I want you to give a brief closing statement, as well, before we turn it over and welcome our third panel.

This will be, I think, a question probably for you, Mr. Schwaab. I understand that NOAA has allocated about close to $50 million to transition this region and perhaps others to catch-share fishing management systems. Just take maybe a minute to explain to us how that money is being spent and what it is being spent on, if you would.

Mr. SCHWAAB. I am sorry, the last part of that again——

Senator CARPER. Yes. I would like for you to take a minute to explain how that money is being spent and what it is being spent on.

Mr. SCHWAAB. Yes, sir. So just for your reference purposes, there is a table attached to my written testimony——

Senator CARPER. OK.

Mr. SCHWAAB [continuing]. That describes that money and its use, and it speaks specifically to fiscal year 2009 and 2010. That money falls into essentially three main categories. One category is direct support for the industry and standing up sector-based management, grants to hire sector managers, funds to pay for some of the at-sea monitors and dockside monitors that are required under this new system.

The second part is used by the agency specifically to stand up the infrastructure needed to put the system in place.

And then there is a third part that really speaks to some continued attempts to innovate around things like gear so that fishermen can fish more selectively and we can capture a higher percentage of the available quota, particularly in the healthier stocks, and avoid running up against quota limitations in some of the weaker stocks.

Senator CARPER. All right. Thank you.

Just take a minute and give us any closing thoughts you might have, please. Mr. Zinser, do you want to go first?

Mr. ZINSER. Yes, sir. First, I think that the oversight being applied is very important. I think it is going to continue to be important. Identifying the problems and solutions is a big part of it, but making sure that those recommendations and reforms are implemented and become institutionalized is really the key.

For our part, what we plan to do is followup with our own audit staff to make sure that the things NOAA says it is doing, it is actually doing, and I think that if Congress were to also do that, it would be important.

I do have a concern with respect to the Asset Forfeiture Fund that the recommendations are implemented. I know that the Appropriations staff, for example, put language in the 2011 appropria-

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tion that was not enacted that basically said that the Asset Forfeiture Fund could not be used until the recommendations were implemented, and I know that Senator Barbara Mikulski has found our work important for them. I would just urge NOAA to follow through on the Asset Forfeiture Fund recommendations so that I am not put in the position of saying whether or not the recommendations are implemented. I want that to be clear so the appropriators feel free to authorize the use of that money.

Senator CARPER. All right. Thanks. A closing comment, Mr. Schwaab.

Mr. SCHWAAB. Yes. Thank you, Senator, and thank you again for the opportunity to be here. I would just like to say that, as I think you have heard throughout the testimony today, we have identified failings, particularly in policy and procedure. We have appreciated the work of the Inspector General in helping to bring those to our attention. We have certainly appreciated the focus that congressional members have brought to bear on this issue, and I think that our actions to date, certainly under the leadership of Secretary Locke and Dr. Lubchenco, have, I hope, illustrated the seriousness with which we take these findings and these recommendations and our commitment to the task at hand.

We certainly understand there is a strong need to work closely with fishermen, fishing communities, and other stakeholders to ensure that our efforts, both in management—well, in management, in science, and in enforcement are open, transparent, accurate, and fair, and we are taking steps aggressively, both in the law enforcement arena as well as others, to redouble our efforts to make the case that is, in fact, true.

In addition to the fishing communities, I also want to close by noting the hard work of many people throughout the Department of Commerce and NOAA to get us to the place where we are today. Certainly, as we indicated in some of my answers, oftentimes, the employees are caught up, as is everybody else, in failings of policy and procedure, and not only to the benefit of you, to the benefit of the fishing communities and other stakeholders, but to the benefit of our own employees, we owe to have the right policies and procedures in place to faithfully execute them so that we can all go forward fairly, effectively, and transparently. Thank you, sir.

Senator CARPER. And let me close by saying, a friend of mine likes to say, "editorial writers are people who enter the battlefield when the fighting is over and shoot the wounded." We are not interested in entering the battlefield as a Subcommittee—or Committee—we are not interested in entering the battlefield when the shooting is over and shooting the wounded. This is a fight that should have been fought. This is a fight that should have been resolved years ago—in previous Administrations, with previous Secretaries, with previous IGs, with previous folks from NOAA, and it was not done.

Good work is being done now. And the key is that good work provides a foundation on which even better work can be done to restore the trust that needs to exist between, in this case, the fishing community itself and those that are entrusted with the responsibility to oversee that community and make sure we have a healthy,

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vibrant fishing industry in this country and especially in this region.

With that having been said, Senator Brown and I will have, I think, 2 weeks to provide additional questions, and we just ask that as we do that, you provide a prompt response to those questions.

The other thing, our job is oversight. Our job is to back up the work that is being done, the appropriate work that is being done to make sure that continues to positively enforce that work and also to help find out if other work needs to be done, and that work is followed up on, as well. And finally, if there are things that we need to do, as Senator Brown has said, if there are things that we need to be doing to help make sure that the Legislative Branch of our government, that we are being responsive and supportive to this agenda, that we are doing that, that we are held accountable.

Thank you very much for joining us today, for the work that you are doing, your teams are doing. Let us keep it up. Thanks very much.

Mr. ZINSER. Thank you.

Mr. SCHWAAB. Thank you.

Senator CARPER. Let me invite the third panel to join us, please. We will now welcome our third panel, and I am going to ask Senator Brown just to lead off. I have a couple of brief comments to make about each of them, but, Senator Brown, why don't you make any comments—these are your folks.

Senator BROWN. Yes. Well, thank you, Mr. Chairman.

Senator CARPER. Please proceed.

Senator BROWN. I appreciate you inviting them and I will save introductions, but just note that they each have specialties in this area based on what we have been dealing with. I appreciate their time. I know, because of our time getting back to Washington, they are going to be very brief. I may submit the comments for the record. But with that, Mr. Chairman, I will turn it back to you.

Senator CARPER. Good. Thanks so much.

Let us start with Lawrence Yacubian. I want to get the correct pronunciation of your last name, please.

Mr. YACUBIAN. It is Yacubian, sir.

Senator CARPER. Yacubian, OK. Mr. Yacubian spent decades, I am told, as a commercial fisherman in New Bedford, Massachusetts, working his way up from apprentice deckhand to engineer to captain. As one Navy captain to another, I salute you. A native of Westport, Massachusetts, he now resides in Florida.

Our next witness is Larry Ciulla, is that correct?

Mr. CIULLA. That is correct, sir.

Senator CARPER. You guys do not make it easy on me to pronounce these names. But I understand you are the co-owner of the Gloucester Seafood Display Auction in Gloucester, Massachusetts, and that you and your sister started the business about 14 years ago, in 1997. The business sells New England fish to buyers around the world via live Internet auctions. That is pretty interesting stuff.

The next witness is, I am told, Stephan Ouellette, partner at Ouellette and Smith in Gloucester, Massachusetts, and you specialize in fishing law.

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Mr. OUELLETTE. I do.

Senator CARPER. Our fourth witness is Mr. Giacalone. Mr. Giacalone is the Policy Director of Gloucester-based Northeast Seafood Coalition (NSC) and also has experience as a commercial fisherman.

Last but not least, a name even I can pronounce, Dr. Brian Rothschild, Dean Emeritus and Montgomery Charter Professor at the University of Massachusetts-Dartmouth School of Marine Science and Technology. He is also Co-Director of the Massachusetts Marine Fisheries Institute. Dr. Rothschild worked with Senator Warren Magnuson on the drafting of the Magnuson-Stevens Act at NOAA during the law's implementation.

I have been handed a note by our staff that Eric Schwaab has had to leave in order, I think, for other travel arrangements. Members of his team are still here and will report back to him. We are pleased to hear that.

Why don't we ask you to testify in the order you have been introduced. I would ask you to limit your comments to 5 minutes and any additional comments will be made part of the record. Your full statement will be made part of the record, and then, Senator Brown and I would like to ask you a couple of questions.

But, Mr. Yacubian, why don't you lead off for us. Thank you.

STATEMENT OF LAWRENCE YACUBIAN,[1] RETIRED FISHERMAN

Mr. YACUBIAN. Thank you, Senator Carper. I understand it is customary to begin testimony by saying thank you to the Subcommittee for the opportunity to be here. Of course, considering why I am here, if I could rewrite history, none of this would have happened. To be honest, I would rather be out scalloping today. But these things did happen and I am here.

Chairman Carper, I thank you for agreeing to hold this hearing.

Senator Brown, thank you for your unwavering focus on our State's fisheries. Your predecessor, the late Senator Ted Kennedy, was a true friend of the fisherman. Your actions since your election to the Senate have upheld that legacy with honor. Thank you.

I also thank the Commerce Department Inspector Todd Zinser and his staff for undertaking the investigation which exposed this corruption.

I thank Commerce Secretary Gary Locke for his promise that these problems will end on his watch.

And I further credit NOAA Assistant Administrator Eric Schwaab for releasing the highly critical reports on fisheries management in the Northeast conducted by Preston Pate and on science conducted by Dr. Michael Sissenwine and Dr. Brian Rothschild, who is here with us today. But more has to be done.

During the darkest days of this long nightmare, I never imagined that one day, I would have the chance to sit face-to-face with a cabinet member and tell him how his Department had wronged me. Thanks to Congressman Barney Frank, that happened. I never thought the Secretary of Commerce and the Administrator of NOAA would return fines and apologize to me. Thanks to Senator John Kerry, that happened. I am forever indebted to the men and

[1] The prepared statement of Mr. Yacubian appears in the appendix on page 79.

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women of the U.S. Senate and Congress who put policies aside and worked as catalysts across State and party lines to exonerate the many in my industry who were also wronged by a misguided regulatory system.

I am a proud American. Despite what I have been through, I still love this Nation of ours. In 2004, when we sold the family farm in Massachusetts to pay the settlement, we boarded a plane to Virginia, where we saw our son, Captain Lawrence Yacubian, who is sitting right here today, leave to serve in Afghanistan. He later served in Iraq and was awarded the Bronze Star for meritorious service in combat. It is still hard for me to accept that unsupervised Federal employees working in a rogue agency could be allowed to run amok in this Nation that I love.

The first reason that I am here today is to question why the National Marine Fisheries Service attorneys and judges have not been indicted. In fact, never mind indictments, none of them have even been fired. Apparently, it is not possible to be fired from civil service. Nearly every one of them is still working for the Federal Government today, despite the findings of the Office of the Inspector General's report and the Special Master's case review that these Federal employees operated with malicious ethics and biased prosecution.

When Special Master Swartwood reviewed my story, he discovered what I have known all along, that justice was impossible and that the cards were stacked against me before my case began. The National Marine Fisheries Service enforcement system within NOAA was rigged by its own financial self-interest, warped career ambition, and misplaced motives.

There was none of the legal checks and balances that are granted by our Nation's legal system. The system violated even the most basic conflict of interest standards. Judges and prosecutors were allowed to maintain eerily close in-house relationships with little or no oversight during the prosecution of my case. It is difficult to feel you are having your day in court when the prosecution and the judge hearing your case are literally allowed to go to lunch together while the court is in recess. It is difficult to feel you are getting justice when the judge has been appointed by the prosecuting agency and will eventually be paid by fines of your conviction.

With such clear conflicts of interest, this agency upheld its own motives, not justice. As Judge Swartwood concluded in his report, money was NOAA's motivating objective.

The second reason that I am here today is to shed light on the abuse of the National Marine Fisheries Service Asset Forfeiture Fund. NOAA turned the Asset Forfeiture Fund into a cookie jar for its enforcement staff. The fines they seized from fishermen like me were lumped into one big account from which staff bonuses, company cars, international staff travel, luxury boats were financed with little to no oversight and no auditing. And as I noted a moment ago, this fund was used to pay the salaries of administrative law judges that heard our cases in their courtrooms.

One of the Nation's top accounting firms, KPMG, at the request of the Inspector General, concluded the first audit of the Asset Forfeiture Fund last year and they could only account for a little more than half of it. Forty-seven million dollars still remained unac-

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counted for. This is not just lax accounting. It is a violation of the public trust.

Was my $430,000 fine used to protect the fisheries? Did it go toward the purchase of 200 government vehicles for a staff of 172? Did it go toward a boat described as luxurious by its manufacturer that NOAA somehow thought was necessary for their work? Or was it perhaps used to finance all-expense-paid trips literally around the world for some of the NOAA employees who penalized my family to the brink of bankruptcy?

I did not know——

Senator CARPER. Mr. Yacubian, You are about 6 minutes right now into your statement, and I am just going to ask you to go ahead and complete your sentence. Your whole statement will be made a part of the record. We just ask you to finish this paragraph, OK, and then I need to recognize the other witnesses. Please, just finish your paragraph.

Mr. YACUBIAN. All right. In addition to my $430,000 fine, I had to pay in excess of $250,000 in legal fees in order to defend myself. When the lawyers on the other side worked for the only organization that can print money, legal bills add up quickly.

But the damages go beyond that. Not only did my career disappear with that money, but my family's heritage and my children's inheritance did, as well. My wife's family farm in Massachusetts that was in her family for 350 years is gone. We had to sell it. Our hope of passing along the property and its story, which spans almost all of American history, is no more.

The $649,000 in fines returned by Secretary Locke to several other fishermen like myself is a good start to restoring trust, but it by itself is not sufficient. For those of us who have been wronged, we have lost careers, years, and our legal fees and other costs we have incurred at the hands of corrupt Federal employees, are still unreimbursed.

For those of us who are still in the fishing business, there is still much more to be done before our faith and trust in the government is restored.

First, more needs to be done to restore the confidence of fishermen——

Senator CARPER. I do not mean to be rude, but you are about 8 minutes into your statement.

Mr. OUELLETTE. Senator, if it would help, I will take a shorter time if you could let him finish.

Senator CARPER. OK. But I need to ask you to please summarize——

Mr. OUELLETTE. Thank you.

Mr. YACUBIAN. I am almost done, Senator. First, more needs to be done to restore the confidence of fishermen in the regulatory system. Today, I ask the Senate to conclusively determine what NOAA did with the unaccounted half of the Asset Forfeiture Fund and the $430,000 in wrongly assessed fines that I was forced to pay.

Second, an independent investigation of NOAA Fisheries rulemaking is critical. What Preston Pate and his colleagues achieved in the agency's internal report is commendable, but I suggest that

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an independent outside investigation conducted by Inspector General Zinser or the Government Accountability Office is warranted.

Third, better oversight into the funding of science programs is crucial. Independent institutions that both scientists and fishermen trust must be funded. The institution Dr. Brian Rothschild helped to found, the University of Massachusetts School for Marine Science and Technology, is an example. Without him, there would not be a scallop industry today. Fishermen do not trust NOAA's internal grantmaking to fund outside science. In the past, what they have done is feather their own nests rather than direct the money to the most worthy institutions.

Finally, I ask the Senate to hold accountable the government attorneys and judges that were the source of this injustice and who are still employed by the Federal Government. These individuals cannot be allowed to be reshuffled into the deck and be protected within the Federal system. They must be separated and terminated in order for justice and integrity to be restored into this agency of the United States.

Thank you for listening.

Senator CARPER. Thanks very much for your testimony and for the passion and sincerity that underpins it.

I would just ask the other remaining witnesses, please adhere to your 5-minute limit. Thanks so much.

Please proceed, Mr. Ciulla.

STATEMENT OF LARRY CIULLA, PROPRIETOR, GLOUCESTER SEAFOOD DISPLAY AUCTION

Mr. CIULLA. Senators, thank you for inviting me here today. Larry Yacubian has become a good friend of mine. He became a friend of mine—at first, I must say, I was afraid of him. When I first had charges put against me in 2009, I got a call from a gentleman I did not know. He was from Florida. One of the women in the office picked it up and said, "I have a gentleman by the name of Larry Yacubian on the phone. I think he has been in trouble with NOAA agents and has lost his business due to some problems he had with the government." I was afraid to pick up the phone, because I thought maybe he did do something wrong. I know I had not done anything wrong, but I thought maybe this good gentleman had actually done something wrong, and at first, I backed away from even wanting to talk to him. And now, I am a little bit ashamed of it, because people did the same thing to me.

Our family has been in a battle with NOAA law enforcement for close to 10 years now. Ten years of my life, fighting with them. And what did I do wrong? Nothing. I stuck up for my rights. We as a community stuck up for our rights, and we fought, and we did not fight just to be right. We fought for justice. We wanted to know what we were doing was the right thing.

We would ask for help from NOAA and we would get ridiculed. And when we stuck up for our rights and won a case in our instance, more pressure was put upon us. We were abused. We all were abused. And this is not something you kind of get pushed around a little bit by a bully next door and you grow up and you are able to push him back. We are talking about the U.S. Government, a branch of the government. NOAA, an agency that has law

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enforcement agents that carry guns. We are dealing with fish, folks. We are dealing with seafood.

Laws have to be upheld, but do you know what also has to be upheld? Our rights as people, not just as people of the United States, how about our human rights? We were ridiculed so much, our family did not want to come to work every day. My mother would sit in the car literally at 70-odd years of age and wonder if she can get through the day, because we know the presence of law enforcement was going to make us sick. The pressure to make a mistake within a quarter-of-an-inch of a fish size—and by the way, we handle millions of fish a day—could possibly put us out of business.

My father said to the Special Master before he left, he said, "Your Honor, can I see you just for a moment? Can you talk privately?" I did not even know he said this until recently. He said to him that he was sorry he lived long enough to see a United States agency such as NOAA do this to his family. That is what they have done to us.

We have just tried to make a living in this community, in our community. Yes, we have been looked at as second-class citizens and we do not want to be that. We want to be people's equal. And still today, we are fighting, and maybe we can get into that a little bit later. But I have still attorneys hired, still fighting for my rights and the rights of other fishermen here in our community. We are fighting for attorney fees. We are fighting for the possibility of damages. And in my case, I still have permit sanctions against me. I am still fighting to keep our business open, and why?

People like Larry Yacubian, a lot of small family businesses that unload at our facility and operate in Gloucester, are not being thanked for opening up the eyes of NOAA to what was wrong. We are being apologized to and they are shutting the door on us. They do not want to make up for what they have done wrong to the fishermen. They do not want anything to do with making them whole again and making them feel a part of their communities again. They do not want to help hold their heads up again. They would rather it just go away.

Well, folks, we are not going to go away. And we are not fighting to win. We are fighting for justice, and we will not stop until we get it. That does not mean that I am going to be around to see it. It does not mean that my business will not fail because of it. But there are a lot of hard things in this world that we have to make decisions about and this is one that I have made. I am going to see this through to the end, until some justice comes of it and good people like Larry Yacubian are actually made whole again.

Thank you.

Senator CARPER. Thank you very much for that statement.

Mr. Ouellette, you have 5 minutes, please.

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STATEMENT OF STEPHAN M. OUELLETTE,[1] ATTORNEY AT LAW, OUELLETTE AND SMITH

Mr. OUELLETTE. Yes. Chairman, Senator Brown, thank you very much for having me here. As a resident of a coastal community, living around fishermen and for the last 15 years of my professional practice having had the honor, and I call it a distinct honor, of representing fishermen, boat owners, and working within this fishing community, I have become acutely aware of problems within NOAA and its management of both the fisheries and of the men and women involved in this industry.

NOAA law enforcement, which I have been heavily involved with for the last 15 years, began to develop very disturbing characteristics in the mid-1990's, leading many of us to begin complaining to NOAA and eventually to our Congressman about how fisherman were being treated and how fines and penalties were being dramatically increased. At that point in time, initial attempts to determine what was going on with the Asset Forfeiture Fund were met with bills to the FOIA account of $10,000 to $15,000, which at that point nobody had money to pay. So we are very gratified, but at the same time exceptionally disturbed to see where all of the money taken from hard-working fishermen over the last 15 years has gone, to the extent that it can be accounted for.

One might say that in the last 15 years, we have seen a different type of over-fishing, over-fishing by NOAA law enforcement. In the late 1980's and early 1990's, there were some significant violations which occurred. NOAA law enforcement dealt with them. But as we saw the number of fishermen diminish, the number of time spent on the sea decrease, and new enforcement measures like vessel tracking systems come online, the number of serious violations all but disappeared. There were a few, but now it seemed that NOAA law enforcement had to concentrate on the small fish and we started to see an increasing number of fines for routine violations like late log books, like misunderstanding of a complex regulation. So as we began to say, we had too many law enforcers chasing too few fishermen.

We see that even today under the Joint Enforcement Agreements, which as I understand are funded out of the Asset Forfeiture Fund, there are large amounts being given to State enforcement agencies to chase our fishermen. For example, as related in my written testimony, one of our local fishermen was boarded 30 out of 45 days—30 out of 45 days—a two to 2½ hour boarding each time, to determine whether or not he was in violation of regulations. They found no violations.

The local enforcement officer was exceptionally polite, and when later on I asked him about it, he said, "Well, we have so much Federal funding under the Joint Enforcement Agreement that I have to board a boat every day, and he is the only Federal vessel fishing out of a port within 10 miles of my office and I am obligated to continue boarding him."

Similarly, one dealer in Boston has complained that for as long as 90 days in a row at a time, he has two full-time environmental police officers sitting outside his door. They are very polite, but

[1] The prepared statement of Mr. Ouellette appears in the appendix on page 83.

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they get in the way and they make mistakes and they spend a lot of time backtracking to figure out what is going on.

Good enforcement is essential to the success of any regulatory program. I think somebody in Washington put it well. Without enforcement, regulations are nothing more than suggestions. But we have to have reasonable, rational enforcement and it should not be self-perpetuating. It should not exist for its own purpose, to fund itself and build a larger and larger system.

And I will quickly alert you to a problem that we have seen developing up and down the East Coast. Suddenly, we have all of these criminal law enforcement agents who now are finding new and unique ways to bring cases to U.S. Attorneys to prosecute U.S. fishermen for what under Magnuson-Stevens are supposed to be civil violations.

It is a greater problem than law enforcement and the Asset Forfeiture Fund. Despite what Mr. Schwaab said earlier, we are investing $50 million to implement a catch system in a fishery that is grossing about $100 million a year. That fishery is landing less than 30 percent of what the scientists say we should be landing. We are falling abysmally short. Literally a half-billion dollars in landings in the New England area alone are being lost due to mismanagement by this agency, fish their scientists say we can and should be landing. This may not be strictly accountability as to how they are spending the money, although I submit that $50 million on a catch-share program in a small fishery like this is a total waste of money. But we are losing a half-billion dollars a year in landings, $2 billion a year in economic activities, and tens of thousands of jobs.

Congress needs to understand what NOAA is really spending this money for, because we have the most expensive aquarium in the world off our shores right now and it needs to be harvested. Thank you.

Senator CARPER. Mr. Ouellette, thank you very much for being with us and for your testimony.

Next, Mr. Giacalone. Please proceed. Five minutes, please.

STATEMENT OF VITO GIACALONE, CHAIRMAN, NORTHEAST SEAFOOD COALITION

Mr. GIACALONE. Thank you, Senator. Mr. Chairman, Members of the Subcommittee, thank you for this opportunity to testify before your Subcommittee. As an active fisherman and Policy Director for the Northeast Seafood Coalition, I have been deeply involved in the process of development and implementation of fisheries management frameworks and amendments affecting the Northeast multispecies fisheries since 2001. Recognizing that the list of witnesses testifying before you today includes two gentlemen who have endured tremendous personal and business stresses as a result of their experiences with fisheries enforcement in the Northeast region, I thought I would focus my testimony on another issue that may be of interest to you and within the influence of your Subcommittee.

Most recently, our fishery has made a profound transition from an effort-controlled management system to a catch-based system of harvesting cooperatives called sectors. The Northeast Seafood Coa-

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lition is the sponsor of 12 of the 17 sectors in operation, with over 300 active vessels as members, operating in ports from Maine to New York.

While the NSC is now both deeply invested and committed to making the existing sector system work as well as to seeking future improvements, sector-based management was not the preferred choice of the Northeast Seafood Coalition, nor were a number of key aspects of the current system. However, NSC could not ignore the reality that this was the direction that the New England Fisheries Management Council and the National Marine Fisheries Service were taking. This direction was further reinforced when the newly appointed NOAA Administrator attended a Council meeting to not only give a strong directive for the Council to complete and implement the sector system, but also to announce a NOAA commitment of at least $16 million to do so.

For whatever reasons, the millions of dollars of NOAA funds committed to implement the new system remained largely with the government agency, even though it was abundantly clear that it was the fishing industry that was to be burdened with unprecedented burdens for the costs and development of the new policies, data collection and processing infrastructures that did not yet even exist, as well as the daily management of the fishery, once implemented.

This latest round of top-down Federal policy has produced a profound shift of management, data collection, data processing, and enforcement burdens for the National Marine Fisheries service to the fishing industry. The monitoring requirements of the new management system, as adopted by the New England Fisheries Management Council and approved by the Secretary, will shift the entire cost of monitoring the fishery onto the fishing industry, beginning next year. This will certainly cause this complex and cumbersome system to collapse under its own weight, along with the industry now dependent upon it.

Currently, the at-sea and dockside monitoring programs are being underwritten by NOAA funding, but these are annual allotments that are beholden to NOAA fiscal funding availability and cannot be depended upon in future years. It should be known that these monitoring programs are essentially functioning as third-party private sector enforcement. The combination of this newly implemented fisheries monitoring system—now virtually 100 percent of trips are monitored by third-party NOAA-certified contractors, either at sea or dockside, as compared to 3 to 5 percent prior to the sector system. The elimination of most all daily and trip possession limits and the contractual obligations, professional sector managers, and joint liabilities associated with sector operations has substantially reduced the role of NOAA enforcement in the Northeast groundfish fishery.

Our industry cannot survive without a secure and long-term funding commitment to meet government-imposed monitoring and management requirements. Given the millions of dollars that have already been committed within the NOAA budget to implement these new management strategies, it is our hope that a thorough review of government limitations on providing funding to the fishing industry to meet these requirements be conducted to determine

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the real and/or perceived limitations on doing so. It is our hope that all potential sources of funding, including the Asset Forfeiture Fund, be considered for direct industry assistance.

I want to take this opportunity to personally thank you, Senator Brown, for your leadership and continued support for our industry in Massachusetts and New England. I also want to thank the Members and staffers of this Subcommittee for coming to Boston and giving us this opportunity to give you our perspectives. I would be happy to answer any questions afterward.

Senator CARPER. Thanks.

Dr. Rothschild, would you please.

STATEMENT OF BRIAN J. ROTHSCHILD, PH.D.,[1] MONTGOMERY CHARTER PROFESSOR OF MARINE SCIENCE AND TECHNOLOGY, UNIVERSITY OF MASSACHUSETTS-DARTMOUTH

Mr. ROTHSCHILD. I will be very brief. I have been asked to address how NOAA's National Marine Fisheries Service is handling money allocated to assist New England fishermen transition to a new catch-share fishery management system.

We are 1 year into the implementation of catch-shares, yet we do not have a careful analysis of what the catch-share system costs, how it is performing regarding producing food for the Nation, whether it is sustaining economic wealth, and whether it is maintaining jobs in the fishing industry. We were provided with revenue statistics, but these are virtually meaningless because there are no data costs.

In terms of production of food for the Nation, the catch-share system did no better than the days at sea system. From the point of cost effectiveness, it was worse because the catch-share system is costing roughly a nominal of $30 million more to manage than the days at sea system. This involves a tripling of observer costs, a quintupling of permit bank subsidies, and also large increases in enforcement, all for the same quantity of fish. Failure to monitor the economic progress of the catch-share system is not only bad public policy, it flouts the intent of Congress because taking an account of economic and social impacts is required by National Standard 8 of the Magnuson-Stevens Act.

In looking at the costs of management, we need to factor in the costs of gross under-fishing. Regulations promulgated by the agency under the catch-share system do not account for the mixed-species nature of the fishery and have resulted in hundreds of millions of dollars in waste. Instead of landing 95,000 tons of fish last year, as deemed possible by NOAA's scientists, regulations caused the catch to amount to only 33,000 tons. This is a waste of 62,000 tons of fish, which has a value of $200 million at the dock and $800 million by the time it reaches the consumer. So catch-share implementation has not only flouted the intent of Congress with respect to National Standard 8, it has also flouted the intent of Congress with respect to National Standard 1, which says that fisheries management shall produce optimum yield.

These are only a few examples drawn from many, a whole tapestry of issues and problems. But they do suggest that we could do

[1] The prepared statement of Mr. Rothschild appears in the appendix on page 98.

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a better job of handling money. We could also implement programs that are more consonant with the intent of Congress.

To do this, and this is what we need to do moving forward, we need a blueprint. We need a time-phased action plan focused on addressing shortfalls in fishery management. This plan needs to be developed with the buy-in of those that are most affected, the fishing industry. In my written testimony, I outline the issues in much more detail and make suggestions for, one, an ad hoc Fishery Management Commission to facilitate the action plan, and two, a National Fisheries Board to reinstitutionalize accountability in the agency, which other witnesses have pointed out has been going on for a long time.

Thank you very much.

Senator CARPER. Gentlemen, thank you all very much.

Senator Brown may have a question or two. Please proceed.

Senator BROWN. Thank you, Mr. Chairman.

Mr. Yacubian, thanks for your story. Actually, I was disturbed by the Dan Rather report and hearing what happened to you. I note your son is here. He is an Afghanistan and Iraq veteran, is that true?

Mr. YACUBIAN. Yes, sir.

Senator BROWN. Well, thank you for that service and thanks for coming.

Based on some of your testimony, you criticized but you also praised and you indicated that certain things are being done. In your estimation, are the actions that have been taken in the last year, are they leading you to have some hope for the changes and reestablishing that trust between the fishermen and the governmental agency?

Mr. YACUBIAN. Yes, Senator. I was in Washington in September and I met with Secretary Locke and he said to me, "I was not here when this was going on," but, he said, "it will end on my watch," and I believed him, and I think there have been some stops and starts, but I think they have made a good effort to do this. And I never thought that I would get a personal letter from Secretary Locke and——

Senator BROWN. And a check.

Mr. YACUBIAN. And a check. And a lot of people think that was a big check, but that check did not even——

Senator BROWN. It did not cover the attorneys' fees and all the other stuff. Right.

Mr. YACUBIAN. But it bothers me that the people who were described by Special Master Swartwood, who is a truly amazing man, that there were a lot of things done that were not correct.

Senator BROWN. Right.

Mr. YACUBIAN. They are still working today.

Senator BROWN. Yes.

Mr. YACUBIAN. Their positions may have been changed, but they are still there.

Senator BROWN. Just so you know, we are aware of that. That is another committee and another hearing. We are addressing that. We will talk offline.

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But, Mr. Ciulla, I know we have met and we have spoken. I visited your facility. In the last year only, have you noted some positive steps to resolving these issues?

Mr. CIULLA. There have been steps. They appear to be positive.

Senator BROWN. And, Mr. Chairman, just for the record, I will have questions. I know we are under some time and pressure. I have some questions I will be directing directly to the panel and I would hope that you will take the time to answer them because they are very helpful.

Mr. Ouellette, with the number of fishermen and vessels decreasing in New England—you noted that in your testimony—and the administrative burden of compliance with the government's new regulatory scheme increasing, would it be a better use of the AFF funds to direct some of these funds toward alleviating the cost of compliance for fishermen, for example, directing some AFF funds toward aiding with the cost of at-sea observers or shoreside monitoring? The reason I ask is that I have a piece of legislation I am working on. You heard Congressman Tierney noting very similar pieces of legislation, because you also noted that is going to be borne by the fishermen fairly soon. What are your thoughts on that?

Mr. OUELLETTE. Yes, Senator. Obviously, as the regulatory burden has increased, fishermen have had more difficulty complying. There has really been little outreach or attempt to help people stay in compliance, and certainly costs of compliance have gone up with things like observer costs. So it would seem quite appropriate to take money that is being assessed against fishermen who commit more serious violations and use it to help the honest people avoid making honest mistakes with often crippling results.

Senator BROWN. Is there an opportunity—I know in some agencies in years past, if you had a problem, you had a question, you say, "hey, excuse me," call them up, have them come down to the boat, have them work on things together. Is that the attitude now after we brought it to everybody's attention? Is that happening or not?

Mr. OUELLETTE. The short answer is the agency—and I am critical of the agency on many levels, but I have to say that the standard people who answer the phone and try to deal with these issues and work in the permit office and interact with fishermen do try their hardest to get the job done, and I do not mean to be overtly critical of everybody within the agency.

But in terms of getting somebody to come down and assist you on a routine matter on a boat, most fishermen are still reluctant to do it because the agency has, over the last 15 years, changed. In 1994, if you had a problem, law enforcement would come down and then an agent would look at it and say, "Geez, you made a mistake here. You had better do this and correct it."

Today, the fear—at least last year and probably today, the fear is that an agent will come down and look at you and say, "Yes, you are right. You have it wrong, and I am going to look through your log books and I am going have to charge you for every violation and we are going to send it up to the Office of General Counsel and you will see a half-million-dollar fine issued." So most fishermen are not out there—they are very reluctant to raise potential——

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Senator BROWN. Out of sight, out of mind——

Mr. OUELLETTE [continuing]. Concerns that may result in prosecutions, yes,

Senator BROWN. Dr. Rothschild, I note that we spoke earlier and we have met many times. You helped draft the Magnuson-Stevens Act. My question is, when you are talking about taxpayer dollars and the use of the money from the fund, was it your opinion when you helped write it that they were able to use—and you have noted some of the trips and all these things—was it your opinion when you wrote it so that they were able to do those sorts of things?

Mr. ROTHSCHILD. Well, I remember very clearly when we launched the implementation of the Act, Senator Magnuson was there and he said, "At last, we have a system where the folks in the fishing industry have some say in their future and the conservation of the fish." So I would say that, looking at this boat, it is probably headed on a different course. By the way, I always wanted to see a picture of the boat.

Senator BROWN. There it is. [Laughter.]

And as I noted, Mr. Chairman, I have other questions, and I know we have to get back to Washington, but I do have a question for Mr. Giacalone. As an active fisherman, could you describe for us in Washington your perspective on how the new regulations affect you? And the reason I ask that is because we are facing an enormous amount of national debt. Are we using the taxpayer dollars effectively and efficiently at this point, in your estimation?

Senator CARPER. And I am going to ask you just to summarize briefly, if you would, please. Thank you.

Mr. GIACALONE. Sure. I think if we could, as I said in the testimony, if we could figure out a way to relieve some of the limitations that appear to be either perceived or regulatory blocks that are keeping a lot of the funds that were committed to make this system work actually get to the private sector, which is where most of the new requirements were placed, if we were able to do that, then I think we could make excellent use of the funds. But right now, I would say not. I would say there has been an awful lot of money committed that is being parked in the agency for the agency to do new things, but not entirely different than what they have done before, and very little money going to the private sector, where they have an enormous new set of burdens to deal with—daily reporting now, then weekly reporting that needs to be submitted. Thank God, right now, they are not enforcing these things to the level that they were when, as Mr. Steve Ouellette had just talked about, because it is almost impossible right now for the complex set-up that was put in the new regulations, for everyone to be in strict compliance. So it is really sort of ironic that we knew we had these difficulties before and then we raised the bar exponentially higher.

Senator BROWN. Thank you.

Senator CARPER. I am going to ask Senator Brown if you would just give a short closing statement. I will do that, and then we will call it a day.

Senator BROWN. Thank you, and I have a whole host of other questions. I know that the time on your end, we went a little longer on the first panel, and as I said, we do need to get back.

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But I want to just thank IG Zinser for doing his job. It is a tough job. And it is good to see many of my friends and colleagues here, Mayor Kirk, Mayor Lang, Senator Tarr, Representative Ferrante, everybody doing a good job getting the word out outside the fishing community. It is very important to note what is going on so people can understand and not just have one opinion.

So your fight is our fight and I plan to be here as long as I am on this job, doing what we are doing to bring it to the attention so we can use those taxpayers' dollars wisely. As Senator Carper always says, we need to find a way to do it better. So I appreciate you all taking the time.

Senator, I want to thank you for your courtesy in holding this hearing and look forward to our many other hearings in the Senate.

Senator CARPER. All right. Thank you so much. Thanks again for inviting us to come and helping us put a spotlight on what has been a sad history, a sad past, one that is being addressed in ways that I am encouraged about, but is a work in progress.

I said at the beginning of our hearing that there were some who question whether or not we should be holding a hearing about a NOAA program, and I thought that was a pretty good question. My response was that the issue of financial mismanagement is one that is found throughout the Federal Government. Frankly, it is found throughout large organizations, businesses as well as governments, and all of us, and particularly those who are stewards and enjoy the trust of those that we represent, we have an obligation to try to do something about mismanagement of the finances for our country.

But I want to reiterate again that the point of this hearing has not been, as I said earlier, to adjudicate the laws of the ocean or describe what is right or wrong with how NOAA polices our fisheries. Those issues are the jurisdiction of the Senate Commerce Committee, and you have from this State, a very senior member of that committee who I think understands these issues far better than I ever will, and I believe I have heard from witnesses here and talked to others who suggest that he has not been quiet about trying to make sure that the right thing is done.

What we are concerned about is trying to ensure that the monies collected and spent by NOAA are managed effectively and in accordance with the law. And as I said earlier, it is not a hearing about fisheries management. This is a hearing about sound financial management.

The point that I sort of walk away from here—that was just a reminder, and Senator Brown and I both mentioned the word "trust" several times. In order for us—one of the reasons why we do not get more done in Washington these days is because of a lack of trust, across party lines, across the aisle. And to the extent that we can bridge those differences and rebuild the trust that used to be rather routine when Senator Kennedy was a pup down there and knew members—in fact, for decades, the kind of trust that existed, and we need to rebuild that.

There has been trust understandably missing here between the fishing community and NOAA for a number of years. Our witnesses have mentioned apologies made by the Secretary of Com-

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merce. To the extent that the Federal Government has not been diligent for years—for years—in making sure that we do the right thing in this regard, has been delinquent in not abiding by what I call the Cliff Notes of the New Testament—that is the Golden Rule, and treat other people the way we want to be treated—to the extent that we have not adhered to doing what is right and, frankly, treating other people the way that we want to be treated, I also would apologize on behalf of our colleagues in the Senate.

Having said that, you have somebody's attention, and not just anybody's attention. We are moving in the right direction. As a Federal Government, we are moving in the right direction. And the key is not to stop that movement. We want to continue to move in the right direction and to—we do not go away in our Subcommittee. We are not small—we are not large, rather, but we are pretty diligent. We are diligent and we are not going to go away on this, either.

My hope is, out of our efforts, our collective efforts, that sense of trust will be restored and not only will that be restored, but so can the fisheries which a lot of people depend on for their livelihood.

Thank you, and with that having been said, we will have 2 weeks that myself, Senator Brown, and other Members of our Subcommittee may offer additional questions of you, and we would just ask, if we do that, that you respond to those questions.

With that, thank you all for joining us and thank you for the hospitality at this hearing. Thank you.

[Whereupon, at 12:24 p.m., the Subcommittee was adjourned.]

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APPENDIX

FOR RELEASE: June 20, 2011
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U.S. SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

SUBCOMMITTEE ON FEDERAL FINANCIAL MANAGEMENT, GOVERNMENT INFORMATION, FEDERAL SERVICES, AND INTERNATIONAL SECURITY

HEARING: "How Is NOAA Managing Funds to Protect the Domestic Fishing Industry?"

WASHINGTON – Today, Sen. Tom Carper (D-Del.), Chairman of the Senate Subcommittee on Federal Financial Management, convened the field hearing, "How is NOAA Managing Funds to Protect the Domestic Industry." The field hearing was held at Faneuil Hall in Boston, Mass. For more information on the hearing, please click here. A copy of Sen. Carper's remarks, as prepared for delivery, follows:

"Let me begin by thanking everyone for joining us here this morning in this historic place. Specifically, I'd like to thank our Ranking Member, Senator Scott Brown, for suggesting that we hold this hearing here today.

"Our Subcommittee is small, but we've learned over time to maximize our effectiveness by partnering with the Office of Management and Budget (OMB), Government Accountability Office (GAO), Inspectors General throughout the federal government like Todd Zinser, who is here today, and with government watchdog groups across the country.

"For the past half-dozen years, this Subcommittee has been singularly focused on how we can achieve better results for less money, or at least better results for the same amount of money.

"Through the years, we've focused on issues like disposing of billions of dollars of surplus federal property, as well as eliminating $125 billon in improper federal payments and $400 billion of major weapons systems cost overruns. This hearing today continues that theme, albeit on a smaller scale. Our primary job on this Subcommittee is to try to ensure that taxpayer dollars are not wasted.

"There have been some who've wondered why the Federal Financial Management Subcommittee would be holding a hearing about a National Oceanic and Atmospheric Administration (NOAA) program. That's a good question. I've explained to them, though, that poor financial management is an unfortunate theme that runs throughout our federal government, and all of us have an obligation to do something about it.

"Let me note, however, that the point of this hearing is not to adjudicate the laws of the ocean or to discuss what is right or wrong with how NOAA polices our fisheries. Those issues are the jurisdiction of the U.S. Senate Commerce Committee.

"What we are concerned about is ensuring that the money collected and spent by NOAA is managed effectively and in accordance with the law. This isn't a hearing about fisheries management. This is a hearing about sound financial management.

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"At a time when we're facing a massive federal budget deficit and considering cuts across a broad range of federal programs, we need to look into every nook and cranny of every agency – large and small – to find ways to make the most out of our scarce resources. We need to move the federal government away from what I call a culture of spendthrift toward a culture of thrift.

"The money in NOAA's asset forfeiture fund is supposed to be used to protect our valuable natural resources and to support the fishing communities that are vital to this region and, frankly, to our nation. Our Subcommittee wants to help make sure that's what happens.

"In June 2009, Administrator of NOAA, Dr. Jane Lubchenco, first requested that the Office of Inspector General at the Commerce Department look into NOAA's enforcement activities and handling of asset forfeiture funds.

"Since that time, reports have been issued describing oversight and management of NOAA's National Marine Fisheries' asset forfeiture fund that too often has been abysmal. For example, until recently, NOAA did not know the balance in the fund. They had trouble tracking how much money was coming into and going out of the fund.

"The fund apparently was also being used to pay for things that it shouldn't have been used for. Cars were purchased when they should have been leased, for example. In addition, I understand that the Inspector General reported that NOAA actually purchased more cars than they had employees to drive them. These problems are long-standing. In fact, I'm told that this poor management goes back 15 years or more. And up until this past year, very little was done to set things right.

"In the past year, however, the Department of Commerce and NOAA have taken important steps to address the concerns raised by the Inspector General and by many within the fishing industry. The Department and NOAA appear to have finally gotten a handle on the fund's day-to-day management. Clear guidelines have been set for how the money contained in the fund may be spent. And more importantly, rules have been implemented making clear how funds are not to be spent.

"For example, I'm told that NOAA no longer allows monies in the fund to be spent on cars, boats or cell phones. In addition, any fund expenditure over $1,000 now has to be approved by the NOAA Comptroller. NOAA apparently is also working to 'right size' its vehicle fleet, a welcome example that could probably be followed in a number of other agencies across the federal government.

"The fund's balance and accounting methods are also more transparent. Last week, the independent audit firm Clifton Gunderson gave the Asset Forfeiture Fund an unqualified clean opinion. In the accounting world, that's the 'Good Housekeeping Seal of Approval.' In addition, the independent auditor also confirmed the fund's balance to be $7.5 million. All of this progress would likely not have happened without a chorus of complaints from citizens like those assembled here today.

"In fairness, this progress would not have been made without the request made two years ago by Dr. Lubchenco for an investigation by the Inspector General and without the tireless effort since that time by the Inspector General and his staff. I believe that NOAA also deserves credit for taking steps to address many of the problems that the Inspector General has identified.

"While a number of needed steps have been taken over the past year, the auditor also identified several other areas of concern that NOAA still needs to address. Specifically, the auditor believes that some problems remain with the way liabilities and expenditures are tracked from the fund.

"I know that Senator Brown has heard me say this many times before, but I want to say it again. Everything I do, I know I can do better. That's probably true for all of us, including NOAA. If it isn't perfect, we need to make it better, and I would strongly encourage NOAA to continue doing just that going forward.

"I understand that NOAA's recent budget submission makes proposals that might further improve the management and oversight of the fund. I want to hear more about that today and learn what we in Congress can do to help.

"Before I close I should note that the Department of Commerce has also made a commitment to get to the bottom of what may have gone wrong with the fund. Secretary Locke appointed a Special Master to examine cases identified by the Inspector General that may have been mishandled. Finding flaws in some of them, the Secretary has ordered that $650,000 be given back to the fishermen who were affected.

"In addition, I understand that Secretary Locke has opened up an additional window of time to ensure that any claims of possibly excessive penalties – going all the way back to 1994 – are reviewed by the Special Master. I believe that those cases are under consideration now.

"One could argue that previous Secretaries of Commerce should have taken these steps years ago. They didn't. I think Secretary Locke should be recognized for his commitment to right the wrongs of the past and to try to make them better.

"With that, I'll turn it over to our ranking member, Senator Brown and thank him again for inviting us to his home state of Massachusetts for this hearing today."

Opening Statement by Senator Scott P. Brown

June 20th, 2011

Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security

U.S. Senate Homeland Security & Governmental Affairs Committee

"How is NOAA Managing Funds to Protect the Domestic Fishing Industry?"
Field Hearing In Boston Massachusetts

Welcome everyone to Boston and thank you to my friend Mayor Menino for hosting us in such an historic venue. Also, I'd especially like to thank Chairman Carper, for graciously allowing me to hold this hearing in Boston this morning. I commend your true bipartisanship in Chairing this Subcommittee and commend its goals of attacking waste, fraud and abuse throughout the government. Protecting our national fish stocks from overfishing is a national imperative that requires good management backed by consensus science. Today, I will try to provide a voice to the many fishermen throughout New England and echo the voices of many other elected officials in this State, including Congressmen Barney Frank and John Tierney, Mayors Lang and Kirk, Senator Tarr, Representative Ferrante and the many others who have worked tirelessly in bringing attention to the plight of the New England fishermen and abuses at NOAA. Fishing is a centuries old Massachusetts tradition but more importantly it is

a homegrown, modern industry that employs thousands of hard working people who put food on America's tables. NOAA's history of overzealous enforcement in the New England fishery has come at the cost of fishermen's trust and their livelihood. Many tell me that NOAA regards them as criminals instead of a legitimate and valued regulated industry. While I again want to emphasize that our fishing regulations must be enforced, we must not forget that fishing is about catching fish, where 96% of violations are civil matters. The tone and tenor of enforcement must reflect this. Yet NOAA agents carry guns and 90% are criminal investigators. So we have a situation where armed criminal investigators are primarily enforcing non-criminal regulations – essentially issuing tickets. The Federal Aviation Administration (FAA), which regulates an industry where an error can lead to large-scale disaster, has zero criminal investigators. None. If they don't need them, I have to wonder why they are being used so prominently in the fishing industry.

It is clear to me that that some of the abuses we will hear about today were motivated by the perverse incentive to fill the coffers of the Asset Forfeiture Fund (AFF), which uses the proceeds from enforcement activities to fund further enforcement action. The AFF was treated like a "piggy bank" by NOAA's Office of Law Enforcement (OLE) and Office of

General Counsel for Enforcement and Litigation (GCEL), which had accounting practices that would have made Enron execs blush. In fact, a damning KPMG review found the fund to be in disarray, with no one at NOAA able to explain how it worked. Predictably, NOAA's law enforcement officers and attorneys went on a spending spree funded like a bounty on hard-working fishermen. For example, OLE purchased more vehicles (202) than it had enforcement staff (172) and a luxurious boat at a cost of $300,000, which CBS News says was used for fishing. There's some irony.

You would think that a fund like this would have tight supervision, but it was only about 16 months ago that the NOAA Comptroller was given control of this fund, which draws fines from many statutory sources established decades ago. Despite the unyielding exactness NOAA used in collecting these fines, they couldn't tell the Inspector General the balance of the AFF or even give a definition of the fund until last Thursday. So finally, after ignoring the problem for decades and only when facing intense Congressional scrutiny, was NOAA able to subject its AFF financial statements to an audit. Although this is progress, being able to produce a year's worth of accurate financial statements is an embarrassingly low threshold for the management of millions of dollars in fines paid by

fishermen over the years. The fact that NOAA's Washington leadership is celebrating the absolute bare minimum of financial transparency tells me just how out of touch they have become. It is incumbent upon NOAA to rebuild the trust of fishermen, to do that NOAA must account for the money paid by fishermen as fines and examine whether it was used properly.

But we must do more. I will follow up until we know who let the AFF slide into chaos. I will add for the record that I requested and gave NOAA ample time (3 weeks) to produce documents related to the AFF. Not a single page was produced until last Friday afternoon. I can't help but wonder whether NOAA would tolerate the same kind of behavior out of a Massachusetts fisherman.

NOAA's stonewalling of Congress is even more concerning given their history of making documents disappear. In November 2009, while facing litigation and an Inspector General review, NOAA's chief law enforcement official directed the shredding of 75-80% of files in his office, in violation of several rules and all common sense.

The Inspector General in a September 2010 report also confirmed nine complaints against NOAA involving "false information in an affidavit; entry into a facility for other than authorized purposes; excessive fines; and comparatively steep assessed penalties in the Northeast Region which

leverage settlement while deterring respondents from taking their cases to hearing."

This led Secretary Locke to appoint a distinguished retired federal judge as a Special Master to review select NOAA enforcement cases and make recommendations about the propriety of past penalties assessed against fishermen. In two cases, the Special Master found that NOAA had abused its power. In the case of Captain Yacubian, the Special Master found that NOAA lawyers had unduly pressured him by unfairly delaying the sale of his vessel and extracting an oppressive penalty. The Special Master inferred that this led to the sale of a family farm that had been in the family since the 1640s. The Special Master found in another case that NOAA imposed excessive fines and conducted selective enforcement on a family-owned fishing auction. The Administrative Law Judge (ALJ) in that case found that the NOAA lawyer's penalty was contrary to the interest of justice and would have essentially put the fishing auction out of business, depriving fishermen of a major market.

I am happy that Mr.Yacubian and Mr. Ciulla are here with us this morning to tell their stories.

The mismanagement of the AFF and the enforcement issues surrounding it are, I believe, symptomatic of a larger problem at NOAA.

This culture of criminalizing our New England fishermen and this adversarial relationship has gone on too long, and it must change. While I do want to acknowledge the Administrator for some of the actions she has taken, especially the long overdue revision to the penalty schedule, there is a lot of work left to be done. We can do better. We need to find a way to restore trust between our fishermen and NOAA.

That trust will be hard to rebuild until those federal employees at NOAA who intentionally and routinely breached the public trust are held accountable. I wish I could refer to them as former federal employees, but they remain employed -- collecting six-figure salaries. And there is the perception that the leadership at NOAA has protected them. We have a high-ranking NOAA official here today, Assistant Administrator Eric Schwaab. If you take nothing else back to your Washington headquarters, let it be this: members of the NOAA enforcement community who abused their prosecutorial authority or who violated the public's trust should not just be sanctioned, but should be removed. Just as those who violate our environmental laws should face consequences, those who break the public trust should pay a hefty price. No one is above the law.

The AFF may have been a good concept, but in practice it has been a disaster. It has been an incentive for abuse and the Inspector General has documented too many abuses for us to cover here today.

That is why I plan to introduce legislation to reform the AFF in order to ensure that it is used for legitimate enforcement and to alleviate some of the costly burden of fishery regulations and compliance. Finally, NOAA should immediately follow the recommendation of outside investigators and appoint an ombudsman who reports directly to the Under Secretary.

It is important to keep in mind that these regulations and enforcement actions have real effects on an industry that is feeling the bite of smaller catches and a miserable national economy. Today, these forces are squeezing out more fishermen and forcing a consolidation that threatens the economies of Gloucester and New Bedford and other ports throughout Massachusetts and New England. We must decide whether the economic life of the New England fisherman is worth saving. I think it is. I am happy to work in a bipartisan manner with those who want to examine ways to help our New England fishermen..

I want to again thank the distinguished chairman for holding this hearing. You are right on the money about "changing the culture in Washington". Let me also thank the witnesses for taking time to appear

here today. With both NOAA's DC leadership and the New England fishing community here today, I think this is an excellent opportunity -to begin to address the long-standing distrust between the parties. Hopefully, this hearing will mark the beginning of a -cooperative relationship that can both protect this important natural resource while promoting a vital Massachusetts industry.

Congressman John Tierney
U.S. Homeland Security and Government Affairs Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security

Remarks as Prepared for Delivery
June 20, 2011

Thank you Chairman Carper and Ranking Member Brown for the opportunity to testify at today's hearing.

I see some familiar faces from the Congressional hearing we held in Gloucester a little more than one year ago.

Notably absent, however, is Dr. Jane Lubchenco, the head of the National Oceanic and Atmospheric Administration (NOAA). It is telling that, given the topic of this hearing and the request for her to testify, she is not here. It shows a lack of interest and investment in the issue at hand and leads me to continue to question if she is right person to lead NOAA in a new direction and find solutions to the outstanding issues at the agency.

Nevertheless, I appreciate everyone who is here taking the time to testify today in an effort to continue oversight over – and ensure accountability of – those responsible for protecting and supporting our fishing community.

I would particularly like to thank Mr. Zinser, the Commerce Department's Inspector General, who is testifying directly following this panel. He and his team have shown dedication to complete thorough investigations in order to ensure our fishing communities are treated fairly.

To that end, here we are, several months into a new fishing year – the second year that the majority of our community's fishermen are operating under the catch-share program – and the fishing industry continues to endure numerous challenges and economic hardships.

While individual fishermen are feeling a large brunt of these challenges times, the fishing industry includes many other related businesses – repair and maintenance, fuel for boats, ice to preserve the catch – just to name a few.

Three businesses located in my district come to mind.

First, the Gloucester Marine Railways - a Massachusetts shipyard that has served the fishing fleet of New England since before the Civil War.

The second, Cape Pond Ice Company - started as Gloucester Co. in 1848 supplying the fresh fish industry with a reliable, volume source of ice, among other services.

These two businesses have described the primary reasons for their economic struggles as being extreme underfishing as a result of the overly prohibitive catch share limits and the consolidation of the fleet.

The railway, which once had 40 boats in the yard, has six today.

The ice plant in The Fort, which was once making 350 tons a day, cut capacity to 200 tons while selling an average of five tons a day to the boats.

The third is another business which has gone through economic hardship not only as a result of the over-regulation of the fish stocks, but also the overzealous action of the Office of Law Enforcement (OLE).

The Gloucester Seafood Display Auction, which provides buyers and sellers a fair venue to market, sell and buy product, has been forced to endure one of the worst overreaches of authority – as was recently confirmed by the Special Master appointed to review enforcement cases.

While I will leave it to the owner of the Display Auction, Mr. Ciulla, to expand on this during the third panel, the on-going challenge he has faced is just one example of how the fishing industry is effected by burdensome and confusing regulations, overzealous catch share limits, unfinished economic development assessments and on-going reparations for wrongdoings in enforcement cases.

The focus of this hearing is on how NOAA is managing funds to protect the domestic fishing industry. Specifically, the Asset Forfeiture Fund.

As most people in this room are well aware, the Department of Commerce Inspector General has issued several reports in the past 18 months that have highlighted common abuses and misuses of power, as well as rampant mismanagement throughout the agency, especially in the Office of Law Enforcement (OLE) in the Northeast region.

Specifically, the IG found "weak internal controls" over the Asset Forfeiture Fund – and Mr. Zinser thoroughly discussed this when he testified in Gloucester one year ago.

However, due to the lack of information available to the IG during the initial investigation, the agency issued a follow-up report last July specifically on the Asset Forfeiture Fund.

The findings showed that "NOAA has administered the Asset Forfeiture Fund in a manner that is neither transparent nor conducive to accountability, thus rendering it susceptible to both error and abuse."

While NOAA has taken some corrective action to address the findings of the report as it relates to the Asset Forfeiture Fund, I believe that lapses and potential conflicts of interest remain.

For example, under current NOAA policy, there is authority to use monies from the Asset Forfeiture Fund for the following purposes, among others: rewards of not less than 20% of the penalty collected or $20,000, whichever is the lesser amount, for information related to enforcement actions; expenditures directly related to specific investigations and enforcement

proceedings; and reimbursement to other Federal or State agencies for enforcement related services provided pursuant to an agreement entered into with NOAA.

In essence, the OLE can increase its own resources by affecting forfeitures and collecting assets and cash, depending on the aggressiveness of its enforcement.

At worst, this is an invitation for abuse. At best, it raises the issue of perception of conflict and a perverse incentive driving enforcement.

Given the history of abuses in this area, I question the advisability of allowing the Fund to be used for these purposes.

I introduced legislation last year, which would have prohibited the uses of Asset Forfeiture Fund monies for these purposes among others. However, NOAA continues to recognize the aforementioned uses as allowable.

I trust Mr. Schwaab, who is also testifying on the next panel, would be able to speak about how the agency's policy will appropriately address the errors and abuses cited in the July 2010 IG report and indicate whether he believes that codifying a policy on the allowable uses of the Asset Forfeiture Fund is a necessary step to ensuring no conflict of interest remains.

That is a step I am not afraid to take if it will ensure the end to misuse and abuse of the Asset Forfeiture Fund and lead to a better environment for our fishermen. We continue to review the Fund administration, rules and OLE practices and will act to eliminate problems.

Finally, one essential question that is left unanswered is how NOAA has used the funds since the report was released.

In August of 2010, NOAA confirmed a balance of $7.5 million in the Asset Forfeiture Fund. In March of 2011, NOAA initiated an independent audit which was just completed this past Thursday, June 16, 2011 by the accounting firm Clifton Gunderson, LLP.

NOAA has stated that "ensuring that the monies in the Asset Forfeiture Fund are properly accounted and used is essential to carrying out our duties as responsible managers of federal dollars."

It is imperative that we hold NOAA accountable for addressing the significant deficiency in internal control over financial reporting and the instance of reportable noncompliance with the selected provisions of laws and regulations cited in the audit.

As I indicated previously, the Asset Forfeiture Fund is just one of many issues on which we need action.

We need a renewed commitment from the Department of Commerce to improve economic conditions for our fishermen and treat them with the fairness they deserve.

I will keep fighting to ensure that this happens, and I appreciate this Subcommittee's commitment to the same.

Thank you Chairman Carper and Ranking Member Brown.

Testimony of

THE HONORABLE TODD J. ZINSER
INSPECTOR GENERAL

U.S. DEPARTMENT OF COMMERCE

before a field hearing of the

Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security
United States Senate

Monday, June 20, 2011

How Is NOAA Managing Funds to Protect the Domestic Fishing Industry?

Chairman Carper, Ranking Member Brown, and Members of the Subcommittee:

We appreciate the opportunity to testify on the actions NOAA is taking to better manage funds to protect the domestic fishing industry. My testimony today will focus on NOAA's use of an asset forfeiture fund (AFF) authorized by the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to pay for investigation or enforcement activities related to the fishing industry. I will discuss our history of work related to the AFF and NOAA's enforcement activities, describe NOAA's efforts to correct these issues, explain our latest work, and offer further suggestions for strengthening NOAA's management of the AFF.

BACKGROUND ON FISHERIES ENFORCEMENT AND THE AFF

NOAA's Office for Law Enforcement (OLE) and the General Counsel for Enforcement and Litigation (GCEL) play a pivotal role in the enforcement of fishing regulations. In August 2009, when we performed our first review, OLE's headquarters and six divisions staffed almost 150 criminal investigators and 15 enforcement officers. The office's work is primarily civil and administrative in nature, focusing on the protection of the nation's fisheries and enforcing compliance with regulations. However, OLE also has authority to enforce over 37 statutes, including criminal provisions in certain statutes, as well as numerous treaties related to the conservation and protection of marine resources. GCEL is also a key part of fishery enforcement; its staff of approximately 17 attorneys, managers, and support personnel processes civil penalty cases, permit sanctions, and administrative forfeitures.

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At the time of our January 2010 report, 65 percent of OLE's cases were related to the MSA. The MSA gives NOAA the authority to retain and use proceeds from the civil and criminal penalties imposed and collected as part of its enforcement actions. Most violations of the act, such as exceeding catch limits, result in civil fines and penalties alone. NOAA is also permitted to use proceeds from assets (such as fish or vessels) that have been forfeited for violations of the MSA. These fines and other proceeds are deposited into the AFF. The fund primarily consists of monetary proceeds from MSA enforcement actions, but also includes proceeds from enforcement of select other marine resource laws, including provisions of the Lacey Act and the Endangered Species Act. The MSA provides that the agency may use these monies for, among other things, "any expenses directly related to investigations and civil or criminal enforcement proceedings, including any necessary expenses for equipment, training, travel, witnesses, and contracting services directly related to such investigations or proceedings."[1]

OIG's Reviews

Our examination of the AFF was part of a larger review of NOAA enforcement operations requested by Undersecretary Lubchenco in June 2009.With respect to the AFF, we investigated concerns raised by members of Congress and the fishing industry that in some cases NOAA was imposing excessive fines on members of the fishing industry—to such an extent that the fines seemed to constitute a form of bounty—because of the agency's ability to levy fines and penalties and then keep the proceeds to augment its budgets. Our work and the work of our contractor KPMG in examining the AFF revealed a significant lack of accountability and transparency—to the fishing industry, to the public, and even within NOAA itself.

In documenting our review of NOAA's enforcement program, we issued reports in January, July, and September 2010, and both the Secretary of Commerce and Dr. Lubchenco have taken action to correct the problems with the AFF and with NOAA's fishing enforcement practices in general. In response to our work, NOAA has proposed or implemented many corrective actions, particularly in the areas of enforcement leadership and management; policy, processes, and regulations; workforce structure and balance; and communications and outreach to the fishing industry. In my view, these actions represent real progress. While there is still more work to be done to implement the many reforms directed by the Secretary and Undersecretary, there is a commitment at the highest levels of the Department and NOAA to see these reforms through to the end. As noted below, we are equally committed to follow up and audit NOAA's implementation of our recommendations.

Examination of the AFF

Our initial report in January 2010 included our early findings regarding the fund, but we were limited in our ability to conduct a thorough review by several factors. First, despite OLE reporting a balance of $8.4 million for the AFF as of December 31, 2009, officials could not substantiate this figure; it was nearly impossible to isolate the monies comprising the AFF from

[1] As authorized by section 311(e)(1) of the MSA.

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other funds used by NOAA. Additionally, while the AFF's balance is included in the Department's overall annual financial statements, due to its relatively small size a separate audit of the fund—which might have illuminated some of the AFF's issues—had never been completed.

Due to the fact that the fund had not been audited, my concern that the AFF lacked sufficient internal controls, and the fact that we could not readily determine how NOAA had utilized the AFF, my office contracted an outside firm, KPMG, to perform a forensic review of the AFF. KPMG's main tasks were designed to give us a clearer understanding of AFF operations and internal controls. The firm's findings, which are detailed in our July 2010 report, reflected a marked lack of organizational attention to this important function:

- At that time, no single unit or individual within NOAA had a detailed understanding of the AFF and how it functioned. Moreover, it appeared that there had been no prior attempts made to define the fund and its uses. As a result, KPMG received multiple—sometimes conflicting—definitions of the fund.

- Decentralized operations resulting in inconsistent practices may have contributed to the confusion: OLE's regions and headquarters, along with GCEL headquarters, had different requirements for AFF-related document retention and preservation. Consequently, the same types of documentation were often not present from one division or region to another, and it was difficult to determine what constituted a "complete" set of supporting documentation. KPMG found that 62 percent of 604 transactions it selected for further analysis (i.e., document review) did not have required supporting documentation, and 27 percent did not have required approvals.

- KPMG's review also disclosed serious deficiencies in the fund's management processes and internal controls. For example, at that time nearly every OLE special agent and enforcement officer was issued a purchase card regardless of the individual's need for one. This practice was inconsistent with federal policies for managing purchase cards. KPMG also found evidence of attempts to circumvent single-purchase limits and competitive procurement procedures.

While KPMG performed its review, we focused on several high-risk AFF expenditure areas:

- We investigated OLE's acquisition and use of vehicles and vessels, finding that OLE used the AFF to purchase vehicles and vessels despite the fact that its policy at the time only explicitly authorized use of the fund to lease vehicles. For example, according to OLE, 200 vehicles were purchased—at a cost of about $4.6 million—predominantly with AFF monies. Additionally, the number of vehicles exceeded the number of OLE enforcement personnel on staff at the time by about 30.

- We assessed international travel practices by OLE and GCEL employees and discovered that neither office had policy guidance for using the AFF for travel not directly related to investigations or enforcement proceedings. Between January 2005 and June 2009, OLE and GCEL charged over $580,000 to the AFF for international travel. However, based on our review of NOAA travel records, only about 17 percent of this travel was directly

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related to specific investigations or enforcement proceedings; the remaining 83 percent went for training or attending meetings and workshops.

- We examined OLE's Special Operations Fund (SOF), which pays for the office's covert and undercover activities and operations, and determined that the SOF had similar problems that were identified with the AFF, including insufficient training for special agents on SOF policies and procedures, particularly for conducting and documenting special operations, and inconsistent methods for recording, approving, and supporting SOF deposits and expenditures.

Our findings are detailed in our July 2010 report. Since we issued that report, the Department and NOAA have worked to improve AFF practices.

NOAA'S CURRENT REFORM EFFORTS

In all, our findings have led to 28 recommendations to NOAA for improving the transparency and accountability of its enforcement programs and operations, including the AFF. According to NOAA, to date 17 of our recommendations have been implemented, with 11 yet to be finalized. However, only time will tell whether NOAA's reforms have been institutionalized. We are currently completing audit work to validate NOAA's assessments of the status of these recommendations.

Our 13 AFF-related recommendations suggested ways to improve NOAA's management of the fund, such as clearly defining the AFF, improving processes and controls, and centralizing expenditures (as explained in appendix A). In response, NOAA developed a corrective action plan that, if implemented correctly, should address our recommendations. NOAA has also made the following improvements based on the findings in our various reports on fisheries enforcement programs and operations:

- ***Leadership and Management.*** Appointments of NOAA General Counsel; Assistant General Counsel for Enforcement and Litigation; Assistant Administrator, National Marine Fisheries Service; Interim Director of OLE; and Acting Special Agent-in-Charge of OLE's Northeast Division. In addition, the senior GCEL attorney in the Northeast was reassigned away from enforcement duties to the Office of General Counsel for Natural Resources.

- ***Policy, Process, and Regulations.*** Requiring high-level review of all proposed charges for alleged violations and of all settlements by the General Counsel for NOAA; finalizing a rule to place the burden of justifying a particular civil penalty or sanction on NOAA rather than the respondent in cases before Administrative Law Judges; developing a new penalty policy, including a revision of the penalty and permit sanction schedules; creating or reviewing and revising NOAA law enforcement and general counsel operations manuals; providing explanatory notes to enforcement case files; tracking priorities; establishing a new case tracking database that links enforcement and legal case management systems; providing public access to information on charges brought and

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cases concluded; increasing management oversight of the AFF; and requiring justification and approval for any AFF expenditure greater than $1,000.

- ***Workforce Structure.*** Freezing the hiring of OLE criminal investigators until a workforce analysis is completed and approved by the Under Secretary that addresses the appropriate mix of criminal investigators and civil enforcement officers. It is our understanding that NOAA is close to completing its workforce analysis.

- ***Communications and Outreach.*** Developing a communications plan to provide greater outreach to fishermen and fishing communities, and other fisheries stakeholders; increasing communications with the Fishery Management Councils, especially in the Northeast; and holding a National Enforcement Summit with over 60 stakeholders, which was broadcast via the Internet and remains available on NOAA's website. As a result of our work, OLE has established a liaison with the fishing communities in the Northeast region. The office also contracted with an outside firm to conduct a regional assessment and review of the fishery management process in New England, which has included recommendations for NOAA to improve collaboration as well as simplify governance and communication.

- ***Special Master's Review.*** In line with a recommendation in our September 2010 report, the Secretary promptly appointed a Special Master to conduct an independent evaluation of cases we identified as being problematic. In May 2011, after reviewing the Special Master's April report, the Secretary announced that $649,527 in penalties would be remitted to 11 individuals or businesses after it was concluded that the NOAA enforcement program had in some instances "overstepped the bounds of propriety and fairness." Currently, the Special Master is examining approximately 80 additional complaints that were received during the application period; those that meet the criteria set forth by the Secretary will receive further analysis and evaluation.

OUR LATEST WORK

We are following up on our past work with a deeper examination of the AFF based on NOAA's action plan. With the understanding that some of NOAA's corrective actions—while technically completed—may still be untested, we will carry out the following reviews and investigations:

- We are currently examining the adequacy of NOAA's definition of AFF assets, including the completeness and accuracy of its funding sources. We are also determining whether NOAA has appropriately defined allowable uses of fund assets and developed controls over collections and disbursements. We began our review in March 2011 and expect to release the results of our work this fall.

- NOAA contracted with an outside accounting firm to audit the AFF's financial statements and certain OLE and GCEL micropurchase transactions occurring between FY 2005 and FY 2010. The micropurchase transaction audit is expected to cover purchase requests and credit card transactions that do not meet NOAA's $1,000 threshold for

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additional senior-level approval. As part of our review of NOAA's definition of the AFF, we are gaining an understanding of the contractor's audit approach to establish whether the approach was designed to provide reliance on the AFF cash balance as of March 31, 2011, and whether the firm is able to give an opinion on the statements.

- We are presently investigating the acquisition and use of a vessel purchased with AFF monies in OLE's Northwest Division; certain travel expenses charged to the AFF, including foreign travel; and the use of the AFF for contract services provided by a financial analyst and an associate.

Finally, we are also analyzing NOAA's progress in implementing the corrective actions planned in response to our January 2010 report. Our analysis will include a determination of whether NOAA is (a) implementing policies and procedures that increase the accountability and transparency of GCEL and OLE operations, (b) progressing on its workforce analysis, (c) establishing an outreach strategy that will improve communications with Fishery Management Councils and fisheries stakeholders, and (d) improving GCEL and OLE management information systems.

FURTHER ACTIONS TO IMPROVE THE AFF

NOAA issued its revised policy regarding prohibited and approved uses of the AFF in March 2011. The policy, which is available on the agency's website, acknowledges that NOAA continues to interpret the MSA to provide broad statutory authority for use of the AFF. NOAA states that its policy restricts uses of AFF monies short of what it believes is authorized by law as a means to guard against negative perceptions of its use of AFF proceeds; for example, the policy specifically prohibits the use of the AFF for any vehicle or vessel purchases or leases.

NOAA's new policy provides further guidance for travel and training expenses; however, ambiguities may still exist. For example, the policy further discusses which travel expenses are prohibited, but the MSA could be read as having a stricter standard. It would be helpful to further clarify how each of the approved travel expenses meets the MSA standard, particularly those expenses for international meetings and negotiations. Additionally, while the NOAA policy lists approved training expenses, it is not clear how some of these expenses meet the MSA requirement that expenses be "directly related" to investigations and enforcement proceedings. It is also unclear whether some of the approved training expenses include associated travel expenses or just the cost of the training course. A stronger definition of these expenses may be warranted.

The use of AFFs in the federal government is not widespread, but several federal agencies do have such funds in place to offset expenses associated with criminal investigations. These funds can be derived from civil judicial, administrative, or criminal forfeitures. In function and operation, NOAA's AFF is something of a misnomer; the fund predominantly represents civil penalties, and would be better termed as such.

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We conducted a general review of the policies and procedures of two major agencies—the Departments of Justice (DOJ) and Treasury—that use asset forfeiture funds as part of their law enforcement efforts. Our review of these policies and procedures, coupled with the recommendations in our July 2010 report, identified several best practices for managing such a fund:

- That the fund be maintained as a distinct entity with expert guidance on policy, operations, financial management, and law. A separate accounting of fund assets establishes an auditable control environment that will reduce the chance for misappropriation and abuse. It also requires a well-defined financial management structure for deposited and expended funds, bringing critical transparency to the AFF.

- That the fund be included in budget appropriations providing technical analyses of fund assets, as well as information on long-term status and estimated availability of NOAA's AFF resources.

- That standardized policies and procedures be established for vehicle and purchase card use and adherence to the policies be monitored though centralized reviews and approvals of AFF transactions and activities in these areas.

- That annual reports on the AFF, including audited financial statements and a strategic plan on investigative initiatives, be completed and made available via the agency's website.

It is clear that the AFF has been poorly managed in the past. However, if NOAA continues to show its commitment to improving the fund by implementing a rigorous process for operating it, putting robust management and strong internal controls in place, actively monitoring policies and procedures on a routine basis, and ensuring that these measures allow for transparency and accountability, Congress can have confidence that the AFF will be a valuable tool for enforcing fishing laws and regulations and ensuring equitable treatment for the many hard-working members of the industry who operate by the rules.

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In conclusion, Mr. Chairman, NOAA is working to ensure that the AFF is meeting its requirements and that the agency is effectively and fairly enforcing fishing laws. But proactive monitoring and investigation are still needed in order to prevent error and abuse and protect those who earn their living from America's marine territories.

This concludes my prepared statement, and I will be pleased to respond to any questions you or other subcommittee members may have.

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Appendix A: Recommendations from July 2010 OIG Report, NOAA's Corrective Actions, and Status of Reform Efforts

Recommendation from July 2010 Report	NOAA's Proposed Corrective Action	Status as of April 18, 2011, as Reported by NOAA
Precisely define the AFF and comprehensively audit it, initially and annually. A comprehensive audit should entail detailed transaction testing and additional data mining.	Develop AFF definition, contract for independent confirmation of balance and audit of AFF financial statements, and implement routine monitoring and oversight procedures.	Partially complete. Audit in progress.
Communicate the results of initial and annual audits of the AFF to NOAA and Department of Commerce senior leadership, as well as outside stakeholders (Congress, Office of Management and Budget, etc.).	Notify senior leadership and outside stakeholders of audit results.	Incomplete. Audit report due mid-June 2011.
Specifically identify and account for the AFF in NOAA's annual budget submissions.	Include AFF budget information in congressional justification and NOAA budget summary.	Complete.
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.	Determine the budget and spending processes at Justice and Treasury, develop internal budget process based on best practices, enter AFF budget operating plan into Commerce systems, and produce monthly reports.	Complete.
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 unauthorized expenditures of AFF monies.	Prepare legal memorandum on applicable MSA provisions and develop formal policy on authorized/unauthorized uses of the fund and splitting costs between AFF and appropriated funds.	Complete.
Take steps to greater centralize AFF approval processes for expenditures.	Formalize the new expenditure approval process through a centralized office.	Complete.

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Recommendation from July 2010 Report	NOAA's Proposed Corrective Action	Status as of April 18, 2011, as Reported by NOAA
Ensure that approved AFF expenditure transactions have required electronic/hard-copy supporting documentation (a recurring KPMG finding).	Review and communicate document retention policies, and implement procedures to ensure compliance.	Complete.
Develop improved processes to (a) clearly identify and track AFF monies received and expended, and (b) ensure that AFF funds are not commingled.	Design and deploy an approach for recording, tracking, and reporting all AFF financial transactions through a single fund code.	Complete.
Implement more stringent internal reviews for split purchase card transactions (i.e., those involving the same credit card holder, date, vendor, and the same or different amounts) and duplicate purchase transactions.	Review KPMG data set, provide split purchase findings to management for action, and educate cardholders and approving officials of credit card guidelines and responsibilities.	Complete.
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.	Develop guidance on leasing vs. purchasing vehicles, update existing policies, and identify/address excess vehicle inventory.	Complete.
Establish formal policy for which OLE personnel should be authorized use of daily take-home vehicles; and review and determine the number of "pool" vehicles per locale based on justified need.	Revise policy on authorized use of government vehicles, implement procedures to ensure compliance, and determine appropriate vehicle inventory level.	Complete.
Review and set policy for which OLE personnel should be authorized use of purchase cards, based on operational need. Presently, nearly every OLE special agent and enforcement officer is issued a purchase card. This is not consistent with current government-wide policy for internal controls to limit the risk of misuse of purchase cards.	Review the number of purchase cardholders and activity levels, and reduce to appropriate level.	Complete.

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Recommendation from July 2010 Report	NOAA's Proposed Corrective Action	Status as of April 18, 2011, as Reported by NOAA
Determine whether NOAA's inability to adequately track AFF expenditures constitutes a violation of any federal financial management law or standard. MSA requires that fines and penalties imposed for violations of the Northeast Multispecies Fishery Management Plan are to be specifically used to enforce that plan, but NOAA has not tracked the use of these funds. The then-Director was unfamiliar with this requirement when we initially addressed it with him.	Prepare legal memorandum that addresses whether NOAA's use of AFF, subsequent to January 1, 2005, gave rise to violations of laws/standards.	Partially complete. Review fund activity in progress.

Source: OIG summary of NOAA's corrective action plan, updated April 18, 2011

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TESTIMONY OF
ERIC C. SCHWAAB
ASSISTANT ADMINISTRATOR FOR FISHERIES
NATIONAL MARINE FISHERIES SERVICE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE

ON

HOW IS NOAA MANAGING FUNDS TO PROTECT THE DOMESTIC FISHING INDUSTRY?

BEFORE THE
SUBCOMMITTEE ON FEDERAL FINANCIAL MANAGEMENT
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENT AFFAIRS
U.S. SENATE

BOSTON, MA

JUNE 20, 2011

Thank you Mr. Chairman and members of the Subcommittee for the opportunity to testify today on the National Oceanic and Atmospheric Administration's (NOAA) actions to improve its enforcement program and how NOAA is managing funds to support the domestic fishing industry. My name is Eric Schwaab, and I am NOAA's Assistant Administrator for Fisheries and Director of the National Marine Fisheries Service (NOAA's Fisheries Service or NMFS).

The fishing industry is an important part of the Nation's culture and economy. Gloucester is America's oldest seaport and New Bedford and other towns along the Massachusetts and New England coasts have fishing industries that have supported families, businesses and communities for hundreds of years. Making sure that there are enough fish to continue those fishing industries is part of NOAA's job. Another part of NOAA's job is to make sure that fishermen have a level playing field to make sure that their businesses aren't compromised by others who choose to violate the rules and the resource isn't compromised by illegal fishing. I meet regularly with fishermen and I hear from all of them that they want that level playing field and regulations that are easy to understand and fairly enforced. They also want to know that if others break the rules, they will be caught.

I. Improvements Made in NOAA's enforcement program

In June 2009, after hearing concerns from fishermen, businesses and elected officials, Dr. Lubchenco asked the Department of Commerce Inspector General to conduct a national review of NOAA's enforcement program. Based on that review and other findings, Secretary of Commerce Gary Locke and Dr. Lubchenco instituted sweeping changes in NOAA's enforcement program, including:

- New enforcement leadership at headquarters and in the New England regional office.

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- Transfer of authority to issue charges and settle cases from the field staff to supervisors in headquarters.
- A new, more transparent penalty policy that ensures consistency in charging decisions nationwide and provides greater clarity for fishermen and businesses.
- Revised regulations that now place the burden on NOAA, rather than a fishermen or business, to justify its proposed penalty and permit sanctions in hearings before Administrative Law Judges.
- A new Asset Forfeiture Fund (AFF or Fund) Use Policy that greatly restricts the Fund's uses to ensure that there is no conflict of interest, real or perceived, with its use.

In addition, after requests from fishermen and elected officials, the Department of Commerce hired a Special Master to review past cases. On May 17, 2011, the Secretary of Commerce announced the remittance of $650,000 in penalties to 11 fishermen and businesses in cases reviewed by the Special Master. The Special Master currently is reviewing additional cases to address any other past issues.

We conducted an initial review of our current workforce and enforcement needs to determine the most effective balance of special agents and enforcement officers. Based on this review, we are reshaping our enforcement workforce by increasing the number of enforcement officers to emphasize compliance, problem solving, and communication. This action will increase our dockside presence and enhance our enforcement partnerships with the states. We are beginning this effort in New England with eight new enforcement officers being hired in the near term and we plan to expand our efforts nationally in the coming year.

We held a national enforcement summit to hear from our constituents – the fishing industry, environmental community, federal agencies, and other stakeholders – on needed improvements. Compliance through better communication was a theme at the summit and we are acting on it. We are stressing compliance assistance as a balance to our deterrence efforts – we must work better with our stakeholders to ensure everyone understands how to comply with our regulations. Earlier this year, we hired a former commercial fisherman here in New England to serve as our first formal compliance liaison in the country. He will work directly with the fishing industry in a non-enforcement capacity to improve communications and ensure all can comply with needed conservation measures. As we implement new regulations, compliance workshops such as ones held recently along the east and west coasts will help ensure the fishing industry is well versed in any new requirements.

This Administration conducted a top-to-bottom review of NOAA's enforcement program and instituted sweeping reforms to ensure the program is fair and effective. Clarifying policies, establishing new procedures, focusing on compliance, and ensuring strict programmatic oversight will allow our enforcement program employees to effectively enforce our laws with the trust of our stakeholders and without the appearance of a conflict of interest associated with funding. I strongly support our enforcement personnel and their mission – without them, we cannot ensure a level playing field for all fishermen or a future that includes truly sustainable fisheries Attached to my testimony is a detailed timeline of the enforcement reforms.

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The remainder of my testimony will focus on the financial oversight aspects of our enforcement program and the questions asked in the hearing invitation letter.

II. Improvements to NOAA's Management of the Asset Forfeiture Fund

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes the Secretary of Commerce to pay certain enforcement-related expenses from fines, penalties, and proceeds from sale of property forfeitures. These fines, penalties, and proceeds can come from violations associated with the Magnuson-Stevens Act or other marine resource laws and are deposited into NOAA enforcement accounts referred to as the Asset Forfeiture Fund (AFF). As authorized by section 311(e)(1) of the Magnuson-Stevens Act, there is broad statutory authority for the Fund's use. In the past, NOAA used these funds for expenditures such as storage costs of seized fish or property, rewards, and expenses directly related to investigations and civil or criminal enforcement proceedings. Such expenditures included: vehicles, vessels, training, and travel, among others. NOAA never used the AFF for employee salaries, benefits, or cash awards.

In July 2010, the OIG issued its *"Review of NOAA Fisheries Enforcement Asset Forfeiture Fund"* based on a report by the public accounting and auditing firm KPMG. In this review, the OIG made 13 recommendations to improve oversight of the AFF. NOAA developed a comprehensive corrective action plan in response to the review. Among other items, the corrective action plan included developing a formal interpretation of the statutory language, establishing a formal policy on the authorized and unauthorized uses, and auditing the AFF by an independent certified public accounting (CPA) firm. Each of these three key items has now been completed.

1. **The current balance of the asset forfeiture fund**

Since the issuance of the OIG's July 2010 report, NOAA has made significant improvements in the AFF's financial management.

For FY 2011, NOAA developed an annual operating budget for the AFF, and NOAA's Chief Financial Officer (CFO) must approve modifications to that budget. Each month NMFS's Office of Management and Budget, Office of Law Enforcement (OLE) and General Counsel for Enforcement and Litigation (GCEL) conduct a review to ensure that all expenses of $1,000 or more receive approval and collections received have been properly recorded. NOAA also identified and accounted for the AFF in its FY 2012 annual budget request.

Another key element of NOAA's corrective action plan was the commitment to conduct an independent financial audit of the AFF. The first step in that process was the completion of an independent review and confirmation of the AFF overall balance at $8.7 million as of March 31, 2010. The confirmation of the AFF fund balance, which an independent CPA firm completed in August 2010, provided additional confidence in our accounting of the AFF and serves as the beginning balance on the audited financial statements for 2011 and beyond.

The next step in that process was the independent financial audit of the AFF financial statements as of March 31, 2011. The audit's purpose is to determine if the Fund's internal controls,

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processes, guidelines and policies are adequate and effective and its financial records are in adherence with generally accepted accounting principles. I am pleased to announce that the AFF received an unqualified ("clean") opinion on its financial statements as of March 31, 2011 by an independent CPA firm. In issuing their clean opinion on the financial statements, the auditors confirmed the AFF overall balance at $7.5 million as of March 31, 2011. The auditors are further providing reasonable assurance that the statements are free from material misstatement, and present fairly the assets, liabilities, net position, and balance of the AFF.

As of June 1, 2011, the AFF's overall balance was $6.2 million. Outstanding obligations to the fund of $2.3 million leave a remaining balance of $3.9 million available for new obligations.

2. **The Fund was used for Appropriate Purposes**

Although the OIG did not identify any specific "misuse" of the AFF in the January 2010 or the July 2010 reports, it did recommend more accountability to minimize errors and opportunities for abuse. NOAA also recognized that some of the expenditures are more appropriate to fund from the program's base appropriations.

As noted above, the Magnuson-Stevens Act authorizes the Secretary of Commerce to pay certain enforcement-related expenses from fines, penalties, and proceeds from sale of property forfeitures collected for violations of the Magnuson-Stevens Act or other marine resource laws. As part of the corrective action plan, NOAA committed to developing a formal interpretation of the statutory language. The "*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*, released by DOC and NOAA General Counsels in February 2011, indicated that the statutorily allowed uses of the AFF are broad and there were no instances of specific misuse of the AFF. The Inspector General also reached the same conclusion.

However, NOAA took immediate action in response to concerns relative to the AFF raised in the January 2010 OIG report. Beginning in February 2010, the NOAA Comptroller began reviewing and approving all new obligations of $1,000 or more to the AFF. These transactions were reviewed to ensure the appropriate use of the AFF and to gain assurance that documentation supported the obligation of funds. The approval of an obligation indicates that the Fund's use is appropriate and that sufficient supporting documentation is being maintained.

After ten months of routine monitoring (February 2010 to December 2010) of the AFF by the NOAA Comptroller, there was no evidence of misuse. Thus, the NOAA Chief Financial Officer (CFO) determined in December 2010 that the NMFS Office of Management and Budget was the appropriate office within NOAA to approve AFF obligations of $1,000 or more. Transferring the approval process to NMFS enabled the annual budget planning and execution to be handled in a more streamlined manner and consistently with the review of NMFS and GCEL appropriated funding.

Effective February 1, 2011, the transition of management and oversight of the AFF to the NMFS' Office of Management and Budget took place. The existing threshold of $1,000 or more for obligations requiring approval remains. The NOAA CFO's Office now routinely conducts

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reviews of the AFF obligation approval process, and samples expenditure transactions of $1,000 or more to ensure the Fund is used appropriately.

The OIG raised concerns with policies for the AFF's use and several groups of expenditures. In response to these concerns, in March 2011, NOAA finalized a new policy to control future AFF expenditures. This is discussed in more detail in the next section of the testimony.

The OIG also recommended NOAA establish formal policies for vehicle acquisition, management, and allocation. In response, OLE implemented new vehicle management procedures. The office has reduced the number of vehicles by 30. At present, 145 cars are used by enforcement personnel across OLE's 60 locations nationwide, 12 are allocated as motor pool or common use vehicles (at 8 locations), 13 are used for special purposes (e.g., for towing vessels or undercover operations), and 13 are being held pending decisions relative to 36 currently vacant enforcement positions. The OLE also modified previous "home-to-work" authorization policies requiring specific justification for employees to bring government vehicles home. Application of the new policy reduced previous "home to work" authorization for employees in the Silver Spring, Maryland headquarters office.

The OIG also raised some concerns with purchase card expenditures from the AFF. In all cases, items purchased with purchase cards were for business related purposes, and the OIG did not note any inappropriate items purchased or any abuse of the purchase cards. However, the OIG noted a number of instances of lack of proper approval, inadequate documentation, or incorrect interpretation of use of the cards. OLE reduced the number of purchase cardholders to the minimum number required to support normal operations and retain capability to respond to emergencies. OLE implemented a policy through which no more than two staff currently have purchase cards at any one of OLE's 60 field offices unless its location and work assignments require additional staff to have cards. As a result of this new policy, NOAA reduced the number of cards by 38 percent (70 cards), and only 110 OLE employees currently hold purchase cards. Additionally, employees who had not followed appropriate policies received additional training to ensure all appropriate processes are complied with in the future.

Given concerns about potential past inappropriate use of the AFF, NOAA contracted with the same CPA firm, separately from the audit described above, to perform additional procedures to test AFF transactions more susceptible to fraud, waste, and/or abuse. The CPA firm is directly testing purchase card transactions, travel vouchers, and other disbursements ranging from $150 to $3,000 for the fiscal years 2005 through 2010. These transactions are being tested to obtain sufficient and appropriate evidence to ensure proper authorization, documentation, and appropriate use in accordance with applicable laws, regulations, and policies existed for those transactions when processed. The agreed-upon procedures were designed to address concerns raised by the OIG in these areas while avoiding duplication of the previous efforts of the OIG. This special transaction review is scheduled to be issued July 15, 2011. Should this review find any misuse of the AFF, the agency will take appropriate action.

3. NOAA's ability to retain enforcement proceeds is not an incentive for overzealous enforcement

We do not believe that use of the AFF is an incentive for overzealous enforcement. In fact, the AFF's balance has decreased by over 40% since fiscal year 2007 as a result of relatively stable

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annual spending and reduced collection of fines, penalties, and proceeds from the sale of forfeited property. The use of proceeds from fines, penalties and the sale of property forfeited as a result of illegal acts is a well established practice within Federal, State, and local governments. The imposition of fines and penalties and the forfeiture of property is controlled and governed by legal processes developed to ensure due process. However, NOAA recognizes that strict oversight of the AFF is an essential component of ensuring the public's trust in our enforcement program. Therefore, following the OIG reports, NOAA developed a new, comprehensive policy to guide its AFF expenditures. In September 2010, NOAA released the policy for public comment while NOAA offices were instructed to operate under the proposed policy until further notice.

NOAA issued a final AFF policy on March 16, 2011. The final policy prohibits half of the AFF's historical uses, including the purchase of vehicles and vessels. While the legal opinion on the AFF states that section 311(e)(1) could be read as authorizing purchase or lease of vehicles or boats for investigative or enforcement purposes, NOAA's new AFF policy prohibits the use of the AFF for the purchase or lease of any vehicles or boats to address any appearances of impropriety. With regard to travel, the new AFF policy reduces the amount and scope of allowed travel significantly. The new policy prohibits travel to and attendance at general conferences or seminars – domestic or international. Also prohibited is travel not directly related to a specific investigation. Travel directly related to specific investigations and enforcement proceedings such as to hearings or depositions are allowed. Attendance at international and domestic bi- or multi-lateral meetings and negotiations to discuss enforcement issues is allowed as these activities are critical to meeting NOAA's international obligations and directly support domestic fishermen by helping create a level international playing field. The policy also expands AFF use for NOAA's compliance assistance, collaboration and outreach activities. Overall, the policy provides guidance on the prohibited and approved uses of the AFF that are consistent with, but narrower than, those authorized under applicable legal authorities and ensures there is not even the appearance of a conflict of interest with the use of the AFF.

NOAA believes, as did Congress in establishing the AFF and specifying the authorized 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 the Nation's fishery 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.

4. How NOAA Fisheries is handling money to assist New England fishermen transition to a new catch share fishery management system

Amendment 16 to the Northeast Multispecies Fishery Management Plan brought the New England groundfish fishery into compliance with the 2006 Magnuson-Stevens Act by setting annual catch limits at levels to end overfishing and rebuild stocks by the required deadlines. Amendment 16, which began on May 1, 2010, also put new rules in place to allow fishermen to organize into "sectors" (a type of catch share program) that are allocated a share of the annual quota for each species of fish. The sector management approach, which was developed by the New England Fishery Management Council with significant public input over a 3 year period, is showing signs of success. For many years, the New England groundfish fishery has been under

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performing both ecologically and economically with not enough fish to support good fishing jobs. Under the sector approach, which provides fishermen with greater flexibility about where and when to fish, despite lower catch limits fishermen overall are making more money than in recent years. In 2011, catch levels have gone up for 12 groundfish stocks as part of the rebuilding process.

During this transition to sector management in fiscal years (FY) 2009 and 2010, a total of over $47 million was invested for the New England groundfish fishery to offset start-up costs of groundfish sectors, to conduct at-sea research with the industry focused on developing more selective gear for this fishery, and to develop permit banks that will provide additional fishing opportunities to small-scale participants in the groundfish fishery. See attached table that outlines how this funding has been allocated.

The funding can be separated into three general categories—direct industry support, innovation, and agency costs.

To support the industry during this transition period, funding has been provided through grants and cooperative agreements to, among other things, hire sector managers, conduct the legally required environmental analyses, hire dock-side and at-sea monitors, and hold workshops and training on catch accounting and data protocols. These funds have assisted the fishing industry as it adjusts to this new management system and the lower catch limits required by the Magnuson-Stevens Act. NOAA currently pays for the required 30 percent at-sea monitoring coverage. This monitoring helps ensure accurate catch accounting and allows NOAA to make regulatory changes as quota is used up. As the fishery rebuilds and becomes more profitable, many of these costs will be assumed by the industry. NOAA has also allocated a total of $6 million for state permit banks in Maine, New Hampshire, Massachusetts and Rhode Island which will provide additional fishing opportunities to small-scale participants in the groundfish fishery by providing access to quota at a discounted rate.

Funding has also been used for innovations to improve overall groundfish management performance. This includes electronic reporting and monitoring systems for fishing vessels. Agency staff has worked with industry and independent developers to build several electronic reporting applications for use on board fishing vessels. NMFS anticipates that this system will be available to interested fishermen this summer. Electronic reporting by fishing vessels will substantially improve the timeliness of fishing reports and the quality of the data being provided. Funding has also been provided for grants for cooperative research with the fishing industry to develop more selective gear and fishing methods. The intent of this research is to reduce the bycatch of the more vulnerable stocks, often referred to as "choke species," while enabling the fishing industry to fully utilize quotas for healthy groundfish stocks, such as haddock.

Finally, funding has been used to improve our internal agency systems. Funding has improved fishery dependent data collection systems, quality control on historic catch data, and quota accounting. Funds have also been used for economic and social science data collection and analysis to ensure a better understanding of the impact of the sector program on participants so improvements can be made if necessary. The agency has also embarked on a new way of engaging with and serving the industry. Funds have supported dozens of meetings between

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NMFS and industry, as well as printed materials supporting an understanding of, and compliance with, the new management system.

III. Conclusion

Fishermen—commercial and recreational—are the lifeblood of so many of our coastal communities. And America's fishermen, these small businessmen, support vital jobs in our coastal communities. An effective enforcement program ultimately protects the business interests of fishermen as well as the marine environment. I believe the reforms this Administration has made to NOAA's enforcement programs are creating a more effective and transparent enforcement program and will help us rebuild the trust of the fishing community and other stakeholders.

Thank you Mr. Chairman. I would be happy to answer any questions you may have.

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TESTIMONY OF LAWRENCE MARTIN YACUBIAN

BEFORE THE SENATE HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE

SUBCOMMITTEE ON FEDERAL FINANCIAL MANAGEMENT, GOVERNMENT INFORMATION, FEDERAL SERVICES, AND INTERNATIONAL SECURITY

THOMAS CARPER OF DELAWARE, CHAIRMAN

SCOTT BROWN OF MASSACHUSETTS, RANKING MEMBER

MONDAY JUNE 20, 2011 • FANEUIL HALL, BOSTON

I understand it is customary to begin testimony by saying thank you to the Committee for the opportunity to be here.

Of course, considering ***why*** I am here, if I could re-write history, none of this would ever have happened. To be honest, I'd rather be out scalloping today.

But these things ***did*** happen. And I ***am*** here.

Chairman Carper, I thank you for agreeing to hold this hearing.

Senator Brown, thank you for your unwavering focus on our state's fisheries. Your predecessor, the late Senator Ted Kennedy, was a true friend of the fisherman. Your actions since your election to the Senate have upheld that legacy with honor. Thank you.

I also thank Commerce Department Inspector General Todd Zinser, and his staff, for undertaking the investigation, which exposed this corruption.

I thank Commerce Secretary Gary Locke for his promise that these problems will end on his watch.

And I further credit NOAA Assistant Administrator Eric Schwaab for releasing the highly-critical reports on fisheries management in the northeast, conducted by Preston Pate, and on science, conducted by Dr. Michael Sissenwine and Dr. Brian Rothschild, who is here with us today. But more has to be done.

During the darkest days of this long nightmare, I never imagined that one day I'd have the chance to sit face-to-face with a Cabinet member, and tell him how his Department had wronged me. Thanks to Congressman Barney Frank, that happened.

I never thought the Secretary of Commerce and the Administrator of NOAA would return fines, and apologize to me. Thanks to Senator John Kerry, that happened.

I am forever indebted to the men and women of the U.S. Congress and Senate who put politics aside and worked as catalysts -- across state and party lines -- to exonerate the many in my industry who were also wronged by a misguided regulatory system.

I'm a proud American. Despite what I've been through, I still love this nation of ours. In 2004, on the very day when we sold the family farm in Massachusetts to pay the settlement, we boarded a plane to Virginia, where we saw our son Captain Lawrence G. Yacubian leave to serve in Afghanistan. He later served in Iraq, and was awarded a Bronze Star for Meritorious Service in Combat. It is still hard for me to accept that unsupervised federal employees, working in a rogue agency could be allowed to run amok in this nation that I love.

The first reason that I am here today is to question why National Marine Fisheries Service Attorneys and Judges have not been indicted. In fact, never mind indictments, none of them have even been fired. Apparently it's not possible to be fired from the civil service. Nearly every one of them is still working for the Federal Government, despite the findings of the Office of the Inspectors General Report and Special Master's Case Review that these federal employees operated with malicious ethics and biased prosecution.

When Special Master Swartwood reviewed my story, he discovered what I have known all along: that justice was impossible, and that the cards were stacked against me before my case began. The National Marine Fisheries Enforcement system within NOAA was rigged by its own financial self-interest; warped career ambitions, and misplaced motives.

There were none of the legal checks and balances that are granted by our nation's legal system. The system violated even the most basic conflict-of-interest standards. Judges and prosecutors were allowed to maintain eerily close in-house relationships, with little or no oversight during the prosecution of my case. It's difficult to feel you're having 'your day in court', when the prosecution and the judge hearing your case are literally allowed to go to lunch together while the court is in recess. It's difficult to feel you're getting justice when the judge has been appointed by the prosecuting agency -- and will eventually be paid by the fines and of your conviction.

With such clear conflicts of interests, this agency upheld its own motives -- not justice. As Judge Swartwood concluded in his report "...Money was NOAA's motivating objective."

The second reason that I am here today is to shed light on the abuse of the National Marine Fisheries Asset Forfeiture Fund. NOAA turned the Asset Forfeiture Fund into a cookie jar for Enforcement staff. The fines they seized from fisherman like me were lumped into one big account, from which staff bonuses, company cars, international staff travel, and luxury boats were financed, with little to no oversight; and no auditing. And, as I noted a moment ago, this fund was used to pay the salaries of the Administrative Law Judges that heard our cases in their courtrooms.

One of the nation's top accounting firms, KPMG, at the request of the Inspector General, conducted the first audit of the Asset Forfeiture Fund last year, and they could only account for a little more than half of it. Forty-seven million dollars remain unaccounted for.

This isn't just lax accounting; it's a violation of the public trust. Was my $430,000 in fines used to protect fisheries? Did it go toward the purchase of 200 government vehicles for a staff of 172? Did it go toward a boat described as "luxurious" by its manufacturer that NOAA somehow thought was necessary for their work? Or was it, perhaps, used to finance all-expense paid trips – literally around the world -- for the same NOAA employees who penalized my family to the brink of bankruptcy? I don't know the answers to any of these questions, and neither does NOAA.

The Asset Forfeiture Fund was not designed to be used in the way NOAA used it. The Magnuson-Stevens Act clearly states that forfeited funds be used for "expenses directly related to investigations and civil or criminal enforcement proceedings". It doesn't say anything about buying cars, or about flying folks across the globe for fancy conferences on my family's dime. But that's what happened

In addition to my $430,000 fine, I had to pay in excess of $250,000 in legal fees in order to defend myself. When the lawyers on the other side work for the only organization that can print money, legal bills add up quickly. But the damage goes beyond that; not only did my career disappear with that money, but my family's heritage and my childrens' inheritance did as well. My wife's family farm in Massachusetts, that was in her family for 350 years, is gone. We had to sell it. Our hope of passing along that property and its story, which spans almost all of American history, is no more.

The $649,000 in fines returned by Secretary Locke to several other fisherman like myself is a good start to restoring trust in the system, but by itself it's not sufficient.

For those of us who were wronged, we've lost careers, years, and our legal fees and other costs we incurred at the hands of corrupt Federal employees are still unreimbursed.

For those of us who are still in the fishing business, there is still much more to be done before our faith and trust in our government is restored.

First, more needs to be done to restore the confidence of fishermen in the regulatory system. Today, I ask the Senate to conclusively determine what NOAA did with the unaccounted half of the Asset Forfeiture Fund; and the $430,000 in wrongly-assessed fines that I was forced to pay.

Second, an independent investigation of NOAA Fisheries rule making is critical. What Preston Pate and his colleagues achieved in the Agency's internal report is commendable. But I suggest that an independent outside investigation conducted by Inspector General Zinser or the Government Accountability Office is warranted.

Third, better oversight into the funding of science programs is crucial. Independent institutions that both scientists and fishermen trust must be funded. The institution Dr. Brian Rothschild helped to found, the University of Massachusetts School for Marine Science and Technology is an example. Fishermen do not trust NOAA's internal grant-making to fund outside science. In the past, what they've done is feather their own nests, rather than direct money to the most

worthy institutions. And this has happened even when the funds come not from their appropriations, but from industry-funded set-asides which were created to support independent science.

Finally. I ask the Senate to hold accountable the Government Attorneys and Judges that were the source of this injustice and who are still employed by the federal government. These individuals cannot be allowed to be 'reshuffled into the deck' ,and be protected within the federal system. They must be separated and terminated in order for justice and integrity to be restored into this Agency of the United States Government.

Thank you for listening.

TESTIMONY OF
STEPHEN M. OUELLETTE, ESQUIRE
BEFORE THE
UNITED STATES SENATE
Committee on Homeland Security and Governmental Affairs
Subcommittee on Federal Financial Management, Government Information, Federal Services and International Security
BOSTON, MASSACHUSETTS
June 20, 2011

Chairman Carper, Senator Brown and members of the Committee:

I would like to thank each of you for your service to our nation and your particular attention to issues of concern facing our nation's fishing industry at a time when government is under unusual pressure to move forward on a broad range of issues from our economy, war, healthcare and beyond. The issues facing our Nation's fisheries are of considerable concern to our region due to their economic, cultural and social impact. Natural fish products remain one of the last natural protein source which can be harvested with use of minimal fossil fuels and require the introduction of no chemicals or fertilizers into the environment. Nonetheless, we would not be here looking for your help if serious issues did not exist in the fishing industry that need your immediate attention, and I, and all of those for whom I work in the fishing community thank you for taking the time to come to Boston and continue the inquiry into the difficult relationship between National Oceanographic and Atmospheric Administration (NOAA) and the commercial fishing industry, and in particular NOAA's law enforcement and management branches.

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As I will explain, I am not confident that NOAA and it sub-agency NMFS have the ability to properly manage our Nation's fisheries, or the associated commercial industry without significant oversight, by Congress and possibly a National Committee selected by major stakeholders to ensure that the best interests of the Nation are fulfilled, as required by the Magnuson Act. I, for one, do not believe NOAA is spending money properly if the intent is to protect the domestic fishing industry. In the Northeast, the fishing industry appears to decline in inverse proportion to increases in NOAA's budget and we seem to be facing a chronic under-fishing crisis. At the same time as the fleet has declined, and in turn serious fisheries violations have all but disappeared, fines and penalties have increased on remaining fishermen, creating an over-enforcement problem-too many enforcers chasing too few fishermen.

As some of you are aware, I am a maritime attorney in practice for over 25 years, and for over fifteen years have represented commercial fishing interests along the eastern seaboard, from the Carolinas to Maine, primarily on regulatory matters. I am member of the Maritime Law Association of the United States Fisheries Committee. My concentration in this area began in 1994, just as Amendment 5 to the Northeast Multispecies plan was being implemented. I have remained involved with the Council process since then and have worked with fishing interests, the councils, state agencies and NOAA/NMFS in trying to set a regulatory course that provides for sustainable fisheries while seeking to preserve fishing communities, including the one in which my family and I live and work. I am a strong believer in seeing the intent of lawmakers carried forth utilizing sound science and basic common sense to achieve a reasoned result that achieves sustainable fisheries, while preserving fishermen. Beginning in the late

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1990's I began to detect a shift in focus from NMFS and NOAA, as regulations increased-with many higher level managers becoming at best indifferent, and at worst highly antagonistic to the fishing industry. Beginning ten years ago, as the number and nature of enforcement cases increased and fines skyrocketed, I openly questioned what I consider to be inappropriate enforcement by the NOAA OLE and the OGC. Over the course of many years I have raised these issues in meetings with NOAA personnel and attorneys and in correspondence with my congressional delegation and at fishery council meetings, copies of some of these are attached. I appreciate the efforts of the Massachusetts legislature and the Massachusetts Attorney General in helping bring these issues to the attention of members of Congress which has ultimately led us the IG's investigation and now, here. Hopefully we can now finish the process of correcting issues with NOAA law enforcement and get focus back to the business of restoring our Nation's commercial fishing industry.

I want to make it clear that industry values the commitment of many at NOAA and NMFS to ensuring the continued sustainability of our fisheries, and to fishermen and fishing communities. There remain many within these agencies who continue to work hard to assist fishermen, many of whom have expressed their frustration with the issues we raise, including some from the law enforcement community itself. Unfortunately, over the past fifteen years I have come to recognize that much of the management at NOAA and NMFS has become disconnected from those they regulate to the point that they are indifferent to the avoidable human tragedy they create. Unfortunately, this attitude has, in my estimation, spread into the law enforcement community to the extent that many in OLE and GCLE are completely disconnected from the fishery, having little

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understanding of the purpose of regulations, the nature of the industry they are regulating, the difficulty in compliance, financial strains, economic hardship of running a small business, economic condition of the fishery and the overall impact of regulations on fishermen. As a result, enforcement becomes unusually harsh and fines become unrealistically high for minor violations, and are multiplied where innocuous violations are repeated due to ignorance, misunderstanding or inadvertence.

The industry was dismayed, but not surprised, when its allegations of abuse by NOAA Office of Law Enforcement (OLE) and the Office of the General Counsel for Law Enforcement (GCLE) were substantiated by the Department of Commerce Office of the Inspector General (OIG) in his report, and by Secretary Locke's Special Master, Judge Swartwood. Even I was not prepared for the apparent abuse by the Office of Law Enforcement of the Asset Forfeiture Fund, and it is difficult for industry to have respect for an agency that has done so little to reveal the scope of this abuse of public funds, particularly given the unjust fashion in which these monies were extracted from the fishing industry.

I have reviewed the Inspector General's Report and can attest that their findings correspond to my observations over the past fifteen years, see my letters to Senator Kennedy and Representative Tierney annexed hereto, Attachments 1&2. While NOAA has implemented some positive changes, such as a revision in its regulations that placed on respondents, usually fishermen, the burden of rebutting the appropriateness of penalties, while denying them the opportunity to discover the basis for the penalty, there has been little other positive progress. NOAA's new penalty policy, issued in March of this year, will create more predictability in assessing fines, but still sets fines at

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unrealistically high levels, such that one error in judgment, such as retaining excess bycatch, can cost a fisherman his business and life savings.

There is no question that adequate enforcement is crucial to the success of fishery management plans, however, as the number of participants in the fishery declines, and as opportunities for "cheating" have been eliminated through such means as mandatory vessel tracking, onboard observers, daily reporting, and regulations are adopted which avoid discard issues, one would expect enforcement to be similarly reduced. Part of the problem in the Northeast has been that as serious violations, like closed area incursions and illegal landings schemes of the 1980's have all but disappeared, law enforcement had elevated simple misunderstandings of complicated regulations into cases with hundreds of thousands of dollars in fines. Symptomatic were the fines levied on a number of herring vessels in 1998. These vessels were required to report their landings weekly though a call-in system, in addition to their monthly vessel trip reports and weekly landings reports by dealers. Many had made their weekly reports through the State of Maine. When Maine ceased handling the reporting, a number of vessels fell out of compliance with weekly reports, but continued to file monthly reports and the dealers, weekly. Fully aware of which vessels were out of compliance, NMFS managers, who claimed the weekly information was crucial to avoid over-harvest, did nothing for six months, and then notified NOAA OLE, not the vessels. Upon notification, all vessels immediately brought themselves into compliance, but each received fines, up to $520,000. NOAA spends little -or no money- assisting the industry in dealing with compliance, and more on meting out penalties to its constituents.

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Nor have the number of enforcers been reduced as the number of industry participants declined. One of my clients reported over thirty dockside boardings in a 45 day period by Massachusetts Environmental Police. Shortly thereafter, I met with one of the Environmental Police Officers (EPO) and inquired as to the frequent boardings. The answer was that under the Joint Enforcement Agreement between the EPOs and NOAA, funded with monies from the Asset Forfeiture Fund, the Massachusetts EPOs were required to board federal boats every day. The EPO was very polite and very forthright, apologizing for the frequency of the boardings, but stating my client's boat was the only federal vessel fishing in his region, and the daily requirement could only be met by frequent boardings. Notably, the fisherman was always found in compliance, and was gratified that he was not being singled out. Nonetheless, one has to question whether the need for enforcement should be reduced as the fleet diminishes and electronic monitoring and government observers have become so pervasive. In effect, just as fishermen over-harvested fish, enforcers have over-harvested the assets of the fishing industry -simply put, there **too many enforcers chasing too few fishermen**.

Vessels and dealers are subject to frequent, unannounced inspection, by armed Coast Guard, NOAA law enforcement agents and state environmental officers. Generally, fishermen attempt to comply with regulations but because of regulatory complexity, and rules that often force captains to compromise safety to avoid having to discard their catches, violations occur. The regulatory burden is excessive, and my review of NMFS's OMB filings under Paperwork Reduction Act Requirements shows that it dramatically understates the regulatory burden currently placed on fishermen by its

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regulations. Despite the increased regulatory burden, with decreased landings, overall earnings are decreasing, driving the cost of compliance up proportionately.

While regulatory complexity has increased, the number of fisherman and the time available for fishing has decreased. NMFS continues to restrict access to fisheries, despite huge leaps in rebuilding, so cost of compliance rises in the face of declining profits, with little hope fishermen will ever be able to harvest the fruits of their sacrifices. Yet NOAA continues to escalate fines and penalties for innocent violations, to the point that most fishermen are terrified that they, or their crew, will make a mistake that costs them tens of thousand of dollars and result in loss of their business and their home.

While, in my experience, NOAA agents have generally been cordial to me, with a few exceptions who have since left or been forced out, the fishermen's complaints that they are treated like criminals is consistent with the agents' demeanor and positions as criminal investigators. I was surprised to see this designation appearing on the agents' business cards a number of years ago, and the IG's report reveals why. Fishermen are approached in the same fashion as criminal suspects, and in a few cases, agents have tried to use criminal laws to enforce Magnuson provisions, improperly, see my letter to Senator Kennedy detailing specific cases, Attachment 1. Guns are often displayed and I have had frequent complaints from fishermen that agents deride them for not showing agents enough respect. There is a general adversarial nature that seems to occur when criminal investigators get involved, and not surprisingly, fishermen find it disconcerting. Unlike most agencies, NOAA does not have civil compliance officers to whom fishermen can turn to ask questions and avoid costly mistakes. While NOAA agents will respond to questions, they are not always correct-in one case I was involved in 20 years ago,

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fishermen landed an extra bluefin tuna after they were told by OLE they could take it off their following year's quota, only to have it seized when they landed-although the agent was reportedly polite and apologetic. In other cases, fishermen have arrived at dock and found their estimate of catch exceeds their allowed limits. Action to bring an unintentional overage to the attention of enforcement through self-reporting often results in seizure of catch and hefty fines.

NOAA's recent response has been to elevate a number of cases to criminal violations. While the Magnuson Act intentionally provides for few criminal penalties, and even the Lacey Act prohibits prohibitions based on underlying Magnuson Act violations, NOAA agents have started to threaten criminal conspiracy charges for violations of Magnuson regulations. We have recently seen criminal charges issue for observer issues and marine mammal violations involving commercial fisherman. In one instance, a fisherman appears to have been charged for trying to release an entangled whale from his gear. One of my clients' businesses was recently served with subpoenas indicating NOAA has elevated a civil charge of exceeding landings limits into a criminal investigation. This action is consistent with comments NOAA General Counsel Lois Schiffer made last year at a symposium held at the Roger Williams School of Law to review the history of the Magnusson Act. At the meeting Atty. Schiffer indicated her desire to see amendment to expand penalties under Magnuson, including criminal prosecutions, private causes of actions, etc... NOAA appears to be finding inventive ways to pursue criminal actions, contrary to the intent of Magnuson's drafters.

Sadly, despite years of successful rebuilding the Agency's promises of restoring the commercial fishing industry to its former strength has gone unrealized. Predictions

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by the Agency of future gains for ongoing conservation measures are never realized. For example, in 2004, NOAA justified a significant reduction in the landings, and paring of the groundfish fleet, by predicting future increases in harvest. I have provided a chart from the Amendment 13 document showing the predicted harvests for no action and for the significant reductions required to accelerate rebuilding. This showed landings, already increasing due to stock rebuilding; increasing to over 200,000,000 pounds of groundfish by 2010, optimistically theorizing that the break even point for these measures would be attained in 2036. The groundfish fleet is landing around 60-70,000,000 pounds, and the break even point will likely not be attained by 3036, See Attachment 3. That the Northeast Multispecies Fishery has undergone significant rebuilding is unquestionable, but at the current landings of approximately 60-70 million pounds of groundfish, it is landing less than 40% of its Annual Catch Limits (ACL). Those ACLs are conservatively set at only 75% of NOAA's scientifically calculated Total Allowable Catch. Recent reports by the Commonwealth of Massachusetts Department of Marine Fisheries, in conjunction with University of Massachusetts School of Marine Sciences and Technology indicate that NOAA's TAC themselves are set arbitrarily low, indicating that landings could be as much as 60% more than currently permitted. NOAA's policies have resulted in an extended period of chronic under-fishing. I recently calculated losses in the Northeast Multispecies fishery to be as much as $200,000,000 per year. Similar under-fishing has been occurring on other species such as monkfish and swordfish, with between $300,000,000 and $500,000,000 in direct landings being lost every year in the New England region, see underfishing memorandum and attachments, Attachment 4. (Although this memorandum is a year old, the figures remain largely unchanged.). Since

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some of these fish are harvested under international treaties, in swordfish, in particular, uncaught quota may result in permanent transfer of our quota to foreign nations. Economists apply a four to one multiplier to landed value as an indicator of overall economic activity and the this region alone is losing as much as $2,000,000,000 in economic activity each year, representing tens of thousands of jobs and hundreds of millions of dollars in lost tax revenues for both the federal and state governments.

In 2004, the groundfish fleet numbered 1,200 vessels; it now numbers less than 500, and predictions are that it will further consolidate to as few as 250. At the same time, the budget of the Northeast Regional Office has climbed from approximately $20M in 1998 to as much as $80M, with the number of full time employees increasing from around 100 to 170, in inverse proportion to the number of active fishing vessels. When the fishery became limited access in 1994, the New England Fishery management Council took pains to protect the nature of the fishery as a small business model. Vessels were constrained by their size and horsepower, and permits could not consolidated. Under Amendment 7, approved in 2007, limits were placed on landings from inshore areas to protect the inshore fleets. Eventually, as scientific mandates required significant reductions in the fishing activity allowed each vessel, under Amendment 13, only after extensive, often contentious debate was limited consolidation allowed through days at sea leasing. Vessels were allowed to transfer their available fishing days. The latest iteration of management has been the "catch share" program. As the March 8, 2011 testimony of Mr. Vito Giacalone, Policy Director of the Northeast Seafood Coalition before the Senate Subcommittee on Oceans, Atmosphere, Fisheries and Coast Guard indicated, the so-called sector system was forced on the industry as the only option NOAA would accept

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for dealing with the Agency's interpretation of statutorily mandated Annual Catch Limits and Accountability Measures. This system casts off all of the protections the NEFMC had implemented from 1994 through 2004 and allows virtually uncontrolled consolidation of the New England groundfish fishery. As this process was unfolding, one NOAA social scientist, reviewing similar consolidation plans from around the world concluded:

> "The primary social impacts that have been documented in empirical cases involving consolidation (explained in greater detail below) range from employment loss, decreased income, decreased quality of life, changing relations of production, structural disadvantages to smaller vessels and firms, dependency and debt patronage, concentration of capital and market power, inequitable gains, regulatory stickiness, reduced stewardship, decreased community stability, loss of cultural values and so on."
> Social Assessment Literature Review: Leasing and Permit Stacking, Olsen, J. Northeast Fishery Science Center, August 9, 2009, Attachment 5.

As consolidation is increasing in the Northeast Multispecies fishery, attempts are being made to set up "permit banks" using state and federal funding to protect and preserve "small boat" fleets, in effect expending public monies to avoid the predictable problem of allowing consolidation.

As noted in the recent Preston Pate report, NOAA is doing a poor job managing the fishery, with an inefficient bureaucracy, largely untrusted by its constituency. Clearly not good governance, nor a reasonable expenditure of federal funds.

The upshot of all of this is that landings are not increasing, and more and more available fish is left in the ocean each year, where unlike money in the bank, it eventually dies of natural mortality and is wasted, contrary to Magnuson's stated purpose. Jobs are lost, coastal communities decline, traditional ways of life and culture are undermined and the consuming public loses a healthy source of protein-never has NOAA even considered

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the impact on public heath. As government expenditures on fishery management in the Northeast rise each year, the industry decreases in almost inverse proportion. If Congress intends for NOAA

> to provide for the preparation and implementation, in accordance with national standards, of fishery management plans which will achieve and maintain, on a continuing basis, the optimum yield from each fishery
> 16 USC Sec. 1801 (B0(5)

as stated in Magnuson, it is falling abysmally short, while hundreds of millions of pounds of fish go unharvested from our oceans.

In short, NOAA is doing a very good job of expending government monies if the intent of Congress is to create the world's largest aquarium off of New England, but a very poor job if the intent is to protect our domestic fishing industry. In the Northeast, the Agency continues to encourage costly "catch share" schemes which force excessive consolidation, driving many out of the industry, in the face of chronic under-fishing.

Systematic Problems

The real issue here is NOAA's apparent disconnect and lack of concern over the future of the commercial fishing industry, fishing communities and the fish consuming public. As such, NOAA and NMFS need a complete overhaul, the agency's need to be instilled with the concept that Magnuson is not just about conservation. It is also about feeding a Nation, fueling an economy, supporting communities and preserving our heritage. Sadly, these values are seldom carried out in NOAA's policies.

Factors which Must Be Addressed

1. Initially, NOAA has become an agency where fishermen find few friends or supporters, or at least very few who can afford to voice their support for fear or retaliation. Council membership seems to be awarded by NOAA based on political

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support, not on the needs of the fisheries. Unless and until NOAA management takes a new approach to the fishing industry, there will never be positive change. Establishment of a National oversight committee comprised of stakeholders, chosen by stakeholders, could address this problem.

2. Enforcement must be used as a positive tool to educate fishermen and help them avoid violations of complex rules. Compliance, not fines should be the goal. Port agents used to fill this role for fish dealers, and sadly, with their elimination, dealers have a harder time staying compliant and the quality of data has deteriorated. Similarly, NOAA agents seldom do friendly checks of vessels and have lost the discretion to allow a vessel to get back into compliance without issuing a violation. Use of criminal investigators creates a hostile atmosphere, and should be limited to cases where criminal action is suspected-notably most Magnuson violations can not be pursued criminally and are expressly excluded from the criminal provisions of the Lacey Act.

3. The Asset Forfeiture Fund must be separated from NOAA OLE and OGC. These funds should be used to meet compliance needs of the industry-observer coverage, outreach programs, cooperative research and industry-funded science.

3. NOAA must implement a regulatory review process to ensure that rules make sense, and ensure that unintentional violations of complex rules are not punished too harshly, if they need to be punished at all.

4. NOAA performance needs to be tied to achieving Optimum Yield, as specified by Magnuson. Where, as in the Northeast, chronic under-fishing occurs, NOAA should be tasked with closing the gap between allowable and actual catches to achieve Optimum Yield, including assessing its interpretation of the Magnuson Act, and

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recommending changes to correct the Act where it is seen as preventing achievement of Optimum Yield.

5. Congress needs to address the conflict between needs for ten year rebuilding programs and the cost benefit of such short rebuilding periods.

6. Congress needs to investigate whether NOAA is improperly elevating Magnuson violations to criminal cases.

7. Congress should amend the Magnuson Act to allow de novo review of penalties in excess of $10,000 or sanction in excess of 90 days by Article Three judges.

8. Congress should place a 12 month statute of limitations on violations, to prevent NOAA from data-mining scientific data collections to conjure up prosecutions.

10. Congress needs to reduce the scope of NOAA's fining and sanction authority, and limit fines for repetitive, technical non-compliance, as does OSHA. Large fines for technical violations should not be imposed unless the permit holder has refused to bring himself into compliance. Although NOAA claims a Fix It Ticket process exists, it is used sparingly in the Northeast.

12. Procedural regulations should provide for partial judgments to eliminate unsupported claims prior to hearing.

Conclusion

NOAA's use of federal funds, including the Asset Forfeiture Fund is doing little to protect the domestic fishing industry in the Northeast, and is actually working to undermine our traditional values. The system of law enforcement is horribly broken and has caused, and continues to cause, unjust and unwarranted impacts on hard working members of our fishing industry. Some positive progress has been made, but clearly

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excessive funds are currently being expended that could be put to better use in science and streamlining the management process. Where fishermen once feared most the perils of the sea, their own government has become an even greater threat. I urge you to force this Agency to reform and make it work to benefit the American people, including those in the fishing industry, as the Magnuson Act requires. Absent strong, positive action, not only will a way of life be lost and fishing communities further devastated, but confidence in the very fabric of our government will be undermined in an irreparable manner.

I thank you again for looking into the issue on behalf of fishermen, their communities and the consumers who rely upon the fishing industry for wholesome seafood.

Respectfully submitted,

/s/ Stephen M. Ouellette
Stephen M. Ouellette, Esquire

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Written Statement of
Brian J. Rothschild
Montgomery Charter Professor of Marine Science,
University of Massachusetts Dartmouth
Chair, Mayor's Ocean and Fisheries Council

Hearing "How is NOAA Managing Funds to Protect the Domestic Fishing Industry?"

Before the
Subcommittee on Federal Financial Management,
Government Information, Federal Services, and International Security
United States Senate

Boston, Massachusetts

June 20, 2011

Members of the Committee, thank you for the opportunity to testify before you this morning. My name is Brian Rothschild. I am the Montgomery Charter Chair of Marine Science at the University of Massachusetts Dartmouth. I also chair the Mayor's Ocean and Fisheries Council in New Bedford, Massachusetts, the largest fishing port in the Nation in terms of value. Our Council is a sounding board for much of the Massachusetts fishing industry. I bring you their greetings.

I have been asked to address, "...how NOAA's National Marine Fisheries Service (NMFS) is handling money allocated to assist New England fisherman transition to a new catch share fishery management system." I recognize that this subcommittee focuses on federal financial management so I will focus my testimony, as requested, on the performance of the catch-share fishery management system in the northeast to show how funding for the catch-share system could be used more effectively. Finally, I will provide advice on strategies that should be adopted to redirect programs and minimize fiscal waste.

There is no way to completely isolate NOAA northeast fisheries catch-share funding from NOAA northeast fisheries management funding. Funding for stock assessments, research vessel operations, cooperative research, Council operations, regional fishery management operations, etc. are all part of NOAA fisheries management and its catch-share orientation. Thus, "handling money" vis-à-vis catch shares should really relate to the entire NOAA fisheries operation in the northeast.

Handling of money can be proper or improper. There is plenty of evidence for improper handling of funds. For example, the Inspector General's report, the Swartwood report, and the asset forfeiture fund issues all point to improper use of authority and funds. The Preston Pate report reflects a broken, disenfranchised, and needlessly expensive management system. Because the management system is supposed to be working

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smoothly, consistent with the intent of Congress, it is fair to say that the Pate report identified serious problems that reflect improper use of funds.

There is, however, a third misuse of funds that is often more serious. This misuse involves failure to reprogram extant budget resources from low to high priority programs. This is insidious because it translates the failure to reprogram into perpetually inflated budget requests: hundreds of millions of dollars are at stake.

With all of this as a setting, we return to the original question posed by the subcommittee: performance of funds allocated to the catch-share system.

The catch-share system, NOAAs primary initiative in the northeast, got off to a bad start. Contrary to the National Environmental Policy Act, this major federal initiative was not exposed to the analysis, planning, and public vetting that ordinarily is required of a major federal action. Among other things, there was significant controversy on the allocation of fish, significant shortfalls in the economic analysis, and an articulation of alternatives. Even though the adoption of the catch-share system was debated for 3.5 years by the New England Fishery Management Council, the inception of the catch-share system was not accompanied by a handbook on how to move forward, and the industry continues to be forced to muddle through on issues that range from day-to-day operations to items as fundamental as "consolidation caps."

In order to appreciate how well we are expending our fiscal resources in catch-share management, we should have metrics of performance. This is a key issue for this subcommittee. We ***may*** know how much the catch-share program costs, but we do not know what we are receiving for these expenditures. Remarkably, the launch of the catch-share system was not accompanied by any evident plan to monitor economic performance. This omission is not only remarkable from the point of view of an evident lapse in good public policy, it is also remarkable because it violates the clear intent of Congress stipulated in National Standard 8 (which requires that the agency take into account social and economic data when formulating fisheries management plans).

Let's take stock of where we are in assessing the performance of the catch-share management system. We are one year into its implementation. The reports that we have focus on revenues. There is practically no understanding of the costs, and so the revenue statistics are virtually meaningless. In addition to costs associated with fishing operations, we particularly need costs to the government associated with subsidization of catch-share management (e.g., observers). Also, we need costs associated with lease transactions and jobs. There are, in addition, many subtle but important problems that have not been addressed, such as using public funding to generate cadre of "slipper captains."

While on one hand we know very little about the details of the day-to-day economic performance of the catch-share system, we have a pretty good overview. We can use as a point of departure the days-at-sea system that preceded the catch-share system. The days-at-sea system was widely disliked. There were at least two characteristics of the

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days-at-sea system that were not sustainable: 1) the number of days-at-sea of fishing per year per boat became very small (e.g., 20 days), and 2) severe ***underfishing*** resulted in an annual loss of fish to fishing communities that amounted to about 100,000 tons per year.

One would have thought that the implementation of the catch-share system would have eliminated severe underfishing. But regulations maintained under the catch-share system did not account for the mixed-species nature of the fishery, and instead of catching 95,000 tons of fish as deemed possible by NOAA scientists, the catch amounted to 33,000 tons. This waste of 62,000 tons of fish has a value of about $200 million at the dock, or $800 million by the time it reached consumers. To put this amount of waste into perspective, consider that discussions relative to buying out the fleet have indicated that $50 million might be a reasonable number.

A particularly interesting statistic relating to performance is that the landings in 2010 under the catch-share system are identical to the landings in 2009 under the days-at-sea system: 33,000 tons. Surely the catch-share system is more expensive both to the public and private sectors and, as a consequence, one might have to conclude, as the data roles in, that the catch-share system was not a big improvement over the days-at-sea system, except to those who were reallocated reasonably large quantities of resource.

So given these observations, could the agency do a better job of "handling money?" The answer is definitely affirmative. NOAA needs to reprogram resources to demonstrate to folks in the street that fisheries management is not broken. This will not be an easy task inasmuch as many of these issues and problems have been existent for a long time, and if there were a will within the agency to solve the problems, they would have been solved. Because some of the problems have been extant for many years and some have been induced or exacerbated recently, it is necessary to arrive at both short-term and longer-term strategic solutions.

The short-term problems are relatively easy in the sense that we all know the symptoms as they have been articulated in, for example, the Pate report. We have to move from symptoms to solutions. We need a time-phased action plan to 1) develop critical mass capabilities for economic analysis, 2) identify and minimize constraints to obtain optimum yield, 3) conduct an analytic study to open closed areas (30% of Georges Bank is closed to fishing with no apparent justification), 4) begin planning immediately to facilitate optimal harvest for the 2010 year class of haddock, 5) improve regulations and management, 6) develop an effective communication plan, 7) invest in cooperative research, 8) seek new and innovative approaches to stock assessment, including multiple species interaction and the ocean environment, and 9) incorporate mixed stock exceptions into fisheries management plans.

Of particular importance in the mix of these activities is the development of revamped critical mass cooperative research programs. Industry needs to become more substantially involved in the collection of data for stock assessments. A great example of cooperative research has been the scallop success story. Ten years ago NOAA declared that the scallop fishery was overfished and the scallop stock required a ten-year

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rebuilding period. The industry disagreed and sought technical advice from the School for Marine Science and Technology (SMAST) at the University of Massachusetts. SMAST found that the scallop stocks were several times larger than indicated by NOAA research. As a result, the secretary of commerce opened the fishery, and this resulted in a conservation and economic bounty of roughly $250 million per year for the past ten years. Cooperative research will yield data that cannot be otherwise obtained and will promote the fractured good will of the fishing industry.

From a strategic point of view, reforming a broken fisheries management system in the northeast is a major undertaking. We need to move beyond describing symptoms. We need an action plan. Where is the action plan? And how can an action plan be developed without the buy-in of those who are most affected, the fishing industry?

I do not believe that NOAA is well placed to develop a shared vision of reformed fishery management. Rather I think the Congress needs to form a commission that reports to Congress that develops the action plan to reform fisheries management in the northeast. The strategic plan should involve a five-year time horizon. The commissioners should be drawn from various interest groups, with a clear majority of the fishing industry. The commission should have a finite life, delivering the strategic-level plan in 12 months after it is fully staffed and operational. Staffing should be seconded in part from NOAA. Funding should be derived from existing budget resources.

The fact that the fisheries management system in the northeast is widely viewed as broken, needs analysis with regard to how it arrived at its present state. As stated earlier, many of the problems have been long standing. I believe that a lack of checks and balances in the previous administration has led to practices and policies that are wasteful and fiscally unwise. Unfortunately, many of the questionable practices and policies have been propagated under the current administration. The common theme that runs through all of these issues is a lack of accountability stimulated by a lack of organizational checks and balances. Installation of a system of checks and balances requires an innovative institutional arrangement such as a National Fisheries Management Board. The Board would ensure that fisheries management responded to the intent of Congress, was innovative and state of the art, and that anyone who is disaffected could receive a fair hearing. An analogue to such a board is the relation between the National Transportation Safety Board and the Federal Aviation Administration. The creation of the Fisheries Management Board would be funded by existing funds.

To conclude, fishery management in the northeast is perceived to have lost its way. We need to create an *ad hoc* commission that reports to Congress to develop a strategic action plan that has a five-year time horizon that gets fisheries management back on track. This strategic management plan should include a countervailing board that ensures the operation of fair process, innovation, conservation, and economic welfare.

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HEARING OF THE SUBCOMMITTEE ON FEDERAL FINANCIAL MANAGEMENT, GOVERNMENT INFORMATION, FEDERAL SERVICES, AND INTERNATIONAL SECURITY

"How Is NOAA Managing Funds to Protect the Domestic Fishing Industry?"

Monday, June 20, 2011

Post-Hearing Questions for the Record

Submitted to Mr. Eric Schwaab

From Senator Scott P. Brown

QUESTIONS FOR THE RECORD

Mr. Schwaab
Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration

1. **Question: On June 16, 2011, NOAA recently released a Clifton Gunderson LLP audit of the Asset Forfeiture Fund, reflecting findings for the year ended March 31, 2011. This balance sheet audit provides top-level cash flow information but lacks details about the categories of spending from the AFF – i.e. exactly what the money was spent on.**

   Can you please provide a detailed description of AFF spending for the time period covered by the Clifton Gunderson LLP audit?

   Answer: The Program Cost section of the Statement of Net Cost (page 7 of the audit) provides a summary-level description of the categories of spending from the AFF. In addition, the attached spreadsheet on Program Costs provides a more detailed breakout of AFF spending for the time period covered by the audit.

2. **Question: The above-references Clifton Gunderson LLP audit mentions two "significant deficiencies" in the operation of the Asset Forfeiture Fund. These were described as "Inadequate quality control review of financial statements" and "Non-compliance with Debt Collection Improvement Act and Treasury guidelines." What steps has NOAA taken to correct these issues?**

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Answer: Clifton Gunderson issued an unqualified opinion (the best possible) on its audit of the Asset Forfeiture Account. Although the outcome of the audit was positive, the audit mentions two deficiencies that NOAA is currently working to address. The audit included one deficiency in internal controls over financial reporting in which reimbursable funding accounting policies were used rather than the accounting policies relating to revolving/special funds. The auditors stated that the accounting treatment as a reimbursable fund was inappropriate for the AFF since it is a special fund. NOAA currently does not have the authority to account for the fund as a special fund. To address this finding, in the fiscal year (FY) 2012 President's budget request to Congress, NOAA has requested the authority for the AFF to be contained in a special fund appropriation beginning in FY 2012.

In addition, the NOAA Finance Office has initiated the necessary data calls for information required for the preparation of the AFF financial statements, and developed a checklist of required information, presentation, and support to ensure adequate quality review of the financial statements.

The audit also included one deficiency regarding noncompliance with the Debt Collection Improvement Act and Treasury guidelines for referring debt to Treasury. Clifton Gunderson noted in its audit that NOAA did not refer unpaid fines to the Treasury for debt collection in a timely manner. To address this finding, NOAA currently has a workgroup to review the backlog of collections cases, which includes cases eligible to go to Treasury for collection in accordance with the Debt Collection Improvement Act. It is the objective of this workgroup to have the reviews completed and, as necessary, the backlog of cases eligible for collection submitted to the Treasury by December 30, 2011.

3. **Question: On May 27, 2011, my staff provided a list of documents to NOAA's legislative liaison, with a request that these documents be produced by June 13, 2011. My staff received a small number of documents on Friday, June 17, 2011. Following up on that request, can you please provide the following:**
   a. **Status of NOAA's workforce review and copy of when reviewed?**
      - **specifically how that policy relates to the ratio of civil to criminal investigators.**

      Answer: NOAA's Office of Workforce Management and Office of Law Enforcement are currently working to complete a detailed Workforce Analysis. This analysis will provide recommendations to NOAA leadership on the appropriate balance of enforcement officers and special agents. While we are finalizing that analysis, NOAA is working to emphasize compliance assistance activities, particularly in the Northeast. Additionally, we are beginning to increase the number of enforcement officers around the country.

   b. **Copy of contract(s) with Hellerman Associates and Gerald Hellerman and Julia Hellerman,**
      - **was travel included in contract if so to where and how much was spent on travel per contract or order, period of performance, amount and award, competitive or sole source and was the contract paid with AFF funds?**

      Answer:
      Hellerman Associates – Attached are contracts between NOAA and Hellerman Associates (Gerald Hellerman) from 2004, 2005, 2006 – 2008, and 2009 - 2011. Information regarding Gerald Hellerman's hourly rate has been redacted as a trade secret, under 5 U.S.C. § 552(b)(4). The NOAA Office of Acquisitions and Grants, which retains NOAA's contracts on

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file, follows the guidance found at Federal Acquisition Regulation (FAR) 4.805 for retention and disposal of contract files. Under this provision, contract files are retained for 6 years and 3 months. Accordingly, NOAA no longer possesses copies of contracts with Hellerman Associates prior to 2004.

The most recent contract with Hellerman Associates, from 2009-2011, was a competitively awarded contract. The contracts for Hellerman Associates from 2004-2008 were sole source contracts.

Information regarding the period of performance, and the amount and award of the contracts with Hellerman Associates, is contained in the attached materials. Each of the contracts with Hellerman Associates was funded out of the AFF.

The 2009 contract with Hellerman Associates specifically provides that "the contractor will be available to travel to diverse locations to provide expert testimony and advice, training, case assistance, and other financial analysis on short notice . . . on an as needed basis" (2009 Hellerman Associates contract, at p. 4).

The 2006 contract with Hellerman Associates requires that Gerry Hellerman "perform such . . . services as are reasonably necessary to provide financial analytical support," and that "a minimum amount of travel may be required on an as needed basis." (2006 Hellerman Associates contract, at pp. 3,7)

The 2005 contract with Hellerman Associates requires that Gerry Hellerman "be willing to provide training and technical assistance to GCEL attorneys, and other NOAA employees as necessary, relating to gathering and utilizing financial information from alleged violations." (2005 Hellerman Associates contract, at p.3). The contract further provides that "the contractor shall be required to travel to various locations through out [sic] the United States to provide expert testimony, training, case assistance, and other financial analysis." (2005 Hellerman Associates contract, at p.4).

The 2004 contract with Hellerman Associates requires that Gerry Hellerman "perform such . . . services as are reasonably necessary to provide analytical support," but has no specific travel provisions.

Ms. Julia Hellerman – Also attached are contracts between NOAA and Julia Hellerman from 2004-2005, 2006, and 2007-2009. In 2009, Ms. Hellerman was hired by NOAA through a government contracting service, Tiger Personnel Services, Inc. (Tiger Personnel). The 2009 contract with Tiger Personnel for Ms. Hellerman's services is attached. NOAA has not contracted with Ms. Hellerman since August 2010. Information regarding Ms. Hellerman's hourly rate has been redacted as a trade secret, under 5 U.S.C. § 552(b)(4). Ms. Hellerman's social security number has been redacted under 5 U.S.C. § 552(b)(6).

The 2007-2009 contract with Julia Hellerman and the 2009 contract with Tiger Personnel were competitively awarded contracts. The contracts with Ms. Hellerman from 2004-2006 were sole source contracts.

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Information regarding the period of performance, and the amount and award of the contracts with Ms. Hellerman and Tiger Personnel, is contained in the attached materials. Each of these contracts was funded out of the AFF.

The 2004 - 2005 contract with Julia Hellerman states that "a minimum amount of travel may be required on an as needed basis." (2004 – 2005 Julia Hellerman contract, at p. 3)

The 2006 and 2007 – 2009 contracts with Julia Hellerman require that Ms. Hellerman "travel to the NOAA Offices" located throughout the country. (2006 Julia Hellerman contract at 10; 2007 – 2009 Julia Hellerman contract at 8). The 2009 contract with Tiger Personnel provides similar language. (2009 Tiger Personnel contract, at p. 4).

c. **Current policy for the awarding of enforcement bonuses or other incentives to NOAA Office of Law Enforcement or General Council for Enforcement Litigation**

Answer: NOAA's Office of Law Enforcement and Office of General Counsel for Enforcement and Litigation follow the policies and procedures of the Department of Commerce performance appraisal system and award programs. Materials were enclosed with the June 17 letter regarding these items.

d. **Current policy for investigation of NOAA charge card misuse and procedure for referral to outside law enforcement.**

Answer: NOAA follows the requirements of the Department of Commerce's purchase card policy. The January 2010 Commerce Acquisition Manual addresses the establishment and maintenance of accounts, card use, and program oversight and surveillance. The manual, enclosed with the June 17 letter, contains sections specifically regarding approvals, reconciliations, recordkeeping, management controls, risk management, and fraud, waste and abuse.

e. **Personnel actions including reprimands, warnings, demotions, terminations, or other corrective notices/actions in the NOAA or Commerce Department personnel files of:**
   - **Dale Jones**
   - **Charles Juliand**
   - **Andrew Cohen**
   - **Pat Kurkle**
   - **Office of Law Enforcement/General Counsel attorneys now employed or employed at any point since 1995.**

   Answer: The information requested is protected from disclosure to the public by the Privacy Act. However, as we understand this to be a request on behalf of the Committee, we will work with appropriate subcommittee staff to provide responsive information in accordance with the law and respective of employees' privacy rights.

f. **Terminations or other personnel actions including reprimands, warnings, demotions, terminations, or other corrective notices/actions in NOAA's Office of Law Enforcement or**

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General Council for Enforcement Litigation misconduct since 1995 – please specify action taken and 1-2 sentence reason. No names or personal identifiable information is requested. Please also include aggregate number of actions taken over the time period.

Answer: The information requested implicates the privacy interests of NOAA employees. However, we will work with appropriate subcommittee staff to provide responsive information in accordance with the law and respective of employees' privacy rights.

g. **Number of violent crimes involving NOAA since 1995?**

Answer: Enforcement services within the Office Law Enforcement are primarily provided by Special Agents (OPM classification 1811) and Enforcement Officers (OPM classification 1801). Both positions are credentialed, armed law enforcement officers. Special Agents are primarily engaged in investigating violations and Enforcement Officers are engaged in monitoring regulated activity, conducting education and outreach, and deterring violations by their presence and by handling less complex violations that can be resolved in a short time span and involving less resources.

Both Agents and Officers can be engaged in situations involving the threat or exercise of physical force. Every year OLE staff is confronted with the need to investigate 30 to 40 cases of interference, intimidation, harassment, and assault. The most frequent targets of these violations are fishery observers; on occasion, OLE staff is the victim of these violations. These violations are normally criminal in nature and handled as criminal matters.

The law enforcement authority, training, and equipment, including weapons, are vital tools in suppressing violence and de-escalating potentially dangerous circumstances as OLE staff monitor, enforce and investigate violations of fishery management regulations. While OLE staff are often not directly involved with "violent crimes," ensuring the safe conduct of OLE activities through these tools is critical as is the case with all natural resource law enforcement.

While many MSA regulations are enforced through civil mechanisms, mis-reporting and fraud can be handled as criminal violations under the U.S. Code. Compliance with regulations often requires sacrifice on the part of fishers and creates economic tension between short term and long term interests. Within this environment the performance of enforcement staff is enhanced by their training and authority.

h. **Copy of Clifton Gunderson July report when available?**
   - **Will the Clifton Gunderson report be made public – if so when?**

Answer: The report of selected micro-purchase transactions was issued by Clifton Gunderson on August 5, 2011. The report was made available on August 25th. The review's purpose is to obtain sufficient and appropriate evidence based on the agreed-upon procedures in accordance with attestation standards in order to determine if the internal controls over AFF micro-purchases are effective and if AFF micro-purchases are in compliance with applicable laws, regulations, and contracts that have a significant effect on the review objectives.

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i. **Does NOAA have plans to examine the years prior to April 1, 2010, as was done in the Clifton Gunderson LLP June 2011 audit, what constituted the fund (source of funds as indicated on page 13 of the audit) and as is stated on page 7 of the audit -what the monies in the fund were spent on?**

Answer: After studying the cost and the time it would take for Clifton Gunderson LLP to perform a retrospective audit for years prior to April 1, 2010, it was determined that a retrospective look of specific micro-purchase transactions from fiscal years 2005 to 2010 should focus on the type of transactions that the Inspector General had raised concerns about in the July 1, 2010 report on the AFF. This report of selected micro-purchase transactions was issued by Clifton Gunderson on August 5, 2011 and was made available on August 25th.

In regard to source of the funds indicated on page 13 of the audit, these funds are proceeds from the sale of seized property that is not available for use by the AFF. A deposit fund is used to record assets seized by NOAA under the MSA and other marine resource laws, which are being contested (i.e., have not yet been voluntarily abandoned or forfeited pursuant to administrative or judicial proceedings). This deposit account was established for this sole purpose. Until the seized assets are either voluntarily abandoned, or there is legal determination through an administrative or judicial proceeding that the seized assets should be forfeited, NOAA does not have authority to use those seized assets pursuant to section 311 of the MSA (which grants authority to use sums received as *"forfeitures"* of property, not seized property).

In terms of what the monies in the fund were spent on (page 7 of the audit), the Program Cost section of the Statement of Net Cost provides a summary-level description of the categories of spending from the AFF. In addition, the attached spreadsheet on Program Costs provides a more detailed breakout of AFF spending for the time period covered by the audit.

j. **Copy of Management letter cited on page 2 of Clifton Gunderson's June 2011 report?**

Answer: The Management Letter was issued on August 5, 2011 and was made available on August 25th.

k. **Status of NOAA's enforcement priorities and copy of draft when completed?**

Answer: In September 2010, NOAA issued a final process for establishing national and regional enforcement priorities after seeking public comment on the process. During fall 2010 and spring 2011, NOAA received input from stakeholders on potential priorities and worked internally to develop draft priorities. The draft priorities are now undergoing final NOAA review. Once approved, the draft enforcement priorities will be released for additional public input.

4. **Question: On June 17, 2011 NOAA Office of Legislative Affairs director John Gray sent a letter to my staff stating that "NOAA has discontinued use of the U.S. Coast Guard administrative law judges and is working with the Office of Personnel Management to transition to another system."**

Can you please describe the reasons for discontinuing the use of USCG ALJs, the name of the body

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that now hears those cases formerly heard by USCG ALJs, and progress made in securing a new permanent hearing body for fisheries cases?

Answer: While the Special Master did not find bias or conflict of interest on the part of the Coast Guard ALJs, the Secretary determined that transitioning to new Administrative Law Judges as part of our comprehensive reform efforts is necessary to address the Special Master's finding of a perception of bias by some in the Northeast and to ensure confidence in the fairness of the administrative process as we make sweeping reforms.

In May, NOAA advised your office that it is working with the Office of Personnel Management to put in place new arrangements for Administrative Law Judges in enforcement actions, and that the approximately 40 cases pending as of May before a Coast Guard ALJ will continue to be assigned to that ALJ, and for a limited time, the Coast Guard ALJs will also hear any new cases. We are moving forward as expeditiously as possible to identify alternative ALJ arrangements. OPM has provided alternatives, which we are pursuing.

5. **Question: Mr. Gray's above-referenced letter to my staff also mentioned a Compliance Assistance pilot program in the Northeast, including a compliance liaison, an outreach specialist, and eight new enforcement officers. Please comment on the success of this pilot program and whether you intend to make this a permanent program? Also, are there plans for hiring a national compliance ombudsman, as recommended by the Commerce Inspector General?**

Answer: While the compliance assistance program is still in its formative stages in the Northeast, it is beginning to show results. Much of the groundwork for introducing the new compliance program has been through walking the docks and talking with industry members in New England's major ports, as well as answering questions about the regulations, meeting with fish dealers and auction houses, and explaining the new program and how we can be of help to the industry. Personnel are meeting with fishermen and others in a variety of venues (e.g., Maine Fishermen's Forum, Council Meetings, Commission meetings, etc.) to listen to and work with them on issues. Per former Secretary Locke's direction, NOAA's Office of Law Enforcement is working to expand these efforts nationally.

NOAA has renewed its commitment to improving the agency's relationship and communications with fishermen and enhancing their understanding of fisheries science, regulations and enforcement activities on the local, regional and national scale. However, NOAA does not plan to hire a national ombudsman. As set forth in its response to the OIG's September 2010 report at pp. 4-6, "the earlier Ombudsman program in the Department was problematic. Moreover, the Small Business Administration (SBA) already has a National Ombudsman to whom small businesses, including fisherman, can bring their concerns about excessive or unfair federal regulatory action. Since June 2008, NOAA's charging documents have included a notice regarding the respondent's ability to file a complaint with the SBA National Ombudsman, and NOAA plans to include a similar notice in materials prepared for purposes of compliance assistance, in addition to the current notice on the OLE website. Notably, in its recent annual reports to Congress (for FY2008 (submitted) and FY2009 (draft, to be finalized soon)), the National Ombudsman for the Small Business Administration has given NOAA straight A's on matters of regulatory fairness and responsiveness, including in matters regarding compliance assistance. Thus, rather than appointing another ombudsman, we are taking a more comprehensive approach." See Report at the following link:
http://www.noaa.gov/lawenforcementupdates/NOAA%20Response%20to%20OIG%209%2023%201

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0%20Report%20Appendices%201-3%20--
%2011%2022%2010%20and%20Supp%20%20App%20%204-5%20--%2011%2029%2010.pdf.

6. **Question: The Magnuson-Stevens Act, in its most recent reauthorization, provides for a Coast Guard Enforcement Working Group coordinator by the Commander of the First Coast Guard District. The law states that this group shall meet at least four times a year and include a diverse group of fisheries stakeholders.**

   My staff contacted the First Coast Guard District and was informed that this group is no longer meeting and that there are no plans to call future meetings. The lack of regular, informal, collaborative meetings with enforcement leaders has been a major complaint among Northeast fishermen. It appears that the authors of the Magnuson-Stevens Act specifically established this group in the Northeast to provide such a venue, in addition to the regional fisheries councils.

   Do you support the resumption of this working group's meetings, as provided by the Magnuson-Stevens Act? If not, does NOAA currently have or plan to establish a similar group?

   Answer: NOAA supports these meetings and the Office of Law Enforcement will work in consultation with the U.S. Coast Guard to resume these meetings or similar ones.

7. **Question: The Commerce Department Inspector General found that "Although fishing regulations promulgated by the Fisheries Management Councils are complex and can change significantly, NOAA appears overly rigid in its interpretation and application of provisions of the regulations. This contributes to industry's negative belief that NOAA only exercises its regulatory discretion to its own benefit."**

   In your testimony, you spoke of restoring trust between NOAA and the fishing community. A major complaint I have heard is that NOAA has punished fishermen for unintentional or minor violations that occur in the context of overall compliance. What steps has NOAA taken to alleviate the rigidity described by the Inspector General?

   Answer: While NOAA does not believe it has been overly rigid in its interpretation and application of provisions of the regulations or has exercised its regulatory discretion solely for its own benefit, NOAA has taken a number of significant actions to improve its enforcement programs. Notably, NOAA revised its Penalty Policy to ensure that there is a consistent standard for assessing penalties for violations, and greater transparency and clarity for the regulated community. The policy addressed the problems identified by the Commerce Department Inspector General by establishing one penalty and permit sanction matrix for each major statute that NOAA enforces, to be applied nationally, with narrower penalty and permit sanction ranges. This simplified approach provides NOAA attorneys with greater guidance in recommending penalties, and assures fairness and consistency of approach across NOAA statutes, across fisheries, and across the country. Further, the Penalty Policy provides that where the violation was due to accident or mistake, there will be a lower penalty assessment, and the basis for penalties calculated under the policy will be included in charging documents filed by NOAA. Finally, charging decisions and settlements will continue to require the prior approval of the NOAA General Counsel or Deputy General Counsel.

   Additionally, we held a national enforcement summit to hear from our constituents – the fishing industry, environmental community, federal agencies, and other stakeholders – on needed

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improvements. Compliance through better communication was a theme at the summit and we are acting on it. We are stressing compliance assistance as a balance to our deterrence efforts – we must work better with our stakeholders to ensure everyone understands how to comply with the regulations. Earlier this year, we hired a former commercial fisherman in New England to serve as NMFS' first formal compliance liaison in the country. He is working directly with the fishing industry in a non-enforcement capacity to improve communications and ensure all can comply with needed conservation measures. We also conducted an initial review of our current workforce and enforcement needs to determine the most effective balance of special agents and enforcement officers. Based on this initial review, we are beginning to reshape our enforcement workforce by increasing the number of enforcement officers to emphasize compliance, problem solving, and communication. This action will increase our dockside presence and enhance our enforcement partnerships with the states. We are beginning this effort in New England with eight new enforcement officers being hired in the near term and we plan to expand our efforts nationally in the coming year. A full Workforce Analysis is underway to provide recommendations to NOAA leadership on the appropriate balance of enforcement officers and special agents.

8. **Question: Special Master Swartwood found that in the case of Lawrence Yacubian, "I find this email to be credible evidence that money was NOAA's motivating objective in this case." The email was redacted. I am requesting an unredacted version of the email referenced. Additionally, can you describe the steps NOAA has taken to make certain that money is never again a motivating factor in the handing of any case?**

Answer: Use of the fines and penalties collected in the AFF is not and has not been a motivating factor in the handling of NOAA enforcement cases. In fact, the AFF's balance has decreased by over 40% as a result of relatively stable annual spending and reduced collection of fines, penalties, and proceeds from the sale of forfeited property. Over the last two years, NOAA has made significant improvements in its enforcement program to make sure that it is fair and effective. For example, since February 2010, all enforcement charging decisions and settlements have required the prior approval of the NOAA General Counsel or Deputy General Counsel to ensure national consistency and appropriate charging and penalty assessments. Since March 2011, proposed penalty assessments are based on NOAA's new Penalty Policy, which uses a simplified approach: there is one penalty and permit sanction matrix for each major statute that NOAA enforces, to be applied nationally, with narrower penalty and permit sanction ranges. This approach assures that NOAA attorneys are provided with greater guidance in recommending penalties, and will further enhance the fairness and consistency of charging decisions across NOAA statutes, across fisheries, and across the country. Further, in September 2010, NOAA implemented a new policy regarding use of the Asset Forfeiture Fund as a means of ensuring that the use of the AFF is transparent to the public and that there is no conflict of interest – real or perceived – with the amount of fines and penalties collected by NOAA and uses of the AFF.

As you are aware, a small amount of material was redacted from the Special Master's report in order to protect attorney-client communications, attorney work product, and personally identifiable information in order to protect personal privacy interests. We have tailored any redactions as narrowly as possible to only redact privileged or protected information. The material that you have requested here constitutes privileged material that we are unable to produce without compromising these important privileges

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9. **Question: Has NOAA changed the pass/fail system performance evaluation system for its Office of General Counsel (GCEL)? If so – please provide a copy of the new system?**

   Answer: NOAA has been working for several years to replace the pass-fail system with a five-tiered performance appraisal system for these bargaining unit employees not covered by the Commerce Alternative Personnel System. In 2007, NOAA undertook an effort to negotiate collectively with those impacted NOAA bargaining units to replace the pass/fail system, which resulted in litigation before the Federal Labor Relations Authority (FLRA) that was not resolved until June 2009. Rather than resume collective negotiations following the FLRA decision, NOAA has decided to end those collective discussions, and will be so notifying the bargaining units in order to initiate individual negotiations to implement the five-tier performance appraisal system. Until those negotiations are complete, GCEL must continue to use the pass/fail system currently in place for attorneys in the bargaining unit.

10. **Question: Please provide a copy of the unredacted April Special Masters report to Secretary Locke. Please note. Senator Brown believes this information is within his oversight responsibilities and therefore we request a version that redacts ONLY personally identifiable information. These privileges cited in the past, particularly with respect to attorney-client communications, attorney work product, are common law privileges, which do not apply to Congress except at the discretion of Congress. Please provide the requested document, unredacted except for personally identifiable information.**

    Answer: As you are aware, a small amount of material was redacted from the Special Master's report in order to protect attorney-client communications, attorney work product, and personally identifiable information in order to protect personal privacy interests. We have tailored any redactions as narrowly as possible to only redact privileged or protected information. We do, however, respect this committee's role in looking into these matters. Therefore, we will work with appropriate subcommittee staff to provide responsive information while still respecting the confidentiality of the communications at issue.

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ORDER FOR SUPPLIES OR SERVICES

PAGE 1 OF PAGES 7

IMPORTANT: Mark all packages and papers with contract and/or order numbers.

1. DATE OF ORDER: 26 Feb 2004
2. CONTRACT NO. *(if any)*: DG130304SE0295
3. ORDER NO.:
4. REQUISITION/REFERENCE NO.: NAEL0102-4-00006
5. ISSUING OFFICE *Address correspondence to:* AJF60012
DOC/NOAA/OFA / External Customers Acq.
OFA66
1305 East West Hwy, Suite 7604
Silver Spring, MD 20910
Juanita L. Beck 301-713-0838

6. SHIP TO: AMD00159
a. NAME OF CONSIGNEE: NOAA/OFFICE OF GENERAL COUNSEL
b. STREET ADDRESS: 8484 GEORGIA AVENUE
4TH FLOOR, SUITE 400
c. CITY: SILVER SPRING d. STATE: MD e. ZIP CODE: 20910
f. SHIP VIA

7. TO: 00000982 TIN: 521836262
a. Name of Contractor: HELLERMAN ASSOCIATES DUNS: 806760443
b. Company Name
c. Street Address: 10965 EIGHT BELLS LANE
d. City: COLUMBIA e. State: MD f. Zip: 21044

8. TYPE OF ORDER
[X] a. PURCHASE
REFERENCE YOUR:
Please furnish the following on the terms and conditions specified on both sides of this order and on the attached sheet, if any, including delivery as indicated.
[ ] b. DELIVERY
Except for billing instructions on the reverse, this delivery order is subject to instructions contained on this side only of this form and is issued subject to the terms and conditions of the above-numbered contract.

9. ACCOUNTING AND APPROPRIATION
See Attached Schedule
BOC:
OBLIGATED AMT: $88,000.00

10. REQUISITIONING OFFICE
Monia Williams

11. BUSINESS CLASSIFICATION *(Check appropriate box(es))*
[X] a. SMALL [ ] b. OTHER THAN SMALL [ ] c. DISADVANTAGED [ ] d. WOMEN-OWNED

12. F.O.B. POINT
DESTINATION

13. PLACE OF
a. INSPECTION: SEE BLOCK 6
b. ACCEPTANCE: SEE BLOCK 6

14. GOVERNMENT B/L NO.

15. DELIVER TO F.O.B. POINT ON OR BEFORE
01 Mar 2004

16. DISCOUNT TERMS
00.00% 0 Days
Net 30

17. SCHEDULE *(See reverse for Rejections)*

ITEM NO. (a)	SUPPLIES OR SERVICES (b)	QUANTITY ORDERED (c)	UNIT (d)	UNIT PRICE (e)	AMOUNT (f)	QTY ACCEPT. (g)
	CONTACT PERSON: MONIA WILLIAMS (301) 427-2202 SEE ATTACHED STATEMENT OF WORK					
0001	FINANCIAL ANALYST	[redacted]	HR	[redacted]	70,000.00	
	Accounting and Appropriation Data: 14.04.2BL2D02P0006020204000.0102000100 000000.25270000					

18. SHIPPING POINT
19. GROSS SHIPPING WEIGHT
20. INVOICE NO.
21. MAIL INVOICE TO:
a. NAME: NOAA/OFFICE OF GENERAL COUNSEL
b. STREET ADDRESS *(or P.O. Box)*: 8484 GEORGIA AVENUE 4TH FLOOR, SUITE 400
c. CITY: SILVER SPRING d. STATE: MD e. ZIP CODE: 20910

SEE BILLING INSTRUCTIONS ON REVERSE

17(h) TOTAL (Cont. pages)

17(i) GRAND TOTAL: US 88,000.00

22. UNITED STATES OF AMERICA BY *(Signature)*

23. NAME *(Typed)*
Jean E. Greene 301-713-0838
(TITLE CONTRACTING/ORDERING OFFICER)

AUTHORIZED FOR LOCAL REPRODUCTION
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OPTIONAL FORM 347 (REV. 6/95)
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SS-C1

04/06/2005 08:56 FAX 301 713 0800 AMD 002

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. Contract ID Code | Page 1 of 2 Pages

2. Amendment/Modification No. M0002
3. Effective Date Apr 6, 2005
4. Requisition/Purchase Req. No. AJF60000-5-00351
5. Project No. (If applicable)

6. Issued By Code AJF60012
DOC/NOAA/OFA /External Customers, AMD
OFA66
1305 East West Hwy, Suite 7604
Silver Spring, MD 20910
Amy Sanders-White 301-713-0838 x104

7. Administered By (If other than Item 6) Code
SEE BLOCK 6

8. Name and Address of Contractor (No., Street, County, and Zip Code)
HELLERMAN ASSOCIATES
10965 EIGHT BELLS LANE
COLUMBIA MD 210442704
Vendor ID: 00000982
DUNS: 806760443
CAGE: 3RJZ4

Code | Facility Code

(X) 9A. Amendment of Solicitation No.
9B. Date (See Item 11)
X 10A. Modification of Contract/Order No. DG1303-04-SE-0295
10B. Date (See Item 13) Feb 26, 2004

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

[ ] The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers [ ] is extended [ ] is not extended.
Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing items 8 and 15, and returning ____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. Accounting and Appropriation Data (If required)
$ US 0.00

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACT/ORDERS.
IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

(x) A. This change order is issued pursuant to: (Specify authority) The changes set forth in Item 14 are made in the Contract Order No. in Item 10A.
X
B. The above numbered Contract/Order is modified to reflect the administrative changes (such as changes in paying office, appropriation date, etc.) Set fourth Item 14, pursuant to the authority of FAR 43.103 (b)
C. This supplemental agreement is entered into pursuant to authority of:
D. Other (Specify type of modification and authority)

E. IMPORTANT: Contractor [X] is not, [ ] is required to sign this document and return ____ copies to the issuing office.

14. Description of Amendment/Modification (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

Modification M0002 is being issued to extend the Period of Performance thru September 30, 2005 at no cost to the Government.

All other terms and conditions remain unchanged

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. Name and Title of Signer (Type or Print)
Gerald Hellerman
Managing Director

16A. Name and title of Contracting Officer (Type or Print)
Mary P. Swailes
Contracting Officer
M.Pat.Swailes@noaa.gov
301-713-0838 x201

15B. Contractor/Offeror (Signature of person authorized to sign)
15C. Date Signed 4/6/05

16B. United States of America (Signature of Contracting Officer)
16C. Date Signed 4/6/2005

NSN 7540-01-152-8070
PREVIOUS EDITIONS UNUSABLE
30-105
STANDARD FORM 30 (REV. 10-83)
Prescribed by GSA FAR (48 CFR) 53.243

SS-C-2

See Instructions – Reverse

Page 1 of Pages

U.S. DEPARTMENT OF COMMERCE
PROCUREMENT REQUEST
Requisitioner fills in only unshaded blocks

1. INVOICE ADDRESS
DOC/NOAA/GCEL
8484 GEORGIA AVENUE 4TH FL. SUITE 400
SILVER SPRING, MD 20910

A. REQUISITION NUMBER:
NA-EL-0102-4-00006

B. READY REQUISITION DATE:

2 RECEIVING OFFICE NO.	3 REFERENCE CONTRACT NUMBER	4 ORDER DATE	5 SOURCE	6 PURCHASE DELIVERY ORDER NUMBER	7 SUB.	C. SF-261

D. CHECK ONE: PURCHASE ORDER / DELIVERY ORDER / IMPREST FUND / CONTRACT / OTHER

8. TO: (Seller)
GERALD HELLERMAN [redacted]
10965 EIGHT BELLS LANE
COLUMBIA, MD 21044
TEL: 301-596-0053
FAX: 410-997-2726

9. SHIP TO: (Use Bldg/Room No.–see Reverse for Format)
NOAA/GCEL
8484 GEORGIA AVENUE 4TH FL. SUITE 400
SILVER SPRING, MD 20910

10. 1099 TAX
11. EMPLOYER IDENTIFICATION NUMBER (EIN)

E. REQUISITIONER CONTACT PERSON: MONIA WILLIAMS
TELEPHONE NO. (301) 427-2202

12 LINE ITEM	13 ACT. CODE	14 DESCRIPTION (Double Space Between Items)	15 BUDGET OBJECT	16 ACC. LINE	17 QUANTITY	18 UNIT ISSUE	19 UNIT PRICE (If Known)	20 ESTIMATED AMOUNT
01		CONTRACTOR – FINANCIAL ANALYST - EVAUATE EXTENSIVE DOCUMENTATION IN SUPPORT OF INABILITY TO PAY AND FOR ONGOING INVESTIGATIONS OF POSSIBLE MAJOR VIOLATIONS OF THE MSFCMA. TO SERVE AS A EXPERT WITNESS. SEE ATTACHED SOW.	2527	01	[redacted]	HR	[redacted]	70,000.00
02		INDIRECT COST - TRAVEL TRAVEL SHALL BE IN ACCORDANCE WITH NOAA TRAVEL REGULATIONS. (INVOICES FOR TRAVEL EXPENSES SHALL BE SUBMITTED FOR REIMBURSEMENT)	2140	02	[redacted]	EA	[redacted]	18,000.00

21. F.O.B. POINT
22. DISCOUNT TERMS
23. PROMPT PAYMENT
Sub-Total (This Page) 24. 88,000.00

F. REQUEST DELIVERY BY:
25. DELIVERY DATE:
26. SHIP VIA
27. ESTIMATED FREIGHT
TOTAL 28.

I certify that funds are available and that the above items are necessary for use in the public service.

G. TITLE OF REQUEST AUTHORIZING OFFICIAL: AGCEL/NOAA — TELEPHONE: (301) 427-2202
SIGNATURE: Michele Kerr — DATE: 2/12/04

TITLE OF REQUESTER: Program Management/Analyst — TELEPHONE: (301) 427-2202
SIGNATURE: [signature] — DATE: 2/12/04

29 ACC. LINE	30 BUREAU CODE	31. ACCOUNTING CLASSIFICATION	32 DISTRIBUTION	33 AMOUNT
01	14	2004-14-2BL2D02P00-01020001-00000000	100%	
02	14	2004-14-2BL2D02P00-01020001-00000000	100%	

H. CLEARANCES AND REMARKS

hASSOCA comcast.net

FORM CD-435 (9-85)
This form was electronically produced by Elite Federal Forms, Inc.

(Distribution–Original and one copy to Procurement)
NOT A PURCHASE ORDER

SS-C-4

STATEMENT OF WORK

The National Oceanic and Atmospheric Administration (NOAA) Office of the General Counsel(GC) requires an experienced financial analyst, available on a continuing basis, with expertise on corporate structure issues who will serve as a technical consultant, financial advisor, and witness with respect to the investigation of business structure and the penalty, forfeiture, permit sanction, and phases of the case.

The analyst will work with both the NMFS Special Agent assigned to the case and the NOAA GC enforcement attorneys at the Office of the Assistant General Counsel for Enforcement and Litigation in St. Petersburg, Florida; Seattle, Washington; Juneau, Alaska; Long Beach, California, and Silver Spring, Maryland.

Duties will include: reviewing and evaluating financial information and documents seized as part of the an ongoing investigation, in order to determine the structure and responsibilities of the four corporations and two corporate officers involved in this investigation; prepare an affidavit if required regarding the structure and responsibilities of the potential respondents for the Offense Investigation Report; briefing NOAA GC enforcement attorney on financial matters, preparing written reports and detailed financial analyses as requested, assisting with the preparation of other documents such as interrogatories and briefs, and developing financial information on respondents.

The financial analyst will be required to testify as a financial expert in any hearing or depositions resulting from this investigation, assist with evaluating settlement offers, assist at hearing and during discovery respecting respondents' financial status, conduct credit and asset investigations, advise on collection of penalties and value of assets, analyze corporate control issues, and perform such other services as are reasonably necessary to provide financial analytical support.

The financial analyst will be required to control, to protect, and not to disclose confidential and sensitive documents and information.

Specific Requirements

(A) The contractor must have extensive experience with corporate structure analysis; analysis and assessment of ability to pay penalties and fines; review of financial statements, business records, and other financial documents; and review of projected performance (e.g., cash flow and cash position projections and disclosure statements). The contractor must be familiar with corporate control issues, and analyzing relationships between affiliated persons, bankruptcy matters, and tracing assets.

55-C-6

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(B) The contractor must be familiar with legal proceedings, especially with federal judicial and administrative proceedings, and have significant experience testifying as a financial expert and in preparing affidavits, in particular on ability to pay issues, in such proceedings, and should be qualified to testify in federal court as an expert on matters related to financial analysis and corporate control.

(C) The contractor must be familiar with discovery proceedings, including preparation for an conduct of depositions, cross examinations, and witness preparation, and including preparation of affidavits where necessary.

(D) The contractor must have a significant experience (ten years or equivalent) in financial analysis in the context of federal statutory enforcement proceedings, in particular with the evaluation of the ability of defendants to pay penalties and fines.

(E) The contractor granted a federal security clearance within the past ten years. The contract work may be performed through employees or subcontractors, however, the control, protection, and non-disclosure of any confidential or sensitive information will be the responsibility of the contractor.

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FORM CD-492
(REV. 9-90)

U.S. DEPARTMENT OF COMMERCE

JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION

I recommend that the Department of Commerce negotiate only with GERALD HELLERMAN, HELLRMAN ASSOCIATES
(Proposed Contractor(s))

for CONTRACT SERVICES – EXPERT WITNESS - FINANCIAL ANALYST
(Description of Supplies or Services)

Requisition No. NA-EL-0102-4-00006 Cost Estimate $ 88,000.00
(Include basic contract period and all options or total systems life costs)

Requesting Activity FEBRUARY 28, 2004 Contracting Activity MARCH 6, 2004

CERTIFICATION REQUIREMENTS

I certify that the attached narrative justification is accurate and contains complete data necessary to support the recommendation for other than full and open competition.

The requisitioner further certifies that the attached narrative justification verifies the Government's minimum needs or schedule requirements and any rationale used to justify other than full and open competition procedures.

*Requisitioner (Name & Title)	Signature	Phone No.	Date
Michele Kuruc, AGCEL/NOAA	/s/	(301) 427-2202	2/10/04

*The procurement request authorizing official, whose signature appears in block G of the Procurement Request (Form CD-435).

Before requesting this acquisition, state the statutory authority for conducting this acquisition under "other than full and open competition" procedures in the following blank 41 USC 253(c)(1) (use only one statutory authority). Also provide a narrative justification to this form. In accordance with FAR Subpart 6.3, the narrative justification must include the facts necessary to reasonably and legitimately lead to the use of the specific authority for other than full and open competition; including adequate information on the nature and/or description of the action being approved and a description of the supplies or services required to meet the agency's needs.

NOTE: Use of this form is optional when: (1) the justification contains all information required by FAR 6.303-2, is certified by the requisitioner and contracting officer and is approved at the appropriate levels; or (2) simplified acquisition procedures for acquisitions not exceeding $100,000 are used, in which case the simplified documentation practices outlined in FAR 13.106-2 may be followed.

STATUTORY AUTHORITY

41 USC 253(c)(1) - Only one responsible source
The supplies or services required by the agency are available from only one responsible source and no other type of supplies or services will satisfy agency requirements.

41 USC 253(c)(2) - Unusual & compelling urgency
The agency's need for the supplies or services is of such an unusual and compelling urgency that the government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals. (NOTE: This authority will not be approved if it is determined that the urgency is due to a lack of advance planning by the requiring activity. Solicitation from as many potential sources as is practicable under the circumstances is required.)

41 USC 253(c)(3) - Industrial mobilization; or engineering, developmental, or research capability; or expert services
It is necessary to award the contract to a particular source or sources in order (a) to maintain a facility, producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency, or to achieve industrial mobilization, or (b) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center or (c) to acquire the services of an expert for any current or anticipated litigation or dispute.

41 USC 253(c)(4) - International agreement
The terms of an international agreement or a treaty between the United States and a foreign government or international organization, or the written directions of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services for such government, have the effect of requiring the use of procedures other than competitive procedures.

41 USC 253(c)(5) - Authorized or required by statute
A statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source, or the agency's need is for a brand-name commercial item for authorized resale.

41 USC 253(c)(6) - National security
The disclosure of the agency's needs would compromise the national security unless the agency is permitted to limit the number of sources from which it solicits bids or proposals.

41 USC 253(c)(7) - Public interest
The agency head (Secretary of Commerce) determines that it is not in the public interest to use full and open competition in the particular acquisition concerned, and notifies Congress in writing of such determination not less than 30 days before award of the contract.

This form was electronically produced by Elite Federal Forms, Inc.

SS-C-8

APPROVAL REQUIREMENTS

Contracting Officer--Not exceeding $500,000:

Contracting Officer & Title	Signature	Phone No.	Date

Contracting Activity Competition Advocate--Over $500,000 but not exceeding $10 million:

Contracting Activity Competition Advocate & Title	Signature	Phone No.	Date

Head of Contracting Activity (HCA) or HCA Designee--Over $10 million but not exceeding $50 million:

Head of Contracting Activity/HCA Designee & Title	Signature	Phone No.	Date

Procurement Executive--Over $50 million:

Procurement Executive & Tilte	Signature	Phone No.	Date

NOTE: Use the total cost estimate specified on the front of this document in determining the necessary approvals. Each review must be preceded by lower level approval(s), e.g., over $50 million all approvals are required.

This form was electronically produced by Elite Federal Forms, Inc.

55-C-9

JUSTIFICATION FOR SOLE SOURCE

Contractor

Gerald Hellerman
Hellerman Associates

Statement of Need

NMFS Office of Enforcement investigates potential violations of the MSFCMA, while NOAA GC initiates and prosecutes enforcement actions, including civil administrative penalty cases. Often these cases involve respondents that have created complex business structures and corporate relationships for their business activities. In order to correctly assess the responsibility and potential liability for each person/corporation, the Agency must have a full understanding of the structure and responsibilities of the potential respondents based on a credible analysis of the financial information available. In addition, financial considerations must be addressed as they arise in the content of subsequent legal enforcement proceedings, including discovery and settlement negotiations.

NOAA GCEL/SS, SE,SW,AK, and the NMFS Office of Enforcement require an experienced financial analyst with expertise in dealing with corporate control and structure issues who will serve as a technical consultant for the following tasks:

- Preparation of an affidavit on the corporate structure and responsibilities of the various corporations and persons under investigation for violations of the Magnsuon-Stevens Fisheries Conservation and Management Act.

- Instruction regarding the interpretation of financial statement forms completed by potential respondents, and,

- Consultation regarding various financial questions that might arise in the context of the case, including, but not limited to, issues regarding financial status, credit and asset investigations, collection of penalties, value of assets, and corporate control issues.

The financial analyst will work with the NOAA GC enforcement attorney at the Office of the Assistant General Counsel for Enforcement and Litigation in St. Petersburg, Florida, and with the NMFS Special Agent assigned to this investigation in St. Petersburg, Florida.

The financial analyst will be required to control, to protect, and not to disclose confidential and sensitive documents and information.

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Mr. Hellerman has almost 20 years of experience in matters of financial and corporate analysis in support t of federal enforcement proceedings. For over three years, Mr. Hellerman has worked with NOAA as a contractor to provide financial analysis and expert witness testimony. He is the former Chief Financial Analyst, Antitrust Division, U.S. Department of Justice (retired July 1993). Prior to that, he was employed by the U.S. Securities and Exchange Commission as a financial analyst, including more than five (5) years as a branch chief. He has participated in numerous enforcement proceedings brought by the Department of Justice, and qualified as a financial analyst and corporate control expert.

Due to his extensive, specialized experience with financial and corporate issues in federal enforcement proceedings, Mr. Hellerman has a particular understanding of the issues and concerns that NOAA GC has with respect to corporate control and structure in the context of its enforcement program. As a result of his experience, Mr. Hellerman will be able to begin to assist NOAA GC with the above referenced tasks without the need for a long preparation period. This is crucial because delay in investigating and charging respondents for this type of violation negatively effects the Agency's goal in achieving compliance with the regulations and may also allow th potential respondents - who are aware of the ongoing investigation - to hide further evidence of violations.

Mr. Hellerman has experience conducting training sessions for NOAA/GC and U.S. Attorneys regarding financial issues surrounding fisheries enforcement cases.

Mr. Hellerman's fees ([redacted] per hour) are considered on the low end of the scale compared to those generally charged by financial analysts of his experience and ability.

In summary, Mr. Hellerman's unique experience and expertise, it is clear that the competitive process will not result in more qualified choice. The Government will be well served by utilizing a sole-source contract in this case.

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1. 52.213-4 TERMS AND CONDITIONS--SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS) (OCT 2003) 4

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1. 52.213-4 TERMS AND CONDITIONS--SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS) (OCT 2003)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses that are incorporated by reference:

(1) The clauses listed below implement provisions of law or Executive order:

(i) 52.222-3, Convict Labor (June 2003) (E.O. 11755).

(ii) 52.222-21, Prohibition of Segregated Facilities (Feb 1999) (E.O. 11246).

(iii) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).

(iv) 52.225-13, Restrictions on Certain Foreign Purchases (OCT 2003) (E.o.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

(v) 52.233-3, Protest After Award (AUG 1996) (31 U.S.C. 3553).

(2) Listed below are additional clauses that apply:

(i) 52.232-1, Payments (APR 1984).

(ii) 52.232-8, Discounts for Prompt Payment (FEB 2002).

(iii) 52.232-11, Extras (APR 1984).

(iv) 52.232-25, Prompt Payment (Oct 2003).

(v) 52.233-1, Disputes (7/02).

(vi) 52.244-6, Subcontracts for Commercial Items (Apr 2003).

(viii) 52.253-1, Computer Generated Forms (JAN 1991).

(b) The Contractor shall comply with the following FAR clauses, incorporated by reference, unless the circumstances do not apply:

(1) The clauses listed below implement provisions of law or Executive order:

(i) 52.222-19, Child Labor--Cooperation with Authorities and Remedies (Sept 2002) (E.O.13126). (Applies to contracts for supplies exceeding the micro-purchase threshold.)

(ii) 52.222-20, Walsh-Healey Public Contracts Act (Dec 1996) (41 U.S.C. 35-45) (Applies to supply contracts over $10,000 in the United States, Puerto Rico, or the U.S. Virgin Islands).

(iii) 52.222-35, Affirmative Action for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212) (Applies to contracts of $25,000 or more).

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793). (Applies to contracts over $10,000, unless the work is to be performed outside the United States by employees recruited outside the United States.) (For purposes of this clause, United States includes the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.)

(v) 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212) (Applies to contracts of $25,000 or more).

(vi) 52.222-41, Service Contract Act of 1965, As Amended (May 1989) (41 U.S.C. 351, et seq.) (Applies to service contracts over $2,500 that are subject to the Service Contract Act and will be performed in the United States, District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, or the outer continental shelf lands).

(vii) 52.223-5, Pollution Prevention and Right-to-Know Information (AUG 2003) (E.O. 13148) (Applies to services performed on Federal facilities).

(viii) 52.225-1, Buy American Act-Supplies (June 2003) (41 U.S.C. 10a-10d) (Applies to contracts for supplies, and to contracts for services involving the furnishing of supplies, for use in the United States or its outlying areas, if the value of the supply contract or supply portion of a service contract exceeds the micro-purchase threshold and the acquisition-

(A) Is set aside for small business concerns; or

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(B) Cannot be set aside for small business concerns (19.502-2), and does not exceed $25,000).

(ix) 52.232-33, Payment by Electronic Funds Transfer--Central Contractor Registration (Oct 2003). (Applies when the payment will be made by electronic funds transfer (EFT) and the payment office uses the Central Contractor Registration (CCR) database as its source of EFT information.)

(x) 52.232-34, Payment by Electronic Funds Transfer--Other than Central Contractor Registration (May 1999). (Applies when the payment will be made by EFT and the payment office does not use the CCR database as its source of EFT information.)

(xi) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Apr. 2003) (46 U.S.C. Appx 1241). (Applies to supplies transported by ocean vessels (except for the types of subcontracts listed at 47.504(d).)

(2) Listed below are additional clauses that may apply:

(i) 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (JULY 1995) (Applies to contracts over $25,000).

(ii) 52.211-17, Delivery of Excess Quantities (SEPT 1989) (Applies to fixed-price supplies).

(iii) 52.247-29, F.o.b. Origin (JUN 1988) (Applies to supplies if delivery is f.o.b. origin).

(iv) 52.247-34, F.o.b. Destination (NOV 1991) (Applies to supplies if delivery is f.o.b. destination).

(c) FAR 52.252-2, Clauses Incorporated by Reference (FEB 1998). This contract incorporates one or more clauses by reference, with the same force and effect as if they were taken in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es): _____

(d) Inspection/Acceptance. The Contractor shall tender for acceptance only those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its postacceptance rights--

(1) Within a reasonable period of time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(e) Excusable delays. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(f) Termination for the Government's convenience. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that the Contractor can demonstrate to the satisfaction of the Government, using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's

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records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

(g) Termination for cause. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(h) Warranty. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(End of clause)

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ORDER FOR SUPPLIES OR SERVICES

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IMPORTANT: Mark all packages and papers with contract and/or order numbers.

1. DATE OF ORDER: 15 Dec 2005
2. CONTRACT NO. (if any):
3. ORDER NO.: DG133006SE1182
4. REQUISITION/REFERENCE NO.: NAGC0102-6-00229
5. ISSUING OFFICE Address correspondence to: F6001201
DOC/NOAA/AGO
Staff Office & External Clients, AD
1305 East West Highway, Rm 7601
Silver Spring, MD 20910
RUBIE B. KING 301-713-0838 x189

6. SHIP TO: GC010214
a. NAME OF CONSIGNEE: DOC/NOAA/GCEL
b. STREET ADDRESS: 8484 Georgia Avenue, 4th Floor, Suite 400
c. CITY: Silver Spring
d. STATE: MD
e. ZIP CODE: 20910
f. SHIP VIA

7. TO: 00000799 TIN: 521836262
a. Name of Contractor: HELLERMAN ASSOCIATES DUNS: 806760443
b. Company Name
c. Street Address: 10965 EIGHT BELLS LANE
d. City: COLUMBIA e. State: MD f. Zip: 210442704

8. TYPE OF ORDER
[X] a. PURCHASE
REFERENCE YOUR: Please furnish the following on the terms and conditions specified on both sides of this order and on the attached sheet, if any, including delivery as indicated.
[ ] b. DELIVERY
Except for billing instructions on the reverse, this delivery order is subject to instructions contained on this side only of this form and is issued subject to the terms and conditions of the above-numbered contract.

9. ACCOUNTING AND APPROPRIATION
See Attached Schedule
BOC:
OBLIGATED AMT: $87,500.00

10. REQUISITIONING OFFICE
Robert Hogan
(301) 427-2202

11. BUSINESS CLASSIFICATION (Check appropriate box(es))
[X] a. SMALL [ ] b. OTHER THAN SMALL [ ] c. DISADVANTAGED [ ] d. WOMEN-OWNED

12. F.O.B. POINT: DESTINATION
13. PLACE OF
a. INSPECTION: SEE BLOCK 6
b. ACCEPTANCE: SEE BLOCK 6
14. GOVERNMENT B/L NO.
15. DELIVER TO F.O.B. POINT ON OR BEFORE: 30 Sep 2006
16. DISCOUNT TERMS: 00.00% 0 Days Net 0

17. SCHEDULE (See reverse for Rejections)

ITEM NO. (a)	SUPPLIES OR SERVICES (b)	QUANTITY ORDERED (c)	UNIT (d)	UNIT PRICE (e)	AMOUNT (f)	QTY ACCEPT. (g)
0001	The Contractor shall provide technical support services in accordance with the attached Statement of Work. The period of performance shall be from December 15, 2005 through September 30, 2006.. Accounting and Appropriation Data:	[redacted]	HR	[redacted]	78,050.00	

18. SHIPPING POINT
19. GROSS SHIPPING WEIGHT
20. INVOICE NO.
21. MAIL INVOICE TO:
a. NAME: DOC/NOAA/GCEL
b. STREET ADDRESS (or P.O. Box): 8484 Georgia Avenue, 4th Floor, Suite 400
c. CITY: Silver Spring
d. STATE: MD
e. ZIP CODE: 20910

SEE BILLING INSTRUCTIONS ON REVERSE

17(h) TOTAL (Cont. pages)
US$
17(i) GRAND TOTAL
87,500.00

22. UNITED STATES OF AMERICA BY (Signature) 12/15/05
23. NAME (Typed): RUBIE B. KING 301-713-0838 x189
(TITLE CONTRACTING/ORDERING OFFICER)

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Previous edition not usable

OPTIONAL FORM 347 (REV. 6/95)
Prescribed by GSA/FAR 48 CFR 53.213(e)

ORDER FOR SUP IES OR SERVICES - Continuatio

PAGE 2 OF PAGES 10

IMPORTANT: Mark all packages and papers with contract and/or order numbers.

DATE OF ORDER: 15 Dec 2005 | CONTRACT NO. (if any) | ORDER NO. DG133006SE1182

ITEM NO. (a)	SUPPLIES OR SERVICES (b)	QUANTITY ORDERED (c)	UNIT (d)	UNIT PRICE (e)	AMOUNT (f)	QTY ACCEPT. (g)
	14.06.2BL7E02P0006021101000.01020001000 00000.25110000 $ 78,050.00					
0002	Other Direct Cost: The Contractor shall be required to invoice for travel in accordance with Federal Travel Regulations.	NTE [redacted]	LT	NTE [redacted]	9,450.00	
	Accounting and Appropriation Data: 14.06.2BL7E02P0006021101000.01020001000 00000.25110000 $ 9,450.00					

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Statement of Work
Financial Analyst/Forensic Accountant and Expert Witness
For the Office of the General Counsel for Enforcement and Litigation

I. INTRODUCTION

The Department of Commerce (DOC) National Oceanic Atmospheric and Administration (NOAA) Office of General Counsel for Enforcement and Litigation (GCEL) has a requirement for a financial analyst/forensic accountant to serve as a technical consultant and financial advisor to NOAA GCEL attorneys responsible for prosecuting Administrative cases against violators of marine natural resource laws administered by NOAA. GCEL is located in Silver Spring, MD, and has five regional offices located in Gloucester, MA, St. Petersburg, FL, Long Beach, CA, Seattle, WA, and Juneau, AK.

II. SCOPE OF WORK

The Contractor shall be required to perform financial review and analysis of documents and other information for GCEL to determine revenue and profit of individuals and companies accused of violating marine natural resource laws administered by NOAA. The primary purpose of this review is to determine an alleged violator's " ability to pay" as required under the Magnuson-Stevens Fisheries Conservation and Management Act (MSFCMA).

The Contractor shall provide clear and concise reports to GCEL based on the available financial information and documents provided to the contractor by the GCEL attorney.
In addition to conducting reviewing and providing an analysis of financial records the Contractor shall be required to prepare reports of findings for use by the GCEL attorney in preparation for Administrative hearings as well as presenting them during the Administrative hearing process.

As part of its responsibilities the Contractor shall be required to participate in pre-hearings, depositions, interrogatories, offering expert testimony at the Administrative hearing before an Administrative Law Judge, and in post-hearing briefs and appeals. In order to provide the required services the Contractor must have completed a federal security clearance within the past 10 years and be willing to provide training and technical assistance to GCEL attorneys, and other NOAA employees as necessary, relating to gathering and utilizing financial information from alleged violators.

III. REPORTS CAR 1352.237-70 (March 2000)

a. Progress Reports

The Contractor shall submit, with its invoices to the Government, a progress report every at a minimum of once per month after the effective date of the purchase order contract, during the period of performance. The Contractor shall prepare a progress report advising of the work completed or investigation (s) status during the performance period. The report shall also include any additional information--including findings and recommendations --that may assist the Government in evaluating progress under this contract. The report shall include a detailed work outline and completed for each project assigned by the Contracting Officers Technical Representative (COR) and the Contractor=s planned phasing of work by reporting period or by case load.

b. Final Report

Within fifteen days of completion of the current investigation and or at the end of performance period, the Contractor shall submit, to the Government, a comprehensive draft report containing the Contractor=s findings and recommendations. The report shall conform to the requirements of the contract, and include all necessary data and exhibits to support findings and

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recommendations. It shall include a recapitulation of the amount of hours expended by case assignment. The report shall also include a brief summary, including short statements on the project=s objectives, scope, methodology, information obtained, and conclusions. The Government will review the draft and return it to the Contractor within thirty (30) days after receipt with comments and instructions for a format to be used in the preparation of the final report. The Contractor shall incorporate the comments into a final report and furnish the Government with one copy upon contract completion.

2. In the event the Government does not return the draft copy of the report to the Contractor within the prescribed period, the Contractor shall be permitted an extra day for each day of delay caused by the Government. The Government shall not be liable for increased costs by reason of any such delay.

IV. TRAVEL

The Contractor shall be required to travel to various locations through out the United States to provide expert testimony, training, case assistance, and other financial analysis. The Government shall provide no less than a 10 days notice. All travel shall be in accordance with Federal Travel Regulations.

V. SCHEDULE OF DELIVERABLES

Following is a schedule of all deliverables, including administrative deliverables, required during the period of performance of this contract:

Item	Description	Qty.	Due Date	Deliver To
1.	Progress Report	1	Monthly	COR
2.	Appear as an Expert		N/A As required	COR

* *Contracting Officer*
** *Contracting Officer Representative*

VI. PERIOD OF PERFORMANCE

The period of performance for this contract shall be for 7 months from the date of the award, or until the funds are expended, whichever comes first.

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1. 52.213-4 TERMS AND CONDITIONS--SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS) (JULY 2005)
(Reference)

2. 1352.201-70 CONTRACTING OFFICER'S AUTHORITY (MARCH 2000)

The Contracting Officer is the only person authorized to make or approve any changes in any of the requirements of this contract and notwithstanding any provisions contained elsewhere in this contract, the said authority remains solely in the Contracting Officer. In the event the Contractor makes any changes at the direction of any person other than the Contracting Officer, the change will be considered to have been made without authority and no adjustment will be made in the contract terms and conditions, including price.

3. 1352.201-71 CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR) (FEBRUARY 2005)

a. Robert J. Hogan is hereby designated as the Contracting Officer's Technical Representative (COTR). The COTR may be changed at any time by the Government without prior notice to the Contractor by a unilateral modification to the Contract. The COTR is located at:
DOC/NOAA/GCEL
8484 Georgia Ave. 4th Floor Suite 400
Silver Spring, MD 20910
Robert.J.Hogan@noaa.gov
(301) 427-2202
b. The responsibilities and limitations of the COTR are as follows:
(1) The COTR is responsible for the technical aspects of the project and serves as technical liaison with the Contractor. The COTR is also responsible for the final inspection and acceptance of all reports, and such other responsibilities as may be specified in the contract.
(2) The COTR is not authorized to make any commitments or otherwise obligate the Government or authorize any changes which affect the Contract price, terms or conditions. Any Contractor request for changes shall be referred to the Contracting Officer directly or through the COTR. No such changes shall be made without the expressed prior authorization of the Contracting Officer (CO). The CO may designate assistant or alternate COTR(s) to act for the COTR by naming such assistant/alternate(s) in writing and transmitting a copy of such designation to the Contractor.

4. 1352.209-71 ORGANIZATIONAL CONFLICT OF INTEREST (MARCH 2000)

(a) The Contractor warrants that, to the best of the Contractor's knowledge and belief, there are no relevant facts or circumstances which would give rise to an organizational conflict of interest, as defined in FAR Subpart 9.5, or that the Contractor has disclosed all such relevant information.
(b) The Contractor agrees that if an actual or potential organizational conflict of interest is discovered after award, the Contractor will make a full disclosure in writing to the Contracting Officer. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Contracting Officer, to avoid, mitigate, or neutralize the actual or potential conflict.
(c) Remedies - The Contracting Officer may terminate this contract for convenience, in whole or in part, if it deems such termination necessary to avoid an organizational conflict of interest. If the Contractor was aware of a potential organizational conflict of interest prior to award or discovered an actual or potential conflict after award and did not disclose or misrepresented relevant information to the Contracting Officer, the Government may terminate the contract for default, debar the Contractor from Government contracting, or pursue such other remedies as may be permitted by law or this contract.

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(d) The Contractor further agrees to insert provisions which shall conform substantially to the language of this clause, including this paragraph (d), in any subcontract or consultant agreement hereunder.

5. 1352.209-72 RESTRICTIONS AGAINST DISCLOSURE (MARCH 2000)

a. The Contractor agrees, in the performance of this contract, to keep the information furnished by the Government and designated by the Contracting Officer or Contracting Officer's Technical Representative in the strictest confidence. The Contractor also agrees not to publish or otherwise divulge such information in whole or in part, in any manner or form, nor to authorize or permit others to do so, taking such reasonable measures as are necessary to restrict access to such information while in the Contractor's possession, to those employees needing such information to perform the work provided herein, i.e., on a "need to know" basis. The Contractor agrees to immediately notify the Contracting Officer in writing in the event that the Contractor determines or has reason to suspect a breach of this requirement.

b. The Contractor agrees that it will not disclose any information described in Subsection A to any persons or individual unless prior written approval is obtained from the Contracting Officer. The Contractor agrees to insert the substance of this clause in any consultant agreement or subcontract hereunder.

6. 1352.209-73 COMPLIANCE WITH THE LAWS (MARCH 2000)

The Contractor shall comply with all applicable laws and rules and regulations having the force of law which deal with or relate to performance hereunder or the employment by the Contractor of the employees.

7. 1352.216-73 CEILING PRICE (MARCH 2000)

The ceiling price of this contract is $87,500.00 The Contractor shall not make expenditures nor incur obligations in the performance of this contract which exceed the ceiling price specified herein, except at the Contractor's own risk.

8. 1352.231-70 DUPLICATION OF EFFORT (MARCH 2000)

The Contractor hereby certifies that costs for work to be performed under this contract and any subcontract hereunder are not duplicative of any costs charged against any other Government contract, subcontract, or other Government source. The Contractor agrees to advise the Contracting Officer, in writing, of any other Government contract or subcontract it has performed or is performing which involves work directly related to the purpose of this contract. The Contractor also certifies and agrees that any and all work performed under this contract shall be directly and exclusively for the use and benefit of the Government, and not incidental to any other work, pursuit, research, or purpose of the Contractor, whose responsibility it will be to account for it accordingly.

9. 1352.233-70 HARMLESS FROM LIABILITY (MARCH 2000)

The Contractor shall hold and save the Government, its officers, agents, and employees harmless from liability of any nature or kind, including costs and expenses to which they may be subject to or on account of any or all suits or damages of any character whatsoever resulting from injuries or damages sustained by any person or persons or property by virtue of performance of this contract, arising or resulting in whole or in part from the fault, negligence, wrongful act or wrongful omission of the contractor, or any subcontractor, their employees, and agents.

10. 1352.239-74 SECURITY PROCESSING REQUIREMENTS FOR CONTRACTORS/SUBCONTRACTOR PERSONNEL FOR ACCESSING DOC INFORMATION TECHNOLOGY SYSTEMS (OCT 2003)

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(a) Contractor personnel requiring any access to systems operated by the Contractor for DOC or interconnected to a DOC network to perform contract services shall be screened at an appropriate level in accordance with Commerce Acquisition Manual 1337.70, Security Processing Requirements for Service Contracts. DOC shall provide screening using standard personnel screening forms, which the Contractor shall submit to the DOC Contracting Officer's Technical Representative (COTR) based on the following guidance:

1) Contract personnel performing work designated Contract High Risk and personnel performing work designated Contract Moderate Risk in the information technology (IT) occupations and those with "global access" to an automated information system require a favorable pre-employment check before the start of work on the contract, regardless of the expected duration of the contract. After a favorable pre-employment check has been obtained, the Background Investigation (BI) for Contract High Risk and the Minimum Background Investigation (MBI) for Contract IT Moderate Risk positions must be initiated within three working days of the start of work.
2) Contract personnel performing work designated Contract Moderate Risk who are not performing IT-related contract work do not require a favorable pre-employment check prior to their employment; however, the Minimum Background Investigation (MBI) must be initiated within three working days of the subject's start of work on the contract, regardless of the expected duration of the contract.
3) Contract personnel performing work designated Contract Low Risk will require a National Agency Check and Inquiries (NACI) upon the subject's start of work on the contract if the expected duration of the contract exceeds 365 calendar days. The NACI must be initiated within three working days of the subject's start of work on the contract.
4) Contract personnel performing work designated Contract Low Risk will require a Special Agreement Check (SAC) upon the subject's start of work on the contract if the expected duration of the contract (including options) exceeds 180 days but is less than 365 calendar days. The SAC must be initiated within three working days of the subject's start of work on the contract.
5) Contract personnel performing work on contracts requiring access to classified information must undergo investigative processing according to the Department of Defense National Industrial Security Program Operating Manual (NISPOM), (http://www.dss.mil/isec/nispom.htm) and be granted eligibility for access to classified information prior to beginning work on the contract. The security forms may be obtained from the cognizant DOC security office servicing your bureau, operating unit, or Departmental office. At the option of the government, interim access to DOC IT systems may be granted pending favorable completion of a pre-employment check. Final access may be granted only on completion of an appropriate investigation based upon the risk level assigned to the contract by the Contracting Officer.

(b) Within 5 days after contract award, the Contractor shall certify in writing to the COTR that its employees, in performance of the contract, have completed annual IT security awareness training in DOC IT Security policies, procedures, computer ethics, and best practices, in accordance with DOC IT Security Program Policy, section 3.13 (http://home.osec.doc.gov/DOC-IT-Security-Program-Policy.htm). The COTR will inform the Contractor of any other available DOC training resources.

(c) Within 5 days of contract award, the Contractor shall provide the COTR with signed Nondisclosure Agreements as specified in Commerce Acquisition Regulation (CAR), 1352.209-72, Restrictions Against Disclosures.

(d) The Contractor shall afford DOC, including the Office of Inspector General, access to the Contractor's and subcontractor's facilities, installations, operations, documentation, databases, and personnel used in performance of the contract. Access shall be provided to the extent required to carry out a program of IT inspection, investigation, and audit to safeguard against threats and hazards to the integrity, availability, and confidentiality

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DOC data or to the ction of computer systems oper: d on behalf of DOC, and to preserve evidence of computer crime.

(e) The Contractor shall incorporate this clause in all subcontracts that meet the conditions in paragraph (a) of this clause.

(End of clause)

11. 1352.246-70 INSPECTION AND ACCEPTANCE (MARCH 2000)

The Contracting Officer or the duly authorized representative will perform inspection and acceptance of supplies and services to be provided under this contract.

Inspection and acceptance will be performed at:
DOC/NOAA/GCEL
8484 Georgia Ave. 4th Floor
Suite 400
Silver Spring, MD 20910
POC: Rrobert J. Hogan
(301) 427-2202

12. 1352.252-70 REGULATORY NOTICE (MARCH 2000)

Contractors are advised that certain provisions and clauses identified with a Commerce Acquisition Regulation (CAR) notation for identification purposes, have not yet been incorporated into the CAR. However, all of these items are binding for this acquisition and will eventually be contained in the CAR at Part 13 of Title 48 of the Code of Federal Regulations.

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ORDER FOR SUPPLIES OR SERVICES

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IMPORTANT: Mark all packages and papers with contract and/or order numbers.

1. DATE OF ORDER: 08 Dec 2006
2. CONTRACT NO. (if any):
3. ORDER NO.: DG133007SE0853
4. REQUISITION/REFERENCE NO.: NAGC0102-7-03122
5. ISSUING OFFICE Address correspondence to: F6001201
DOC/NOAA/AGO
STAFF OFFICE & EXTERNAL CLIENTS, AD
1305 EAST WEST HIGHWAY, RM 7601
SILVER SPRING, MD 20910
PEARLETTE M. MERRIWEATHER (301) 713-0838

6. SHIP TO: AD100031
a. NAME OF CONSIGNEE: DEPUTY GENERAL COUNSEL /GCEL — Ult Dest: AD100031
b. STREET ADDRESS: 8484 GEORGIA AVE, RM 400
c. CITY: SILVER SPRING
d. STATE: MD
e. ZIP CODE: 20910-5612
f. SHIP VIA:

7. TO: 00000799 TIN: 521836262
a. NAME OF CONTRACTOR: HELLERMAN ASSOCIATES DUNS: 806760443
b. COMPANY NAME:
c. STREET ADDRESS: 10965 EIGHT BELLS LANE
d. CITY COLUMBIA e. STATE MD f. ZIP 210442704

8. TYPE OF ORDER
[X] a. PURCHASE — REFERENCE YOUR: Please furnish the following on the terms and conditions specified on both sides of this order and on the attached sheet, if any, including delivery as indicated.
[ ] b. DELIVERY — Except for billing instructions on the reverse, this delivery order is subject to instructions contained on this side only of this form and is issued subject to the terms and conditions of the above-numbered contract.

9. ACCOUNTING AND APPROPRIATION: 140726L7E02P0096021101000010200010000000025110000000000 BOC: OBLIGATED AMT: $99,300.00
10. REQUISITIONING OFFICE: NOAA - NMFS

11. BUSINESS CLASSIFICATION (Check appropriate box(es)): [X] a. Small [ ] b. Other than small [ ] c. Disadvantaged [ ] d. Women-owned [ ] e. HUBZone [ ] f. Emerging small business [ ] g. Service-disabled veteran-owned

12. F.O.B. POINT: DESTINATION
13. PLACE OF: a. INSPECTION: SEE BLOCK 6 b. ACCEPTANCE: SEE BLOCK 6
14. GOVERNMENT B/L NO.:
15. DELIVER TO F.O.B. POINT ON OR BEFORE: 10 Dec 2007
16. DISCOUNT TERMS: 00.00% 0 Days Net 30

17. SCHEDULE (See reverse for Rejections)

ITEM NO. (a)	SUPPLIES OR SERVICES (b)	QUANTITY ORDERED (c)	UNIT (d)	UNIT PRICE (e)	AMOUNT (f)	QTY ACCEPT. (g)
	The Contractor shall provide financial analysis and expert witness services in accordane with the attached Statement of Work. The period of performance is 12/13/2006 - 12/12/2007. To evaluate extensive documentation in support of inability to pay for ongoing investigations.					

18. SHIPPING POINT
19. GROSS SHIPPING WEIGHT
20. INVOICE NO.
21. MAIL INVOICE TO:
a. NAME: DEPUTY GENERAL COUNSEL /GCEL
b. STREET ADDRESS (or P.O. Box): 8484 GEORGIA AVE, RM 400
c. CITY: SILVER SPRING d. STATE: MD e. ZIP CODE: 20910-5612

SEE BILLING INSTRUCTIONS ON REVERSE

17(h) TOTAL (Cont. pages)
17(i) GRAND TOTAL: US$ 99,300.00

22. UNITED STATES OF AMERICA BY (Signature):
23. NAME (Typed): MORIE GUNTER-HENDERSON 301 713-0838
(TITLE CONTRACTING/ORDERING OFFICER)

OPTIONAL FORM 347 (REV. 3/2005)
Prescribed by GSA/FAR 48 CFR 53.213(e)

2006-SS-C-1

ORDER FOR SUPPLIES OR SERVICES - Continuation

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IMPORTANT: Mark all packages and papers with contract and/or order numbers.

DATE OF ORDER: 08 Dec 2006
CONTRACT NO. (if any):
ORDER NO.: DG133007SE0853

ITEM NO. (a)	SUPPLIES OR SERVICES (b)	QUANTITY ORDERED (c)	UNIT (d)	UNIT PRICE (e)	AMOUNT (f)	QTY ACCEPT. (g)
0001	To serve as an expert witness. Other Direct Cost: Travel	NTE [redacted]	HR	NTE [redacted]	88,200.00	
0002	Travel shall be in accordance with NOAA Travel Regulations. (Invoices for travel expenses shall be submitted for reimbursement). Option Period 1 12/13/2007 - 12/12/2008	NTE [redacted]	LT	NTE [redacted]	11,100.00	
0003	To serve as an expert witness. To evaluate extensive documentation in support of inability to pay for ongoing investigations. Other Direct Cost: Travel	NTE [redacted]	HR	NTE [redacted]	90,720.00	
0004	Travel shall be in accordance with NOAA Travel Regulations. (Invoices for travel expenses shall be submitted for reimbursement).	NTE [redacted]	LT	NTE [redacted]	11,100.00	

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Statement of Work
National Oceanic Atmospheric Administration
Office of General Counsel/Office of Enforcement
Financial Analyst/Forensic Accountant and Expert Witness
December 1, 2006

I. STATEMENT OF NEED

NMFS Office of Enforcement investigates potential violations of the MSFCMA, while NOAA GC initiates and prosecutes enforcement actions, including civil administrative penalty cases. Often these cases involve respondents that have created complex business structures and corporate relationships for their business activities. In order to correctly assess the responsibility and potential liability for each person/corporation, the Agency must have a full understanding of the structure and responsibilities of the potential respondents based on a credible analysis of the financial information available. In addition, financial considerations must be addressed as they arise in the content of subsequent legal enforcement proceedings, including discovery and settlement negotiations.

II. OBJECTIVE

The National Oceanic and Atmospheric Administration (NOAA) Office of the General Counsel(GC) requires an experienced financial analyst, available on a continuing basis, with expertise on corporate structure issues who will serve as a financial advisor, financial consultant, and financial expert and witness with respect to the investigation of business structure and the penalty, forfeiture, permit sanction, and phases of the cases.

The analyst will work with both the NMFS Special Agents assigned to the cases and the NOAA GC enforcement attorneys from the Office of the Assistant General Counsel for Enforcement and Litigation. These attorneys are located in Silver Spring, Maryland; Gloucester, Massachusetts; St. Petersburg, Florida; Long Beach, California; Seattle, Washington, and Juneau, Alaska.

Duties will include: reviewing and evaluating financial information and documents seized as part of ongoing investigations, in order to determine the structure and responsibilities of the corporations; officers involved in this investigation; prepare affidavits if required regarding the structure and responsibilities of the potential respondents for the Offense Investigation Report; briefing NOAA GC enforcement attorneys on financial matters, preparing written reports and detailed financial analyses as requested, assisting with the preparation of other documents such as interrogatories and briefs, and developing financial information on respondents.

The financial analyst will be required to testify as a financial expert in any hearing or depositions resulting from investigations, assist with evaluating settlement offers, assist at hearings and during discovery-respecting respondents' financial status, conduct credit and asset investigations, advise on collection of penalties and value of assets, analyze corporate control issues, and perform such other services as are reasonably necessary to provide financial analytical support.

The Financial Analyst/Forensic Accountant and Expert Witness will be required to control, to protect, and not to disclose confidential and sensitive documents and information.

III. SPECIFIC TASKS

1.0 The Contractor shall have extensive experience with corporate structure analysis; analysis and assessment of ability to pay penalties and fines; review of financial statements, business records, and other financial documents; and review of projected performance (e.g., cash flow and cash position projections and disclosure statements). The Contractor shall be familiar with corporate control issues, and analyzing relationships between affiliated persons, bankruptcy matters, and tracing assets.

2.0 The Contractor shall be familiar with legal proceedings, especially with federal judicial and administrative proceedings, and have significant experience testifying as a financial expert and in preparing affidavits, in particular

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on ability to pay issues, in such proceedings, and should be qualified to testify in federal court as an expert on matters related to financial analysis and corporate control.

3.0 The Contractor shall be familiar with discovery proceedings, including preparation for an conduct of depositions, cross examinations, and witness preparation, and including preparation of affidavits where necessary.

4.0 The Contractor shall have a significant experience (ten years or equivalent) in financial analysis in the context of federal statutory enforcement proceedings, in particular with the evaluation of the ability of defendants to pay penalties and fines.

5.0 The Contractor granted a federal security clearance within the past ten years. The contract work may be performed through employees or subcontractors, however, the control, protection, and non-disclosure of any confidential or sensitive information will be the responsibility of the Contractor.

6.0 NOAA GCEL/Alaska Region, and the NMFS Office of Enforcement require an experienced financial analyst with expertise in dealing with corporate control and structure issues. The Contractor shall serve as a technical consultant for the following tasks:

6.1 Preparation of an affidavits on the corporate structure and responsibilities of the various corporations and persons under investigation for violations of the Magnsuon-Stevens Fisheries Conservation and Management Act.

6.2 Instruction regarding the interpretation of financial statement forms completed by potential respondents, and,

6.3 Consultation regarding various financial questions that might arise in the context of the case, including, but not limited to, issues regarding financial status, credit and asset investigations, collection of penalties, value of assets, and corporate control issues.

6.4 The Contract shall work with the NOAA GC enforcement attorney at the Office of the Assistant General Counsel for Enforcement and Litigation in Juneau, Alaska and the designated NMFS Special Agents assigned to the investigations.

6.5 The Contractor is required to control, to protect, and not to disclose confidential and sensitive documents and information.

IV. DELIVERABLES

1.0 Inspection and Acceptance Criteria

Final inspection and acceptance of all work performed, reports and other deliverables will be performed at the place of delivery by the COTR.

1.1 General Acceptance Criteria

General quality measures, as set forth below, will be applied to each work product received from the Contractor under this statement of work.

1.1.1 Accuracy - Work Products shall be accurate in presentation, technical content, and adherence to accepted elements of style.

1.1.2 Clarity - Work Products shall be unambiguous and relevant. Any/All diagrams shall be easy to understand and be relevant to the supporting narrative.

1.1.3 Consistency to Requirements - All work products must satisfy the requirements of this statement of work.

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1.1.4 File Editing - All text and diagrammatic files shall be editable by the Government.

1.1.5 Format - Work Products shall be submitted in hard copy (where applicable) and in media mutually agreed upon prior to submission. Hard copy formats shall follow any specified Directives or Manuals.

1.1.6 Timeliness - Work Products shall be submitted on or before the due date specified in this statement of work or submitted in accordance with a later scheduled date determined by the Government.

3.0 Place of Performance

The place of performance is 8484 Georgia Ave, Silver Spring, MD and off-sites identified by the COTR during performance of this effort.

4.0 Contract Type/ Period of Performance

This is a Labor Hour Contract for [redacted] hours for services. The period of performance is 12 months from date of award and One (1) Option Period.

V. Purchase Order Administrative

1.0 Contracting Officer

The Contracting Officer (CO) for this effort is as follows:
Morie Gunter-Henderson
Department of Commerce
National Oceanic & Atmospheric Administration
Staff Office / External Clients, AD
1305 East West Highway, Silver Springs, MD 20910
Voice: 301.713.0838 Ext 205
Fax: 301.713.0809
Email: morie.gunter-henderson@noaa.gov

2.0 Contract Administration

The Contract Administrator (CA) for this effort is as follows:
Pearlette Merriweather
Department of Commerce
National Oceanic & Atmospheric Administration
Staff Office / External Clients, AD
1305 East West Highway, Silver Springs, MD 20910
Voice: 301.713.0838 Ext 186
Fax: 301.713.0809
Email: pearlette.m.merriweather@noaa.gov

3.0 Invoice Instructions

Invoices will be submitted covering hours of labor expended on a Monthly basis.

The Contractor shall provide two original copies of each invoice for work that is performed directly to the COTR: To constitute a proper invoice it must include the items listed in paragraphs (3.1) through (3.9) of this section. If the invoice does not comply with these requirements, it will be returned within 7 days after the date the designated billing office received the invoice with a statement of the reasons why it is not a proper invoice. If such notice is not

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timely, then an adjusted due date for the purpose of determining an interest penalty, if any, will be established in accordance with Far 32.907.

3.1 Name and address of the contractor.
3.2 Contractors are strongly encouraged to assign a sequential Invoice Numbering.
3.3 Invoice date. (Contractors are encouraged to date invoices as close as possible to the date of mailing or transmission.)
3.4Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).
3.5 Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.
3.6 Shipping and payment terms (e.g., shipment number and date of shipment, prompt payment discount terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.
3.7 Name and address of contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).
3.8 Name (where practicable), title, phone number, and mailing address of person to be notified in the event of a defective invoice.
3.9 Any other information or documentation required by the contract (such as evidence of shipment).

VI. Other Performance Requirements

1.0 Hours of Work
Contractor personnel are expected to conform to normal operating hours. The normal duty hours are 8:00 AM to 5:00 PM. Monday through Friday, with the exception of Federal Government holidays, with an allowance for a half-hour lunch period each day.

2.0 Government Holidays
The following Government holidays are normally observed by Government personnel: New Years Day, Martin Luther King's Birthday, Presidential Inauguration Day (metropolitan DC area only), President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Christmas Day, and any other day designated by Federal Statute, Executive Order, and/or Presidential Proclamation.

3.0 Payment for Unauthorized Work
No payments will be made for any unauthorized supplies and/or services or for any unauthorized changes to the work specified herein. This includes any services performed by the Contractor of their own volition or at the request of an individual other than a duly appointed Contracting Officer. Only a duly appointed Contracting Officer is authorized to change the specifications, terms, and conditions under this effort.

4.0 Disclosure of Information
Information made available to the contractor by the Government for the performance or administration of this effort shall be used only for those purposes and shall not be used in any other way without the written agreement of the Contracting Officer.

The contractor agrees to assume responsibility for protecting the confidentiality of Government records, which are not public information. Each contractor or employee of the contractor to whom information may be made available or disclosed shall be notified in writing by the contractor that such information may be disclosed only for a purpose and to the extent authorized herein.

5.0 Limited Use of Data
Performance of this effort may require the contractor to access and use data and information proprietary to a Government agency or Government contractor which is of such a nature that its dissemination or use, other than in performance of this effort, would be adverse to the interests of the Government and/or others.

Contractor and/or contractor personnel shall not divulge or release data or information developed or obtained in performance of this effort, until made public by the Government, except to authorize Government personnel or upon

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written approval of the Contracting Officer (CO). The contractor shall not use, disclose, or reproduce proprietary data that bears a restrictive legend, other than as required in the performance of this effort. Nothing herein shall preclude the use of any data independently acquired by the contractor without such limitations or prohibit an agreement at no cost to the Government between the contractor and the data owner which provides for greater rights to the contractor.

6.0 Government furnished information and equipment

Space and facilities on site will be provided to the primary contractors if required. In addition, appropriate information and access to NOAA personnel and managers will be provided. The contractor will provide required hardware and software and will have access to NOAA systems as necessary.

7.0 Travel

A minimum amount of travel may be required on an as needed basis. The contractor shall not at any time perform travel without the clearance of the AGCEL. In accordance with applicable NOAA travel regulations, when travel is involved the contractor will be reimbursed for all travel costs associated with the project. The Program Management Analyst will certify and submit relevant documents to NOAA finance in accordance with NOAA travel and finance regulations.

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1. 1352.201-70 CONTRACTING OFFICER'S AUTHORITY (MARCH 2000)

The Contracting Officer is the only person authorized to make or approve any changes in any of the requirements of this contract and notwithstanding any provisions contained elsewhere in this contract, the said authority remains solely in the Contracting Officer. In the event the Contractor makes any changes at the direction of any person other than the Contracting Officer, the change will be considered to have been made without authority and no adjustment will be made in the contract terms and conditions, including price.

2. 1352.201-71 CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR) (FEBRUARY 2005)

a. Robert Hogan is hereby designated as the Contracting Officer's Technical Representative (COTR). The COTR may be changed at any time by the Government without prior notice to the Contractor by a unilateral modification to the Contract. The COTR is located at:

DOC/NOAA/GCEL
8484 Georgia Ave. 4th Floor Suite 400
Silver Spring, MD 20910
robert.j.hogan@noaa.gov
301.427.2202

b. The responsibilities and limitations of the COTR are as follows:

(1) The COTR is responsible for the technical aspects of the project and serves as technical liaison with the Contractor. The COTR is also responsible for the final inspection and acceptance of all reports, and such other responsibilities as may be specified in the contract.

(2) The COTR is not authorized to make any commitments or otherwise obligate the Government or authorize any changes which affect the Contract price, terms or conditions. Any Contractor request for changes shall be referred to the Contracting Officer directly or through the COTR. No such changes shall be made without the expressed prior authorization of the Contracting Officer (CO). The CO may designate assistant or alternate COTR(s) to act for the COTR by naming such assistant/alternate(s) in writing and transmitting a copy of such designation to the Contractor.

3. 1352.209-71 ORGANIZATIONAL CONFLICT OF INTEREST (MARCH 2000)

(a) The Contractor warrants that, to the best of the Contractor's knowledge and belief, there are no relevant facts or circumstances which would give rise to an organizational conflict of interest, as defined in FAR Subpart 9.5, or that the Contractor has disclosed all such relevant information.

(b) The Contractor agrees that if an actual or potential organizational conflict of interest is discovered after award, the Contractor will make a full disclosure in writing to the Contracting Officer. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Contracting Officer, to avoid, mitigate, or neutralize the actual or potential conflict.

(c) Remedies - The Contracting Officer may terminate this contract for convenience, in whole or in part, if it deems such termination necessary to avoid an organizational conflict of interest. If the Contractor was aware of a potential organizational conflict of interest prior to award or discovered an actual or potential conflict after award and did not disclose or misrepresented relevant information to the Contracting Officer, the Government may terminate the contract for default, debar the Contractor from Government contracting, or pursue such other remedies as may be permitted by law or this contract.

(d) The Contractor further agrees to insert provisions which shall conform substantially to the language of this clause, including this paragraph (d), in any subcontract or consultant agreement hereunder.

4. 1352.209-72 RESTRICTIONS AGAINST DISCLOSURE (MARCH 2000)

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a. The Contractor agrees, in the performance of this contract, to keep the information furnished by the Government and designated by the Contracting Officer or Contracting Officer's Technical Representative in the strictest confidence. The Contractor also agrees not to publish or otherwise divulge such information in whole or in part, in any manner or form, nor to authorize or permit others to do so, taking such reasonable measures as are necessary to restrict access to such information while in the Contractor's possession, to those employees needing such information to perform the work provided herein, i.e., on a "need to know" basis. The Contractor agrees to immediately notify the Contracting Officer in writing in the event that the Contractor determines or has reason to suspect a breach of this requirement.

b. The Contractor agrees that it will not disclose any information described in Subsection A to any persons or individual unless prior written approval is obtained from the Contracting Officer. The Contractor agrees to insert the substance of this clause in any consultant agreement or subcontract hereunder.

5. 1352.209-73 COMPLIANCE WITH THE LAWS (MARCH 2000)

The Contractor shall comply with all applicable laws and rules and regulations having the force of law which deal with or relate to performance hereunder or the employment by the Contractor of the employees.

6. 52.213-4 TERMS AND CONDITIONS--SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS) (SEP 2006)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses that are incorporated by reference:

(1) The clauses listed below implement provisions of law or Executive order:

(i) 52.222-3, Convict Labor (June 2003) (E.O. 11755).

(ii) 52.222-21, Prohibition of Segregated Facilities (Feb 1999) (E.O. 11246).

(iii) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).

(iv) 52.225-13, Restrictions on Certain Foreign Purchases (Feb 2006) (E.o.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

(v) 52.233-3, Protest After Award (Aug 1996) (31 U.S.C. 3553).

(2) Listed below are additional clauses that apply:

(i) 52.232-1, Payments (Apr 1984).

(ii) 52.232-8, Discounts for Prompt Payment (Feb 2002).

(iii) 52.232-11, Extras (Apr 1984).

(iv) 52.232-25, Prompt Payment (Oct 2003).

(v) 52.233-1, Disputes (July 2002).

(vi) 52.244-6, Subcontracts for Commercial Items (Sept 2006).

(vii) 52.253-1, Computer Generated Forms (Jan 1991).

(b) The Contractor shall comply with the following FAR clauses, incorporated by reference, unless the circumstances do not apply:

(1) The clauses listed below implement provisions of law or Executive order:

(i) 52.222-19, Child Labor-Cooperation with Authorities and Remedies (Jan 2006) (E.O. 13126). (Applies to contracts for supplies exceeding the micro-purchase threshold.)

(ii) 52.222-20, Walsh-Healey Public Contracts Act (Dec 1996) (41 U.S.C. 35-45) (Applies to supply contracts over $10,000 in the United States, Puerto Rico, or the U.S. Virgin Islands).

(iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212) (Applies to contracts of $100,000 or more).

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793). (Applies to contracts over $10,000, unless the work is to be performed outside the United States by employees recruited outside the United States.) (For purposes of this clause, United States includes the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.)

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(v) 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212) (Applies to contracts of $100,000 or more).

(vi) 52.222-41, Service Contract Act of 1965, As Amended (July 2005) (41 U.S.C. 351, et seq.) (Applies to service contracts over $2,500 that are subject to the Service Contract Act and will be performed in the United States, District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, or the outer continental shelf lands).

(vii) 52.223-5, Pollution Prevention and Right-to-Know Information (Aug 2003) (E.O. 13148) (Applies to services performed on Federal facilities).

(viii) 52.225-1, Buy American Act-Supplies (June 2003) (41 U.S.C. 10a-10d) (Applies to contracts for supplies, and to contracts for services involving the furnishing of supplies, for use in the United States or its outlying areas, if the value of the supply contract or supply portion of a service contract exceeds the micro-purchase threshold and the acquisition--

(A) Is set aside for small business concerns; or

(B) Cannot be set aside for small business concerns (see 19.502-2), and does not exceed $25,000).

(ix) 52.232-33, Payment by Electronic Funds Transfer-Central Contractor Registration (Oct 2003). (Applies when the payment will be made by electronic funds transfer (EFT) and the payment office uses the Central Contractor Registration (CCR) database as its source of EFT information.)

(x) 52.232-34, Payment by Electronic Funds Transfer-Other than Central Contractor Registration (May 1999). (Applies when the payment will be made by EFT and the payment office does not use the CCR database as its source of EFT information.)

(xi) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx 1241). (Applies to supplies transported by ocean vessels (except for the types of subcontracts listed at 47.504(d).)

(2) Listed below are additional clauses that may apply:

(i) 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Sept 2006) (Applies to contracts over $30,000).

(ii) 52.211-17, Delivery of Excess Quantities (Sept 1989) (Applies to fixed-price supplies).

(iii) 52.247-29, F.o.b. Origin (Feb 2006) (Applies to supplies if delivery is f.o.b. origin).

(iv) 52.247-34, F.o.b. Destination (Nov 1991) (Applies to supplies if delivery is f.o.b. destination).

(c) "FAR 52.252-2, Clauses Incorporated by Reference (Feb 1998)." This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es): _____

(d) "Inspection/Acceptance." The Contractor shall tender for acceptance only those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its postacceptance rights-

(1) Within a reasonable period of time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(e) "Excusable delays." The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in

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connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(f) "Termination for the Government's convenience." The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that the Contractor can demonstrate to the satisfaction of the Government, using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

(g) "Termination for cause." The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(h) "Warranty." The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(End of Clause)

7. 1352.216-73 CEILING PRICE (MARCH 2000)

The ceiling price of this contract is $99,300.00 The Contractor shall not make expenditures nor incur obligations in the performance of this contract which exceed the ceiling price specified herein, except at the Contractor's own risk.

8. 1352.231-70 DUPLICATION OF EFFORT (MARCH 2000)

The Contractor hereby certifies that costs for work to be performed under this contract and any subcontract hereunder are not duplicative of any costs charged against any other Government contract, subcontract, or other Government source. The Contractor agrees to advise the Contracting Officer, in writing, of any other Government contract or subcontract it has performed or is performing which involves work directly related to the purpose of this contract. The Contractor also certifies and agrees that any and all work performed under this contract shall be directly and exclusively for the use and benefit of the Government, and not incidental to any other work, pursuit, research, or purpose of the Contractor, whose responsibility it will be to account for it accordingly.

9. 1352.233-70 HARMLESS FROM LIABILITY (MARCH 2000)

The Contractor shall hold and save the Government, its officers, agents, and employees harmless from liability of any nature or kind, including costs and expenses to which they may be subject to or on account of any or all suits or damages of any character whatsoever resulting from injuries or damages sustained by any person or persons or property by virtue of performance of this contract, arising or resulting in whole or in part from the fault, negligence, wrongful act or wrongful omission of the contractor, or any subcontractor, their employees, and agents.

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10. 1352.239-74 SECURITY PROCESSING REQUIREMENTS FOR CONTRACTORS/SUBCONTRACTOR PERSONNEL FOR ACCESSING DOC INFORMATION TECHNOLOGY SYSTEMS (OCT 2003)

(a) Contractor personnel requiring any access to systems operated by the Contractor for DOC or interconnected to a DOC network to perform contract services shall be screened at an appropriate level in accordance with Commerce Acquisition Manual 1337.70, Security Processing Requirements for Service Contracts. DOC shall provide screening using standard personnel screening forms, which the Contractor shall submit to the DOC Contracting Officer's Technical Representative (COTR) based on the following guidance:

1) Contract personnel performing work designated Contract High Risk and personnel performing work designated Contract Moderate Risk in the information technology (IT) occupations and those with "global access" to an automated information system require a favorable pre-employment check before the start of work on the contract, regardless of the expected duration of the contract. After a favorable pre-employment check has been obtained, the Background Investigation (BI) for Contract High Risk and the Minimum Background Investigation (MBI) for Contract IT Moderate Risk positions must be initiated within three working days of the start of work.
2) Contract personnel performing work designated Contract Moderate Risk who are not performing IT-related contract work do not require a favorable pre-employment check prior to their employment; however, the Minimum Background Investigation (MBI) must be initiated within three working days of the subject's start of work on the contract, regardless of the expected duration of the contract.
3) Contract personnel performing work designated Contract Low Risk will require a National Agency Check and Inquiries (NACI) upon the subject's start of work on the contract if the expected duration of the contract exceeds 365 calendar days. The NACI must be initiated within three working days of the subject's start of work on the contract.
4) Contract personnel performing work designated Contract Low Risk will require a Special Agreement Check (SAC) upon the subject's start of work on the contract if the expected duration of the contract (including options) exceeds 180 days but is less than 365 calendar days. The SAC must be initiated within three working days of the subject's start of work on the contract.
5) Contract personnel performing work on contracts requiring access to classified information must undergo investigative processing according to the Department of Defense National Industrial Security Program Operating Manual (NISPOM), (http://www.dss.mil/isec/nispom.htm) and be granted eligibility for access to classified information prior to beginning work on the contract. The security forms may be obtained from the cognizant DOC security office servicing your bureau, operating unit, or Departmental office.

At the option of the government, interim access to DOC IT systems may be granted pending favorable completion of a pre-employment check. Final access may be granted only on completion of an appropriate investigation based upon the risk level assigned to the contract by the Contracting Officer.

(b) Within 5 days after contract award, the Contractor shall certify in writing to the COTR that its employees, in performance of the contract, have completed annual IT security awareness training in DOC IT Security policies, procedures, computer ethics, and best practices, in accordance with DOC IT Security Program Policy, section 3.13 (http://home.osec.doc.gov/DOC-IT-Security-Program-Policy.htm). The COTR will inform the Contractor of any other available DOC training resources.

(c) Within 5 days of contract award, the Contractor shall provide the COTR with signed Nondisclosure Agreements as specified in Commerce Acquisition Regulation (CAR), 1352.209-72, Restrictions Against Disclosures.

(d) The Contractor shall afford DOC, including the Office of Inspector General, access to the Contractor's and subcontractor's facilities, installations, operations, documentation, databases, and personnel used in

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performance of the contract. Access shall be provided to the extent required to carry out a program of IT inspection, investigation, and audit to safeguard against threats and hazards to the integrity, availability, and confidentiality DOC data or to the function of computer systems operated on behalf of DOC, and to preserve evidence of computer crime.

(e) The Contractor shall incorporate this clause in all subcontracts that meet the conditions in paragraph (a) of this clause.

(End of clause)

11. 1352.252-70 REGULATORY NOTICE (MARCH 2000)

Contractors are advised that certain provisions and clauses identified with a Commerce Acquisition Regulation (CAR) notation for identification purposes, have not yet been incorporated into the CAR. However, all of these items are binding for this acquisition and will eventually be contained in the CAR at Part 13 of Title 48 of the Code of Federal Regulations.

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SOLICITATION/CONTRACT/ORDER FO OMMERCIAL ITEMS
Offeror to Complete Blocks 12, 17, 23, 24, & 30

1. Requisition Number: NW957650-9-06760
PAGE 1 OF 13

2. Contract No.: DG133F09SE1599
3. Award/Effective Date: Mar 13, 2009
4. Order Number:
5. Solicitation Number:
6. Solicitation Issue Date:

7. For Solicitation Information Call: a. Name ROBIN L. PRATHER, Robin.Prather@noaa.gov
b. Telephone Number (No collect calls): 301-713-0820 x185
8. Offer Due Date/Local Time: /

9. Issued By: Code AJF50012
NOS/NMFS/OAR ACQUISITION DIVISION /OFA65
1305 EAST-WEST HWY., SSMC-4 RM 7141.
SILVER SPRING, MD 20910

10. This Acquisition is
- [ ] Unrestricted
- [ ] Set-Aside % for
- [ ] Small Business
- [ ] Emerging Small Business
- [ ] HUBZone Small Business
- [ ] Service-Disabled Veteran-Owned
- [ ] 8(a)

NAICS: ____
Size Standard: ____

11. Delivery for FOB Destination Unless Block is Marked.
[ ] See Schedule

12. Discount Terms
Discount: 0%
Net due: 30

[ ] 13a. This contract is a rated order under DPAS (15 CFR 700)

13b. Rating

14. Method of Solicitation
[ ] RFQ [ ] IFB [ ] RFP

15. Deliver To: Code AD100031
DEPUTY GENERAL COUNSEL /GCEL
8484 GEORGIA AVE, RM 400
SILVER SPRING, MD 20910-5612

16. Administered By: Code AJF50012
NOS/NMFS/OAR ACQUISITION DIVISION /OFA65
1305 EAST-WEST HWY., SSMC-4 RM 7141
SILVER SPRING, MD 20910

17a. Contractor/Offeror: Code 00000799 Facility Code
HELLERMAN ASSOCIATES
5431 NW 21ST AVENUE
BOCA RATON FL 334963446
Telephone No. 301-596-0053 TIN: 521836262

18a. Payment Will Be Made By: Code AJ231012
TRAVEL & PURCHASES BRANCH /OFA231
CXX1 ROOM 2202
GERMANTOWN, MD 20874

17b. Check if Remittance is Different and Put Such Address in Offer.
[ ]

18b. Submit Invoices to Address Shown in Block 18a Unless Box Below is Checked.
[X] See Addendum.

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT

25. Accounting and Appropriation Data
See Attached Schedule

26. Total Award Amount (For Govt. Use Only)
US NTE 175,000.00

[ ] 27a. Solicitation incorporates by reference FAR 52.212-1, 52.212-4. FAR 52.212-3 and 52.212-5 are attached. Addenda [ ] are [ ] are not attached
[X] 27b. Contract/Purchase Order incorporates by reference FAR 52.212-4. 52.212-5 is attached. Addenda [X] are [ ] are not attached

[ ] 28. Contractor is required to sign this document and return ____ copies to issuing Office. Contractor agrees to furnish and deliver all items set forth or otherwise identified above and on any additional sheets subject to the terms and conditions specified herein.

[X] 29. Award of Contract: Reference. Quotation dated March 5, 2009 Offer Dated ____. Your offer on Solicitation (Block 5), including any additions or changes which are set forth herein, is accepted as to items:

30a. Signature of Offeror/Contractor

31a. United States of America (Signature of Contracting Officer)

30b. Name and Title of Signer (Type or Print)

30c. Date Signed

31b. Name of Contracting Officer (Type or Print)
JEANETTE SPREEMANN
JEANETTE.SPREEMANN@NOAA.

31c. Date Signed
03/13/09

32a. Quantity in Column 21 Has Been
[ ] Received [ ] Inspected [ ] Accepted, and Conforms to the Contract, Except as Noted: ____

32b. Signature of Authorized Government Representative

32c. Date

32d. Printed Name and Title of Authorized Government Representative

32e. Mailing Address of Authorized Government Representative

32f. Telephone Number of Authorized Government Representative

32g. E-mail of Authorized Government Representative

33. Ship Number
[ ] Partial [ ] Final

34. Voucher Number

35. Amount Verified Correct For

36. Payment
[ ] Complete [ ] Partial [ ] Final

37. Check Number

38. S/R Account Number

39. S/R Voucher Number

40. Paid By

41a. I certify this account is correct and proper for payment

41b. Signature and Title of Certifying Officer
Jeanette Spreemann

41c. Date
13 Mar 09

42a. Received By (Print)

42b. Received At (Location)

42c. Date Rec'd (YY/MM/DD)
OH

42d. Total Containers

STANDARD FORM 1449 (REV 3/2005)
Prescribed by GSA - FAR (48 CFR) 53.212

SS-C-01

SCHEDULE Continued

Item No.	Supplies/Services	Quantity	Unit	Unit Price	Amount
	For additional technical information, contact Charles Green, 301-427-2202.				
0001	The contractor shall provide financial analysis and expert witness services in accordance with the attached Statement of Work dated February 25, 2009, entitled "Financial Analyst Expert Witness". The period of performance is thirty-six months. Services shall be provided on an Time and Materials basis at the following rates: Hourly rate for first 12-month period (3/16/2009-3/15/2010): $220.00/hour Hourly rate for second 12-month period (3/16/2010-3/15-2011): $230.00/hour Hourly rate for third 12-month period (3/16/2011-3/15/2012): $240.00/hour. Accounting and Appropriation Data: 14.09.26L.7E02.P00.0096.021101000.010200010000' 0000.25100000.000000 $ 120,000.00	[redacted]	EA	[redacted]	NTE 120,000.00
0002	The contractor shall provide financial analysis and expert witness services in accordance with the attached Statement of Work dated February 25, 2009, entitled "Financial Analyst Expert Witness". The period of performance is thirty-six months. Travel shall be provided on a cost-reimbursable basis in accordance with Federal Travel Regulations and FAR 31.205-46 on a not-to-exceed basis. The ceiling price of this order is $525,000.00. Notwithstanding the ceiling price of this order, the maximum limitation of Government liability is $175,000.00. In no event shall the contractor bill for or be paid more than the maximum limitation of Government liability. Accounting and Appropriation Data: 14.09.26L.7E02.P00.0096.021101000.010200010000 0000.25100000.000000 $ 55,000.00	[redacted]	EA	[redacted]	NTE 55,000.00

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STATEMENT OF WORK
Financial Analyst Expert Witness
February 25, 2009

NTRODUCTION

'he National Oceanic and Atmospheric Administration (NOAA) General Counsel for Enforcement and Litigation (GCEL) requires an xperienced financial analyst, available on a continuing basis, with expertise in corporate structure issues to serve as a technical consultant, inancial advisor, and expert witness. The analyst will work directly with NMFS Office of Law Enforcement investigators and NOAA GCEL ttorneys.

ICOPE OF WORK

'he financial analyst will review and evaluate financial information and documents to determine the structure and responsibilities of the orporations and corporate officers involved in the investigation; prepare affidavits, if required, regarding the structure and responsibilities of he potential respondents; brief GCEL attorneys on financial matters relating to the case; prepare written reports and detailed financial analyses egarding the respondents as requested; assist in the preparation of financial interrogatories and other documents designed to probe and elicit an ccurate representation of a respondents' existing financial state; assist with evaluating settlement offers; assist at hearing and during discovery vith issues relating to respondents' financial status; conduct credit and asset investigations; advise GCEL attorneys on the potential collection of penalties and value of a respondent's assets; analyze corporate control issues; assist GCEL attorneys with documents filed in court roceedings that deal with a respondent's financial state; and perform other services as are reasonably necessary to provide financial analytical upport.

'he financial analyst will be required to testify as an expert witness on corporate financial structure at hearing and/or deposition when such estimony is deemed necessary.

'he financial analyst will be required to maintain the confidentiality of sensitive documents and information.

SPECIFIC REQUIREMENTS

(A) The contractor must have extensive experience with corporate structure analysis; analysis and assessment of ability to pay penalties and fines; review of financial statements, business records, and other financial documents; and review of projected performance (e.g., cash flow anc cash position projections and disclosure statements). The contractor must be familiar with corporate control issues, relationships between affiliated persons, bankruptcy matters, and tracing assets. Experience with analysis of commercial fishing operations would be especially valuable.

(B) The contractor must be familiar with federal judicial and administrative proceedings and have significant experience testifying as a financial expert and in preparing affidavits and must be qualified to testify in federal court as an expert on matters related to financial analysis and corporate control. Knowledge of NOAA's administrative enforcement process and the statutes NOAA administers would be especially valuable.

(C) The contractor must be familiar with discovery proceedings, including preparation for and participation in the conduct of depositions, crost examinations, and witness preparation, including the preparation of affidavits where necessary.

(D) The contract work may be performed through employees or sub-contractors; however, the control, protection, and non-disclosure of any confidential and/or sensitive information will be the sole responsibility of the contractor.

(E) The C&A requirements of clause 73 do not apply and a Security Accreditation Package is not required. Extensive experience with corporate structure analysis, corporate control issues, analysis of relationships between affiliated individuals and the corporation, and analysis and assessment of ability to pay assessed fines and penalties. Knowledge of commercial fishing operations. Specifically:

- Extensive experience in financial analysis/forensic accounting in the context of Federal statutory enforcement proceedings. Knowledge of NOAA's administrative enforcement process.
- Judicially qualified as an expert witness in the field of financial analysis/forensic accounting.
- Knowledge of statutes and regulations relating to marine natural resources managed by NOAA.
- Available to travel to diverse locations to provide expert testimony, training, case assistance, and other financial analysis on short notice (no less than 10 days).

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)ELIVERABLES

'he contractor will provide clear and concise reports to GCEL based on the available financial information and documents provided to the ontractor by the GCEL attorney. (Performance required within 3 weeks of the request from GCEL).

'he contractor will be available to travel to diverse locations to provide expert testimony and advice, training, case assistance, and other inancial analysis on short notice (no less than 10 days) on an as needed basis. (Performance required in no less than 10 days from request nless otherwise agreed upon by GCEL and the contractor).

'he contractor shall submit invoices detailing hours of labor expended. Travel will be conducted on an as-needed basis. All relevant travel ills shall be submitted in accordance with Federal Travel Regulations. The contractor shall not at any time perform tasks without the learance of the lead GCEL attorney on a case and/or the Assistant General Counsel for Enforcement and Litigation. The Contracting Officer's 'echnical Representative (COTR) will certify costs and submit documents to NOAA finance for payment.

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1. 52.212-4 CONTRACT TERMS AND CONDITIONS--COMMERCIAL ITEMS (OCT 2008)

(a) "Inspection/Acceptance." The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights--

(1) Within a reasonable time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) "Assignment." The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (e.g., use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) "Changes." Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) "Disputes." This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) "Definitions." The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

(f) "Excusable delays." The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) "Invoice."

(1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include--

(i) Name and address of the Contractor;

(ii) Invoice date and number;

(iii) Contract number, contract line item number and, if applicable, the order number;

(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;

(vi) Terms of any discount for prompt payment offered;

(vii) Name and address of official to whom payment is to be sent;

(viii) Name, title, and phone number of person to notify in event of defective invoice; and

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

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(A) The Contractor sh include EFT banking informati on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer-Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer-Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315.

(h) "Patent indemnity." The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) "Payment."--

(1) "Items accepted." Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) "Prompt payment." The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR part 1315.

(3) "Electronic Funds Transfer (EFT)." If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.

(4) "Discount." In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) "Overpayments." If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall--

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the--

(A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected contract line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) Interest.

(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 611 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) Final decisions. The Contracting Officer will issue a final decision as required by 33.211 if--

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

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(C) The Contractor re sts a deferment of collection a debt previously demanded by the Contracting Officer (see 32.607-2).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on--

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(j) "Risk of loss." Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) "Taxes." The contract price includes all applicable Federal, State, and local taxes and duties.

(l) "Termination for the Government's convenience." The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) "Termination for cause." The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) "Title." Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) "Warranty." The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) "Limitation of liability." Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

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(q) "Other compliances." Th ontractor shall comply with al applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) "Compliance with laws unique to Government contracts." The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 3701, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

(s) "Order of precedence." Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

(1) The schedule of supplies/services.

(2) The Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause.

(3) The clause at 52.212-5.

(4) Addenda to this solicitation or contract, including any license agreements for computer software.

(5) Solicitation provisions if this is a solicitation.

(6) Other paragraphs of this clause.

(7) The Standard Form 1449.

(8) Other documents, exhibits, and attachments.

(9) The specification.

(t) "Central Contractor Registration (CCR)."

(1) Unless exempted by an addendum to this contract, the Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(2)

(i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in FAR Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to

(A) change the name in the CCR database;

(B) comply with the requirements of Subpart 42.12; and

(C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (t)(2)(i) of this clause, or fails to perform the agreement at paragraph (t)(2)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(3) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

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(4) Offerors and Contract may obtain information on re cration and annual confirmation requirements via the internet at http://www.ccr.gov or by calling 1-888-227-2423 or 269-961-5757.

(End of Clause)

2. 52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS--COMMERCIAL ITEMS (FEB 2009)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clause, which is incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) 52.222-50, Combating Trafficking in Persons (Feb 2009) (22 U.S.C. 7104(g)).

_____ Alternate I (Aug 2007) of 52.222-50 (22 U.S.C.7104(g)).

(2) 52.233-3, Protest after Award (Aug 1996) (31 U.S.C. 3553).

(3) 52.233-4, Applicable Law for Breach of Contract Claim (Oct 2004) (Pub. L. 108-77, 108-78).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

_____ (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Sep 2006), with Alternate I (Oct 1995)(41 U.S.C. 253g and 10 U.S.C. 2402).

_____ (2) 52.203-13, Contractor Code of Business Ethics and Conduct (Dec 2008) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)). (15 U.S.C. 657a).

_____ (3) 52.219-3, Notice of Total HUBZone Set-Aside (Jan 1999) (15 U.S.C. 657a).

_____ (4) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (July 2005) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).

(5) [Reserved]

(6)

___XX___ (i) 52.219-6, Notice of Total Small Business Set-Aside (June 2003) (15 U.S.C. 644).

_____ (ii) Alternate I (Oct 1995) of 52.219-6.

_____ (iii) Alternate II (Mar 2004) of 52.219-6.

(7)

_____ (i) 52.219-7, Notice of Partial Small Business Set-Aside (June 2003) (15 U.S.C. 644).

_____ (ii) Alternate I (Oct 1995) of 52.219-7.

_____ (iii) Alternate II (Mar 2004) of 52.219-7.

_____ (8) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)).

(9)

_____ (i) 52.219-9, Small Business Subcontracting Plan (Apr 2008) (15 U.S.C. 637(d)(4).

_____ (ii) Alternate I (Oct 2001) of 52.219-9.

_____ (iii) Alternate II (Oct 2001) of 52.219-9.

_____ (10) 52.219-14, Limitations on Subcontracting (Dec 1996) (15 U.S.C. 637(a)(14)).

_____ (11) 52.219-16, Liquidated Damages--Subcontracting Plan (Jan 1999) (15 U.S.C. 637(d)(4)(F)(i)).

(12)

_____ (i) 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (Oct 2008) (10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).

_____ (ii) Alternate I (June 2003) of 52.219-23.

_____ (13) 52.219-25, Small Disadvantaged Business Participation Program-Disadvantaged Status and Reporting (Apr 2008) (Pub. L.

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103-355, sec 1 7102, and 10 U.S.C. 2323).
_____ (14) 52.219-26, Small Disadvantaged Business Participation Program-Incentive Subcontracting (Oct 2000) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
_____ (15) 52.219-27, Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (May 2004) (15 U.S.C. 657 f).
_____ (16) 52.219-28, Post Award Small Business Program Rerepresentation (June 2007) (15 U.S.C. 632(a)(2)).
XX (17) 52.222-3, Convict Labor (June 2003) (E.O. 11755).
XX (18) 52.222-19, Child Labor--Cooperation with Authorities and Remedies (Feb 2008) (E.O. 13126).
XX (19) 52.222-21, Prohibition of Segregated Facilities (Feb 1999).
XX (20) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).
XX (21) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212).
XX (22) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793).
XX (23) 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212).
XX (24) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201).
_____ (25) 52.222-54, Employment Eligibility Verification (Jan 2009). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in 22.1803.)

(26)
_____ (i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Items (May 2008) (42 U.S.C. 6962(c)(3)(A)(ii)).
_____ (ii) Alternate I (May 2008) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)).
_____ (27) 52.223-15, Energy Efficiency in Energy-Consuming Products (Dec 2007) (42 U.S.C. 8259b).

(28)
_____ (i) 52.223-16, IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products (Dec 2007) (E.O. 13423).
_____ (ii) Alternate I (Dec 2007) of 52.223-16.
_____ (29) 52.225-1, Buy American Act-Supplies (June 2003)(41 U.S.C. 10a-10d).

(30)
_____ (i) 52.225-3, Buy American Act-Free Trade Agreements-Israeli Trade Act (Aug 2007) (41 U.S.C. 10a-10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, Pub. L. 108-77, 108-78, 108-286, 109-53 and 109-169.
_____ (ii) Alternate I (Jan 2004) of 52.225-3.
_____ (iii) Alternate II (Jan 2004) of 52.225-3.
_____ (31) 52.225-5, Trade Agreements (Nov 2007) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).
_____ (32) 52.225-13, Restrictions on Certain Foreign Purchases (Jun 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).
_____ (33) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150).
_____ (34) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) (42 U.S.C. 5150).
_____ (35) 52.232-29, Terms for Financing of Purchases of Commercial Items (Feb 2002) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).
_____ (36) 52.232-30, Installment Payments for Commercial Items (Oct 1995) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).
_____ (37) 52.232-33, Payment by Electronic Funds Transfer-Central

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_____ (38) 52.232-34, Payment by Electronic Funds Transfer-Other than Central Contractor Registration (May 1999) (31 U.S.C. 3332).

_____ (39) 52.232-36, Payment by Third Party (May 1999)(31 U.S.C. 3332).

_____ (40) 52.239-1, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).

(41)

_____ (i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx 1241(b) and 10 U.S.C. 2631).

_____ (ii) Alternate I (Apr 1984) of 52.247-64.

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

_____ (1) 52.222-41, Service Contract Act of 1965 (Nov 2007) (41 U.S.C. 351, et seq.).

_____ (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (May 1989) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

_____ (3) 52.222-43, Fair Labor Standards Act and Service Contract Act-Price Adjustment (Multiple Year and Option Contracts) (May 1989) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

_____ (4) 52.222-44, Fair Labor Standards Act and Service Contract Act-Price Adjustment (Feb 2002) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

_____ (5) 52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Requirements (Nov 2007) (41 U.S.C. 351, et seq.).

_____ (6) 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services--Requirements (Feb 2009) (41 U.S.C. 351, et seq.).

_____ (7) 52.237-11, Accepting and Dispensing of $1 Coin (Aug 2007) (31 U.S.C. 5112(p)(1)).

(d) Comptroller General Examination of Record. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records-Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)

(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1)in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause--

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(i) 52.203-13, Contract Code of Business Ethics and Co ct (DEC 2008) (Pub. L. 110-252, Title VI, Chapter 1 (4 1 U.S.C. 251 note)).

(ii) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $550,000 ($1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(iii) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).

(iv) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212).

(v) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).

(vi) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004) (E.O. 13201).

(vii) 52.222-41, Service Contract Act of 1965 (Nov 2007) (41 U.S.C. 351, et seq.).

(viii) 52.222-50, Combating Trafficking in Persons (Feb 2009) (22 U.S.C. 7104(g)).

_____ Alternate I (Aug 2007) of 52.222-50 (22 U.S.C. 7104(g)).

(ix) 52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Requirements (Nov 2007) (41 U.S.C. 351, et seq.).

(x) 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services--Requirements (Feb 2009) (41 U.S.C. 351, et seq.).

(xi) 52.222-54, Employment Eligibility Verification (Jan 2009).

(xii) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx 1241 (b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of Clause)

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VerDate Nov 24 2008 09:59 Mar 14, 2012 Jkt 068010 PO 00000 Frm 00164 Fmt 6601 Sfmt 6601 P:\DOCS\68010.TXT JOYCE

68010.115

ORDER FOR SUPPLIES OR SERVICES

PAGE 1 OF PAGES 7

IMPORTANT: Mark all packages and papers with contract and/or order numbers.

1. DATE OF ORDER: 26 Feb 2004
2. CONTRACT NO. *(If any)*: DG130304SE0287
3. ORDER NO.:
4. REQUISITION/REFERENCE NO.: NAEL0102-4-00007
5. ISSUING OFFICE *Address correspondence to:* AJF60012
DOC/NOAA/OFA / External Customers Acq.
OFA66
1305 East West Hwy, Suite 7604
Silver Spring, MD 20910
Juanita L. Beck 301-713-0838

6. SHIP TO: AMD00159
a. NAME OF CONSIGNEE: NOAA/OFFICE OF GENERAL COUNSEL
b. STREET ADDRESS: 8484 GEORGIA AVENUE
4TH FLOOR, SUITE 400
c. CITY: SILVER SPRING
d. STATE: MD
e. ZIP CODE: 20910
f. SHIP VIA:

7. TO: 00000881 TIN: 364923021
a. Name of Contractor: Julia Hellerman DUNS: 123798212
b. Company Name:
c. Street Address: 866 9th Street
d. City: Boulder e. State: CO f. Zip: 80302-7529

8. TYPE OF ORDER
[X] a. PURCHASE
REFERENCE YOUR: Please furnish the following on the terms and conditions specified on both sides of this order and on the attached sheet, if any, including delivery as indicated.
[ ] b. DELIVERY
Except for billing instructions on the reverse, this delivery order is subject to instructions contained on this side only of this form and is issued subject to the terms and conditions of the above-numbered contract.

9. ACCOUNTING AND APPROPRIATION BOC: OBLIGATED AMT: $71,632.00
See Attached Schedule

10. REQUISITIONING OFFICE: Monia Williams

11. BUSINESS CLASSIFICATION *(Check appropriate box(es))*
[X] a. SMALL [ ] b. OTHER THAN SMALL [ ] c. DISADVANTAGED [X] d. WOMEN-OWNED

12. F.O.B. POINT: DESTINATION
13. PLACE OF
a. INSPECTION:
b. ACCEPTANCE: SEE BLOCK 6
14. GOVERNMENT B/L NO.:
15. DELIVER TO F.O.B. POINT ON OR BEFORE: 28 Feb 2004
16. DISCOUNT TERMS: 00.00% 0 Days
Net 30

17. SCHEDULE *(See reverse for Rejections)*

ITEM NO. (a)	SUPPLIES OR SERVICES (b)	QUANTITY ORDERED (c)	UNIT (d)	UNIT PRICE (e)	AMOUNT (f)	QTY ACCEPT. (g)
	CONTACT PERSON: MONIA WILLIAMS (301) 427-2202 STATEMENT OF WORK ATTACHED					
0001	COLLECTIONS ANALYST Accounting and Appropriation Data: 14.04.2BL2D02P0006020204000.0102000100 000000.25110000	[redacted]	HR	[redacted]	66,592.00	

18. SHIPPING POINT
19. GROSS SHIPPING WEIGHT
20. INVOICE NO.
17(h) TOTAL (Cont. pages)

21. MAIL INVOICE TO:
SEE BILLING INSTRUCTIONS ON REVERSE
a. NAME: NOAA/OFFICE OF GENERAL COUNSEL
b. STREET ADDRESS *(or P.O. Box)*: 8484 GEORGIA AVENUE
4TH FLOOR, SUITE 400
c. CITY: SILVER SPRING
d. STATE: MD
e. ZIP CODE: 20910

US
17(i) GRAND TOTAL 71,632.00

22. UNITED STATES OF AMERICA BY *(Signature)*
23. NAME *(Typed)* Jean E. Greene 301-713-0838
(TITLE CONTRACTING/ORDERING OFFICER)

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition not usable
OPTIONAL FORM 347 (REV. 6/95)
Prescribed by GSA/FAR 48 CFR 53.213(a)

SS-C-5

ORDER FOR SUPPLIES OR SERVICES - Continuation

PAGE 2 OF PAGES 7

IMPORTANT: Mark all packages and papers with contract and/or order numbers.

DATE OF ORDER	CONTRACT NO. (if any)	ORDER NO.
26 Feb 2004	DG130304SE0287	

ITEM NO. (a)	SUPPLIES OR SERVICES (b)	QUANTITY ORDERED (c)	UNIT (d)	UNIT PRICE (e)	AMOUNT (f)	QTY ACCEPT. (g)
	$ 66,592.00					
0002	INDIRECT COSTS, SITE VISITS, TRAVEL - SEE ATTACHED STATEMENT OF WORK Accounting and Appropriation Data: 14.04.2BL2D02P0006020204000.0102000100000000.21400000 $ 3,600.00	[redacted]	EA	[redacted]	3,600.00	
0003	TELEPHONE & INTENET ACCESS Accounting and Appropriation Data: 14.04.2BL2D02P0006020204000.0102000100000000.31000000 $ 1,440.00	[redacted]	MO	[redacted]	1,440.00	

NSN 75401-01-152-8082 50348-101 OPTIONAL FORM 348 (10-83)

Prescribed by GSA FAR (48 CGR) 53.213(e)

55-C-6

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1. 52.204-7 CENTRAL CONTRACTOR REGISTRATION (OCT 2003) 4

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H605-41331-79W7 with DISTILLER

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1. 52.204-7 CENTRAL CONTRACTOR REGISTRATION (OCT 2003)

(a) Definitions. As used in this clause--

"Central Contractor Registration (CCR) database" means the primary Government repository for Contractor information required for the conduct of business with the Government.

"Data Universal Numbering System (DUNS) number" means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

"Data Universal Numbering System +4 (DUNS+4) number" means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see the FAR at Subpart 32.11) for the same parent concern.

"Registered in the CCR database" means that--

(1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and

(2) The Government has validated all mandatory data fields and has marked the record "Active".

(b)

(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS +4" followed by the DUNS or DUNS+4 number that identifies the offeror's name and address exactly as stated in the offer. The DUNS number will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

(c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number--

(i) If located within the United States, by calling Dun and Bradstreet at 1-866-705-5711 or via the Internet at http://www.dnb.com; or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office.

(2) The offeror should be prepared to provide the following information:

(i) Company legal business.

(ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.

(iii) Company Physical Street Address, City, State, and Zip Code.

(iv) Company Mailing Address, City, State and Zip Code (if separate from physical).

(v) Company Telephone Number.

(vi) Date the company was started.

(vii) Number of employees at your location.

(viii) Chief executive officer/key manager.

(ix) Line of business (industry).

(x) Company Headquarters name and address (reporting relationship within your entity).

(d) If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.

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(e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.

(f) The Contractor is responsible for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(g)

(1)

(i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to

(A) change the name in the CCR database;

(B) comply with the requirements of Subpart 42.12 of the FAR; and

(C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer.

The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (g)(1)(i) of this clause, or fails to perform the agreement at paragraph (g)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see FAR Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(h) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at http://www.ccr.gov or by calling 1-888-227-2423, or 269-961-5757.

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68010.120

See Instructions – Reverse

Page 1 of Pages

U.S. DEPARTMENT OF COMMERCE
PROCUREMENT REQUEST
Requisitioner fills in only unshaded blocks

1. ADDRESS
DOC/NOAA/GCEL
8484 GEORGIA AVENUE 4TH FL. SUITE 400
SILVER SPRING, MD 20910

A. REQUISITION NUMBER: NA-EL-0102-4-00007

B. READY REQUISITION DATE:

2 RECEIVING OFFICE NO.	3 REFERENCE CONTRACT NUMBER	4 ORDER DATE	5 SOURCE	6 PURCHASE DELIVERY ORDER NUMBER	7 SUB.	C. SF-281

D. CHECK ONE: PURCHASE ORDER; DELIVERY ORDER; IMPREST FUND; CONTRACT; OTHER

8. TO: (Seller)
Julia Schultz Hellerman
866 Ninth Street
Boulder, Colorado 80302
Tel: 303-546-0287 Fax: 303-546-6203
[redacted]

9. SHIP TO: (Use Bldg/Room No.–see Reverse for Format)
U.S. DOC/NOAA
Office of GCEL
8484 Georgia Avenue 4th Fl. Suite 400
Silver Spring, MD 20910

10. 1099 TAX

11. EMPLOYER IDENTIFICATION NUMBER (EIN)

E. REQUISITIONER CONTACT PERSON: MONIA WILLIAMS

TELEPHONE NO. (301) 427-2202

12 LINE ITEM	13 ACT. CODE	14 DESCRIPTION (Double Space Between Items)	15 BUDGET OBJECT	16 ACC. LINE	17 QUANTITY	18 UNIT ISSUE	19 UNIT PRICE (If Known)	20 ESTIMATED AMOUNT
01		CONTRACTOR-COLLECTIONS ANALYST with extensive backgrund in finance and/or collections. Collections Analyst will assist NOAA/GCEL staff in meeting management obligations for referral of enforcement cases to Finance for debt processing per the attached statement of work (terms and conditions) SEE ATTACHED SOW.	2511	01	[redacted]	HR	[redacted]	66,592.00
02		INDIRECT COSTS. SITE VISIT(s) TRAVEL WILL BE IN ACCORDANCE WITH NOAA TRAVEL REGULATIONS. (INVOICES FOR TRAVEL EXPENSES SHALL BE SUBMITTED FOR REIMBURSEMENT).	2140	02	[redacted]	EA	[redacted]	3,600.00
03		MISCALLENOUS EXPENSES TEL. & INTERNET ACCESS.	3100	03	[redacted]	MTH	[redacted]	1,440.00

H. F.O.B. POINT | 22. DISCOUNT TERMS | 23. PROMPT PAYMENT | Sub-Total (This Page) | 24. 71,632.00

. REQUEST DELIVERY BY: | 25. DELIVERY DATE: | 26. SHIP VIA | 27. ESTIMATED FREIGHT | TOTAL | 28.

certify that funds are available and that the above items are necessary for use in the public service.

. TITLE OF REQUEST AUTHORIZING OFFICIAL: GCEL/NOAA — TELEPHONE: (301) 427-2202

IGNATURE: Michele Kerwin — DATE: 2/12/04

TITLE OF REQUESTER: Program Management/Analyst — TELEPHONE: (301) 427-2202

IGNATURE: [signature] — DATE: 2/12/04

29 ACC. LINE	30 BUREAU CODE	31. ACCOUNTING CLASSIFICATION	32 DISTRIBUTION	33 AMOUNT
01	14	2004-14-2BL2D02P00-01020001-00000000	100%	
02	14	2004-14-2BL2D02P00-01020001-00000000	100%	
03	14	2004-14-2BL2D02P00-01020001-00000000	100%	

. CLEARANCES AND REMARKS

ORM CD-435 (9-85)
s form was electronically produced by Elite Federal Forms, Inc.

(Distribution–Original and one copy to Procurement)
NOT A PURCHASE ORDER

SS-C-11

STATEMENT OF WORK

PROJECT PURPOSE - CONTRACT for COLLECTIONS ANALYST -

To procure contract services of an analyst with a background in finance and/or collection matters. In its 1997 audit of NOAA's FY 1996 financial statements, KPMG made certain findings and recommendations requiring changes in the procedures NOAA General Counsel (GC) use in its collection work. In response to the findings and recommendations, GC and NOAA Finance (Finance) worked together to develop procedures that would result in Finance assuming all financial responsibility for accounting, billing, and collecting civil monetary penalties for cases where a legally enforceable debts exist. Procedures were designed to ensure that legally enforceable debts are timely processed in GC and then referred to Finance. Cases in GC fall into several categories, i.e., pre-debt not referred to Finance for billing and collecting, time payments, delinquent debts, Treasury cases, and write-offs. Case file packages must be reviewed and a determination must be made as to which procedures to follow to resolve debt processing in a timely and accurate manner. Satisfying these procedures is necessary for NOAA to achieve an unqualified audit from KPMG. Current staff is insufficient to process all collection work in a timely way. The contractor will be under the supervision of the Assistant General Counsel for Enforcement and Litigation.

PROJECT TASKS:

Award of this contract will assist GC staff (located in Gloucester, MA, St. Petersburg, FL., Long Beach, CA., Seattle, WA., Juneau, AK., and Silver Spring, MD) to meet obligations as stated **in Compendium of Debt Processing Guidelines and Procedures for Collection o Civil Monetary Penalties.** This will be accomplished as follows:

(1) Review and assess cases for valid debt, availability of debtor information, collection efforts to date, final disposition of seized proceeds, and likelihood of collection success;

(2) Follow proper procedures and guidelines prior to referral of cases to Finance;

(3) Incorporate necessary procedures for GC action, including corresponding Enforcement Management Information System (EMIS) entries;

(4) Utilize standard forms and EMIS reports to ensure consistent submissions of case to Finance;.

(5) Identify other ways to evaluate what/how frequently dollar amounts of cases being sent to or returned from Finance, and

(6) Forms and reports are intended to help modify assessment, settlement, and collection practices to increase percentage of full payment.

55-C-12

DELIVERABLES AND MONITORING:

Products and services to be expected from the contractor include:

(1) Review, research, and track actions of cases;

(2) Document basis for recommended debt processing actions;

(3) Review files and take action within ten (10) business days when cases are returned by Finance due to non-payment, inaccurate payment, or other reasons;

(4) Notify Finance, case attorney, or GCEL of final actions taken on cases within ten (10) business days;

(5) Return to Finance, within ten (10) business days, cases sent back to the regional office for corrections;

(6) Coordinate efforts to develop a tickler system to ensure timely identification of delinquent, legally enforceable debts;

(7) Act as a liaison between GC and other contractors in the development of a tickler system and a program to calculate interest and payment amounts;

(8) Prepare two reports at six (6) month intervals which includes comparison of new data to past data. Should include one report at end of FY year and other report at half-way point, and

(9) GCEL will provide written feedback on the semi-annual reports and/or progress reports to the contractor within four (4) weeks of receiving them. The feedback should address the content and format of the submitted material, suggestions for improvement and any changes that GCEL would like implemented.

(10) The Collections Analyst will be required to control, to protect, and not to disclose confidential and sensitive documents and information.

COSTS, PAYMENTS, AND BILLING:

Contractor will submit bills covering hours of labor expended on a bi-weekly basis. Contractor's hourly wage will be [redacted] per hour. The contractor's performance will be monitored and evaluated by a COTR selected by the requesting authorizing official.

SS-C-13

LOCATION:

NOAA/GCEL
8484 Georgia Avenue 4th Floor, Suite 400
Silver Spring, MD

An alternative work site will be considered. This consideration will be based on the experience of the selected candidate.

TRAVEL:

A minimum amount of travel will be required on an as needed basis. All applicable travel expenses will be paid by GCEL.

QUALIFICATIONS FOR SELECTION:

Candidate must possess a degree in finance, management, or administration;

Candidate must possess knowledge of legal terms and references;

Candidate must possess and have knowledge of financial terms and applications;

Candidate must possess and have knowledge of collections procedures and terminologies;

Candidate must be familiar with computer software applications;

Candidate must possess good oral and organizational skills, and be adept at communicating the Agency's viewpoints;

All qualified candidates must submit a writing sample, and

All qualified candidates will be interviewed by the requesting office.

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VerDate Nov 24 2008 09:59 Mar 14, 2012 Jkt 068010 PO 00000 Frm 00173 Fmt 6601 Sfmt 6601 P:\DOCS\68010.TXT JOYCE
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FORM CD-492
(REV. 9-90)

U.S. DEPARTMENT OF COMMERCE

JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION

I recommend that the Department of Commerce negotiate only with JULIA SCHULTZ HELLERMAN
(Proposed Contractor(s))

for CONTRACT SERVICES --COLLECTIONS ANALYST
(Description of Supplies or Services)

Requisition No. NA-EL-0102-4-00007 Cost Estimate $ 71,632.00
(Include basic contract period and all options or total systems life costs)

Requesting Activity _____ Contracting Activity _____

CERTIFICATION REQUIREMENTS

I certify that the attached narrative justification is accurate and contains complete data necessary to support the recommendation for other than full and open competition.

The requisitioner further certifies that the attached narrative justification verifies the Government's minimum needs or schedule requirements and any rationale used to justify other than full and open competition procedures.

*Requisitioner (Name & Title)	Signature	Phone No.	Date
Michele Kuruc, AGCEL/NOAA	/S/	(301) 427-2202	2/10/04

*The procurement request authorizing official, whose signature appears in block G of the Procurement Request (Form CD-435). Before requesting this acquisition, state the statutory authority for conducting this acquisition under "other than full and open competition" procedures in the following blank 41 USC 253(c)(1) (use only one statutory authority). Also provide a narrative justification to this form. In accordance with FAR Subpart 6.3, the narrative justification must include the facts necessary to reasonably and legitimately lead to the use of the specific authority for other than full and open competition; including adequate information on the nature and/or description of the action being approved and a description of the supplies or services required to meet the agency's needs.

NOTE: Use of this form is optional when: (1) the justification contains all information required by FAR 6.303-2, is certified by the requisitioner and contracting officer and is approved at the appropriate levels; or (2) simplified acquisition procedures for acquisitions not exceeding $100,000 are used, in which case the simplified documentation practices outlined in FAR 13.106-2 may be followed.

STATUTORY AUTHORITY

41 USC 253(c)(1) - Only one responsible source
The supplies or services required by the agency are available from only one responsible source and no other type of supplies or services will satisfy agency requirements.

41 USC 253(c)(2) - Unusual & compelling urgency
The agency's need for the supplies or services is of such an unusual and compelling urgency that the government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals. (NOTE: This authority will not be approved if it is determined that the urgency is due to a lack of advance planning by the requiring activity. Solicitation from as many potential sources as is practicable under the circumstances is required.)

41 USC 253(c)(3) - Industrial mobilization; or engineering, developmental, or research capability; or expert services
It is necessary to award the contract to a particular source or sources in order (a) to maintain a facility, producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency, or to achieve industrial mobilization, or (b) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center or (c) to acquire the services of an expert for any current or anticipated litigation or dispute.

41 USC 253(c)(4) - International agreement
The terms of an international agreement or a treaty between the United States and a foreign government or international organization, or the written directions of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services for such government, have the effect of requiring the use of procedures other than competitive procedures.

41 USC 253(c)(5) - Authorized or required by statute
A statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source, or the agency's need is for a brand-name commercial item for authorized resale.

41 USC 253(c)(6) - National security
The disclosure of the agency's needs would compromise the national security unless the agency is permitted to limit the number of sources from which it solicits bids or proposals.

41 USC 253(c)(7) - Public interest
The agency head (Secretary of Commerce) determines that it is not in the public interest to use full and open competition in the particular acquisition concerned, and notifies Congress in writing of such determination not less than 30 days before award of the contract.

This form was electronically produced by Elite Federal Forms, Inc.

SS-C-15

APPROVAL REQUIREMENTS

Contracting Officer--Not exceeding $500,000:

Contracting Officer & Title	Signature	Phone No.	Date

Contracting Activity Competition Advocate--Over $500,000 but not exceeding $10 million:

Contracting Activity Competition Advocate & Title	Signature	Phone No.	Date

Head of Contracting Activity (HCA) or HCA Designee--Over $10 million but not exceeding $50 million:

Head of Contracting Activity/HCA Designee & Title	Signature	Phone No.	Date

Procurement Executive--Over $50 million:

Procurement Executive & Tilte	Signature	Phone No.	Date

NOTE: Use the total cost estimate specified on the front of this document in determining the necessary approvals. Each review must be preceded by lower level approval(s), e.g., over $50 million all approvals are required.

This form was electronically produced by Elite Federal Forms, Inc.

55-C-16

JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION

Ms. Julia Schultz Hellerman has the educational and work experience necessary to accomplish the required duties and responsibilities as a Collections Analyst for the Office of the Assistant General Counsel for Enforcement and Litigation (GCEL). Ms. Schultz Hellerman has a Masters degree in Health Care Management and Policy from the University of Michigan, which included quantitative course work in accounting, finance, and statistics, as well as qualitative courses in organizational methodology, government policy, and law. As an independent consultant, it was necessary for her to develop a tickler system to track cases and schedule actions. Many of the work assignments involved an analytical review of case files and the utilization of programs to perform necessary financial calculations. She has substantial experience reviewing and analyzing financial documents, standardizing formats, and making recommendations for improvement of financial results for a number of organizations. In addition, she has worked on market assessment projects involving analysis of market position and development of new marketing strategies. Both types of projects required detailed written and verbal reporting of findings and recommendations. As a coordinator of other contractors in her position as an analyst for the State of Colorado Department of Health Care Policy and Financing, strong communication and planning skills were necessary. Also, in addition to fiscal analysis, she worked with other departments and state agencies, including the Attorney General's office, and community members to coordinate development of program guidelines and acted as a liaison between all of these groups and the Policy Board for the program. In addition, she made regular presentations and was responsible for public and private reporting and documentation. Finally, this analytical position required very strong organizational skills to follow numerous standard procedures and adhere to specific guidelines.

For the past year, Ms. Hellerman has performed the duties and responsibilities as a Collections Analyst for the Office of the Assistant General Counsel for Enforcement and Litigation. Her work is clear and concise.

We are confident that as a result of Ms. Schultz Hellerman's unique experience and expertise, the competitive process will not result in a more qualified choice. The Government will be well served by utilizing a sole-source contract for this acquisition.

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H605-41331-79W7 with DISTILLER

VerDate Nov 24 2008 09:59 Mar 14, 2012 Jkt 068010 PO 00000 Frm 00176 Fmt 6601 Sfmt 6601 P:\DOCS\68010.TXT JOYCE

68010.127

ORDER FOR SUPPLIES OR SERVICES

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IMPORTANT: Mark all packages and papers with contract and/or order numbers.

1. DATE OF ORDER: 17 Feb 2006
2. CONTRACT NO. (If any):
3. ORDER NO.: DG133006SE1736
4. REQUISITION/REFERENCE NO.: NAGC0102-6-00226
5. ISSUING OFFICE Address correspondence to: F6001201
DOC/NOAA/AGO
Staff Office & External Clients, AD
1305 East West Highway, Rm 7601
Silver Spring, MD 20910
RUBIE B. KING 301-713-0838 x189

6. SHIP TO: GC010214
a. NAME OF CONSIGNEE: DOC/NOAA/GCEL
b. STREET ADDRESS: 8484 Georgia Avenue, 4th Floor, Suite 400
c. CITY: Silver Spring
d. STATE: MD
e. ZIP CODE: 20910
f. SHIP VIA

7. TO: 00000009 TIN: 364923021
a. Name of Contractor: JULIA HELLERMAN DUNS: 123798212
b. Company Name
c. Street Address: 866 9TH STREET
d. City: BOULDER e. State: CO f. Zip: 803027429

8. TYPE OF ORDER
[X] a. PURCHASE
REFERENCE YOUR: Please furnish the following on the terms and conditions specified on both sides of this order and on the attached sheet, if any, including delivery as indicated.
[ ] b. DELIVERY
Except for billing instructions on the reverse, this delivery order is subject to instructions contained on this side only of this form and is issued subject to the terms and conditions of the above-numbered contract.

9. ACCOUNTING AND APPROPRIATION BOC: OBLIGATED AMT: $95,085.00
See Attached Schedule

10. REQUISITIONING OFFICE
Robert Hogan
(301) 427-2202

11. BUSINESS CLASSIFICATION (Check appropriate box(es))
[X] a. SMALL [ ] b. OTHER THAN SMALL [ ] c. DISADVANTAGED [X] d. WOMEN-OWNED

12. F.O.B. POINT: DESTINATION
13. PLACE OF
a. INSPECTION: SEE BLOCK 6
b. ACCEPTANCE: SEE BLOCK 6
14. GOVERNMENT B/L NO.
15. DELIVER TO F.O.B. POINT ON OR BEFORE: 09 Feb 2007
16. DISCOUNT TERMS: 00.00% 0 Days Net 30

17. SCHEDULE (See reverse for Rejections)

ITEM NO. (a)	SUPPLIES OR SERVICES (b)	QUANTITY ORDERED (c)	UNIT (d)	UNIT PRICE (e)	AMOUNT (f)	QTY ACCEPT. (g)
0001	The Contractor shall provide consulting and financial support services in accordance with the attached Statement of Work. The Period of Performance shall be from February 14, 2006 through February 13, 2007. Collection Analyst	[redacted]	HR	[redacted]	90,000.00	

18. SHIPPING POINT
19. GROSS SHIPPING WEIGHT
20. INVOICE NO.
21. MAIL INVOICE TO:
a. NAME: DOC/NOAA/GCEL
b. STREET ADDRESS (or P.O. Box): 8484 Georgia Avenue, 4th Floor, Suite 400
c. CITY: Silver Spring
d. STATE: MD
e. ZIP CODE: 20910

SEE BILLING INSTRUCTIONS ON REVERSE

17(h) TOTAL (Cont. pages)
US$ 95,085.00
17(i) GRAND TOTAL

22. UNITED STATES OF AMERICA BY (Signature) 02/17/06
23. NAME (Typed): RUBIE B. KING 301-713-0838 x189
(TITLE CONTRACTING/ORDERING OFFICER)

AUTHORIZED FOR LOCAL REPRODUCTION OPTIONAL FORM 347 (REV. 6/95)

2006-2009 - SS-C. 01

ORDER FOR SUPPLIES OR SERVICES - Continuation

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IMPORTANT: Mark all packages and papers with contract and/or order numbers.

DATE OF ORDER	CONTRACT NO. (If any)	ORDER NO.
10 Feb 2006		DG133006SE1736

ITEM NO. (a)	SUPPLIES OR SERVICES (b)	QUANTITY ORDERED (c)	UNIT (d)	UNIT PRICE (e)	AMOUNT (f)	QTY ACCEPT. (g)
	Accounting and Appropriation Data: 14.06.2BL7E02P0006021101000.01020001000 00000.25110000 $ 90,000.00					
0002	Other Direct Cost (travel, telephone and miscellaneous expenses) Telephone and Miscellaneous Expenses: $2,285.00 Travel (In accordance with Federal Travel Regulations: $2,800.00 Accounting and Appropriation Data: 14.06.2BL7E02P0006021101000.01020001000 00000.31000000 $ 5,085.00	NTE [redacted]	LT	[redacted]	5,085.00	

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1. 52.213-4 TERMS AND CONDITIONS--SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS) (FEB 2006)
(Reference)

2. 52.232-7 PAYMENTS UNDER TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS (AUG 2005)
(Reference)

3. 1352.201-70 CONTRACTING OFFICER'S AUTHORITY (MARCH 2000)

The Contracting Officer is the only person authorized to make or approve any changes in any of the requirements of this contract and notwithstanding any provisions contained elsewhere in this contract, the said authority remains solely in the Contracting Officer. In the event the Contractor makes any changes at the direction of any person other than the Contracting Officer, the change will be considered to have been made without authority and no adjustment will be made in the contract terms and conditions, including price.

4. 1352.201-71 CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR) (FEBRUARY 2005)

a. Robert Hogan is hereby designated as the Contracting Officer's Technical Representative (COTR). The COTR may be changed at any time by the Government without prior notice to the Contractor by a unilateral modification to the Contract. The COTR is located at:
U.S. Department of Commerce National Oceanic Atmospheric Administration
Office of the General Council Enforcement and Litigation
8484 Georgia Avenue 4th FL. Suite 400
Silver Spring, MD 20910
(301) 427-2202

b. The responsibilities and limitations of the COTR are as follows:
(1) The COTR is responsible for the technical aspects of the project and serves as technical liaison with the Contractor. The COTR is also responsible for the final inspection and acceptance of all reports, and such other responsibilities as may be specified in the contract.
(2) The COTR is not authorized to make any commitments or otherwise obligate the Government or authorize any changes which affect the Contract price, terms or conditions. Any Contractor request for changes shall be referred to the Contracting Officer directly or through the COTR. No such changes shall be made without the expressed prior authorization of the Contracting Officer (CO). The CO may designate assistant or alternate COTR(s) to act for the COTR by naming such assistant/alternate(s) in writing and transmitting a copy of such designation to the Contractor.

5. 1352.208-70 PRINTING (MARCH 2000)

Unless otherwise specified in this contract, the Contractor shall not engage in, or subcontract for, any printing (as that term is defined in Title I of the Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with performing under this contract. Provided, however, that performing a requirement under this contract involving the duplicating of less than 5,000 units of only one page, or less than 25,000 units in the aggregate of multiple pages, such pages are not exceeding a maximum image size of 10 and 3/4 inches by 14 and 1/4 inches, will not be deemed printing.

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6. 1352.209-71 ORGANIZATIONAL CONFLICT OF INTEREST (MARCH 2000)

(a) The Contractor warrants that, to the best of the Contractor's knowledge and belief, there are no relevant facts or circumstances which would give rise to an organizational conflict of interest, as defined in FAR Subpart 9.5, or that the Contractor has disclosed all such relevant information.

(b) The Contractor agrees that if an actual or potential organizational conflict of interest is discovered after award, the Contractor will make a full disclosure in writing to the Contracting Officer. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Contracting Officer, to avoid, mitigate, or neutralize the actual or potential conflict.

(c) Remedies - The Contracting Officer may terminate this contract for convenience, in whole or in part, if it deems such termination necessary to avoid an organizational conflict of interest. If the Contractor was aware of a potential organizational conflict of interest prior to award or discovered an actual or potential conflict after award and did not disclose or misrepresented relevant information to the Contracting Officer, the Government may terminate the contract for default, debar the Contractor from Government contracting, or pursue such other remedies as may be permitted by law or this contract.

(d) The Contractor further agrees to insert provisions which shall conform substantially to the language of this clause, including this paragraph (d), in any subcontract or consultant agreement hereunder.

7. 1352.209-72 RESTRICTIONS AGAINST DISCLOSURE (MARCH 2000)

a. The Contractor agrees, in the performance of this contract, to keep the information furnished by the Government and designated by the Contracting Officer or Contracting Officer's Technical Representative in the strictest confidence. The Contractor also agrees not to publish or otherwise divulge such information in whole or in part, in any manner or form, nor to authorize or permit others to do so, taking such reasonable measures as are necessary to restrict access to such information while in the Contractor's possession, to those employees needing such information to perform the work provided herein, i.e., on a "need to know" basis. The Contractor agrees to immediately notify the Contracting Officer in writing in the event that the Contractor determines or has reason to suspect a breach of this requirement.

b. The Contractor agrees that it will not disclose any information described in Subsection A to any persons or individual unless prior written approval is obtained from the Contracting Officer. The Contractor agrees to insert the substance of this clause in any consultant agreement or subcontract hereunder.

8. 1352.209-73 COMPLIANCE WITH THE LAWS (MARCH 2000)

The Contractor shall comply with all applicable laws and rules and regulations having the force of law which deal with or relate to performance hereunder or the employment by the Contractor of the employees.

9. 1352.215-70 PERIOD OF PERFORMANCE (MARCH 2000)

a. The period of performance of this contract is from February 17, 2006 through February 16, 2007.

10. 1352.231-70 DUPLICATION OF EFFORT (MARCH 2000)

The Contractor hereby certifies that costs for work to be performed under this contract and any subcontract hereunder are not duplicative of any costs charged against any other Government contract, subcontract, or other Government source.

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The Contractor agrees to advise the Contracting Officer, in writing, of any other Government contract or subcontract it has performed or is performing which involves work directly related to the purpose of this contract. The Contractor also certifies and agrees that any and all work performed under this contract shall be directly and exclusively for the use and benefit of the Government, and not incidental to any other work, pursuit, research, or purpose of the Contractor, whose responsibility it will be to account for it accordingly.

11. 1352.233-70 HARMLESS FROM LIABILITY (MARCH 2000)

The Contractor shall hold and save the Government, its officers, agents, and employees harmless from liability of any nature or kind, including costs and expenses to which they may be subject to or on account of any or all suits or damages of any character whatsoever resulting from injuries or damages sustained by any person or persons or property by virtue of performance of this contract, arising or resulting in whole or in part from the fault, negligence, wrongful act or wrongful omission of the contractor, or any subcontractor, their employees, and agents.

12. 1352.246-70 INSPECTION AND ACCEPTANCE (MARCH 2000)

The Contracting Officer or the duly authorized representative will perform inspection and acceptance of supplies and services to be provided under this contract.

Inspection and acceptance will be performed at:
U.S. Department of Commerce/NOAA
Office of GCEL
8484 Georgia Avenue 4th FL. Suite 400
Silver Spring, MD 20910
Monia Williams
(301) 427-2202

13. STATEMENT OF WORK

CONTRACT TYPE (MARCH 2000)

This is a Labor Hour type contract for Consulting Services. It consists of a twelve month base period from February 17, 2006 through February 16, 2007.

CEILING PRICE (MARCH 2000)

The ceiling price of this contract is $95,085.00. The Contractor shall not make expenditures nor incur obligations in the performance of this contract which exceed the ceiling price specified herein, except at the Contractor's own risk.

STATEMENT OF WORK
COLLECTIONS ANALYST
January 12, 2006

I. INTRODUCTION

The U.S. Department of Commerce (DOC), National Oceanic and Atmospheric Administration (NOAA), Office of General Counsel Enforcement and Litigation (GC) have a requirement for the collection of monetary penalties as a result recommendations made by NOAA's independent auditors. In response to the findings and recommendations, the Office of the General Counsel and NOAA's Finance Office developed procedures that would result in finance office assuming

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all financial responsibility for accounting, billing, and collecting civil monetary penalties for cases where a legally enforceable debts exist. Procedures were designed to ensure that legally enforceable debts are timely processed in GC and then referred to the finance office.

Cases in the Office of the GC fall into several categories, i.e., pre-debt not referred to Finance for billing and collecting, time payments, delinquent debts, Treasury cases, and write-offs. Case file packages must be reviewed and a determination must be made as to which procedures to follow to resolve debt processing in a timely and accurate manner. Satisfying these procedures is necessary for NOAA to achieve an unqualified audit from its auditors and MD to meet obligations as stated in Compendium of Debt Processing Guidelines and Procedures for Collection of Civil Monetary Penalties. Technical support services shall be required at the GC staff offices located in Gloucester, MA, St. Petersburg, FL., Long Beach, CA., Seattle, WA., Juneau, AK., and Silver Spring.

II. STATEMENT OF OBJECTIVES

The Contractor shall be required to provide technical support services to accomplish the following task:

(1) Review and assess cases for valid debt, availability of debtor information, collection efforts to date, final disposition of seized proceeds, and likelihood of collection success;

(2) Follow proper procedures and guidelines prior to referral of cases to Finance;

(3) Incorporate necessary procedures for GC action, including corresponding Enforcement Management Information System (EMIS) entries;

(4) Utilize standard forms and EMIS reports to ensure consistent submissions of case to Finance;

(5) Identify other ways to evaluate what/how frequently dollar amounts of cases being sent to or returned from Finance, and

(6) Forms and reports are intended to help modify assessment, settlement, and collection practices to increase percentage of full payment.

In addition to the project tasks, other responsibilities shall include the following:

- The completion and presentation of periodic and special statistical reports
- Regular quarterly audits of financial information using the EMIS System
- Management of bankruptcy cases/completion of all necessary filings
- Keeping updated on the Department's financial reporting requirements
- Management of the collection process for problematic cases, including renegotiation when necessary, and
- Monthly data reconciliations
- Serve as a liaison between GC and other Contractors in the development of a tickler system and a program to calculate

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interest and payment amounts;

III. Reports

a. Progress Reports

Within 10 days from the date of the award of the contract, the Contractor shall provide a Task Management Plan with a detailed work outline of the project and the Contractor's planned phasing of work by reporting period. A copy of this plan shall be provided to the COR and to the Contracting Officer. In addition, the Contractor shall be required to submit, to the COR, two detailed Progress Report no later than March 30, 2006 and September 30, 2006 advising of the work completed during the performance period and comparing new data with past data. GCEL will provide written feedback on the semi-annual reports and/or progress reports to the contractor within four (4) weeks of receiving them. The feedback will address the content and format of the submitted material, suggestions for improvement and any changes that GCEL would like implemented.

In addition, the Government shall require with its monthly invoice an interim report advising of the POC of the work completed during the month, the work forecast for the following period, and the names, titles and number of hours expended for each of the Contractor's professional personnel assigned to the contract, including officials of the Contractor, the Number actions receive from the regional offices, the case number, when assigned and the results and or current status. The report shall also include any additional information--including findings and recommendations --that may assist the Government in evaluating progress under this contract.

b. Final Report

Within 10 days of completion of the contract performance period, the Contractor shall submit, to the Government, a comprehensive draft report containing the Contractor's findings and recommendations. The report shall conform to the requirements of the contract, and include all necessary data, maps and exhibits to support findings and recommendations. It shall include a recapitulation of the amount of hours expended by each of the Contractor's employees, including officials of the Contractor. The report shall also include a brief summary, including short statements on the project's objectives, scope, methodology, information obtained, and conclusions. The Government will review the draft and return it to the Contractor within thirty (30) days after receipt with comments and instructions for a format to be used in the preparation of the final report. The Contractor shall incorporate the comments into a final report and furnish the Government with one copy upon contract completion.

c. In the event the Government does not return the draft copy of the report to the Contractor within the prescribed period, the Contractor shall be permitted an extra day for each day of delay caused by the Government. The Government shall not be liable for increased costs by reason of any such delay.

IV. SCHEDULE OF DELIVERABLES

Following is a schedule of all deliverables, including administrative deliverables, required during the period of performance of this contract:

Item	Description	Due Date	Deliver To
(1)	Review, research, and track actions of cases;	As needed	COR
(2)	Document basis for recommended debt processing actions;	As needed	COR

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(3)	Review files and take action When cases are returned by Finance due to non-payment, inaccurate payment or other reasons;	10 business days	COR
(4)	Notify Finance, case attorney, or GCEL of final actions taken	10 business days	COR
(5)	Return to Finance, cases sent back to the regional office for corrections;	10 business days	COR
(6)	Coordinate efforts to develop a tickler system to ensure timely identification of delinquent, legally enforceable debts;	As needed	COR
(7)	Prepare two Progress Reports With comparison of new data to the past data.	March 30th September 30th	COR and CO*

*Co= Contracting Officer

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III. PLACE OF PERFORMANCE

The primary place of performance shall be at the Contractors own offices, however, the Contractor shall be required to attend periodic meetings at the NOAA/GCEL offices located in Silver Spring, Maryland and in the regional offices as needed.

IV. TRAVEL

The Contractor shall be required to travel to the NOAA Offices located in Gloucester, MA, St. Petersburg, FL; Long Beach, CA; Seattle, WA; Juneau, AK and Silver Spring. For the purpose of establishing a contract ceiling the Government shall establish a separate Contract Line Item (CLIN) in its Pricing Schedule for travel. All travel resulting from this requirement shall be in accordance with Government Federal Travel Regulations and must be authorized in advance by the Contracting Officers Representative (COR).

V. PAYMENT

The Contractor shall be required to submit a detailed invoice covering the number of labor hours and Other Direct Cost (ODCs) associated with the performance of this acquisition. Invoices shall be submitted monthly to the COR.

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ORDER FOR SUPPLIES OR SERVICES

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IMPORTANT: Mark all packages and papers with contract and/or order numbers.

1. DATE OF ORDER: 1 June 2007
2. CONTRACT NO. (if any):
3. ORDER NO.: DG133007SE2581
4. REQUISITION/REFERENCE NO.: NAGC0102-7-05908
5. ISSUING OFFICE Address correspondence to: F6001201
DOC/NOAA/AGO
STAFF OFFICE & EXTERNAL CLIENTS, AD
1305 EAST WEST HIGHWAY, RM 7601
SILVER SPRING, MD 20910
PEARLETTE M. MERRIWEATHER (301) 713-0838

6. SHIP TO: AD100031
a. NAME OF CONSIGNEE: DEPUTY GENERAL COUNSEL /GCEL — Ult Dest: AD100031
b. STREET ADDRESS: 8484 GEORGIA AVE, RM 400
c. CITY: SILVER SPRING
d. STATE: MD
e. ZIP CODE: 20910-5612
f. SHIP VIA:

7. TO: 00000009 TIN: 364923021
a. NAME OF CONTRACTOR: JULIA HELLERMAN DUNS: 123798212
b. COMPANY NAME:
c. STREET ADDRESS: 866 9TH STREET
d. CITY: BOULDER e. STATE: CO f. ZIP: 803027529

8. TYPE OF ORDER
[X] a. PURCHASE — REFERENCE YOUR: Please furnish the following on the terms and conditions specified on both sides of this order and on the attached sheet, if any, including delivery as indicated.
[ ] b. DELIVERY — Except for billing instructions on the reverse, this delivery order is subject to instructions contained on this side only of this form and is issued subject to the terms and conditions of the above-numbered contract.

9. ACCOUNTING AND APPROPRIATION: See Attached Schedule — BOC: — OBLIGATED AMT: $96,000.00
10. REQUISITIONING OFFICE: NOAA - NMFS

11. BUSINESS CLASSIFICATION (Check appropriate box(es)): [ ] a. Small [X] b. Other than small [ ] c. Disadvantaged [X] d. Women-owned [ ] e. HUBZone [ ] f. Emerging small business [ ] g. Service-disabled veteran-owned

12. F.O.B. POINT: DESTINATION
13. PLACE OF: a. INSPECTION: SEE BLOCK — b. ACCEPTANCE: SEE BLOCK
14. GOVERNMENT B/L NO.:
15. DELIVER TO F.O.B. POINT ON OR BEFORE: 16 Apr 2007
16. DISCOUNT TERMS: 00.00% 0 Days; Net 30

17. SCHEDULE (See reverse for Rejections)

ITEM NO. (a)	SUPPLIES OR SERVICES (b)	QUANTITY ORDERED (c)	UNIT (d)	UNIT PRICE (e)	AMOUNT (f)	QTY ACCEPT (g)
	The Contractor shall provide services in accordance with the Statement of Work. The period of performance is 06/08/2007-06/07/2008. Base Period of Performance: 06/08/2007 - 06/07/2008					
0001	Collection Specialist	[redacted]	HR	[redacted]	93,600.00	

18. SHIPPING POINT
19. GROSS SHIPPING WEIGHT
20. INVOICE NO.
21. MAIL INVOICE TO:
a. NAME: DEPUTY GENERAL COUNSEL /GCEL
b. STREET ADDRESS (or P.O. Box): 8484 GEORGIA AVE, RM 400
c. CITY: SILVER SPRING d. STATE: MD e. ZIP CODE: 20910-5612

SEE BILLING INSTRUCTIONS ON REVERSE

17(h) TOTAL (Cont. pages)
17(i) GRAND TOTAL: US$ 96,000.00

22. UNITED STATES OF AMERICA BY (Signature):
23. NAME (Typed): MORIE GUNTER-HENDERSON 301 713-0838
(TITLE CONTRACTING/ORDERING OFFICER)

OPTIONAL FORM 347 (REV. 4/2006)
Prescribed by GSA/FAR 48 CFR 53.213(f)

2006-2009-SS-C-13

STATEMENT OF WORK
COLLECTIONS ANALYST
February 26, 2007

I. INTRODUCTION

The U.S. Department of Commerce (DOC), National Oceanic and Atmospheric Administration (NOAA), Office of General Counsel Enforcement and Litigation (GC) have a requirement for the collection of monetary penalties as a result recommendations made by NOAA's independent auditors. In response to the findings and recommendations, the Office of the General Counsel and NOAA's Finance Office developed procedures that would result in finance office assuming all financial responsibility for accounting, billing, and collecting civil monetary penalties for cases where a legally enforceable debts exist. Procedures were designed to ensure that legally enforceable debts are timely processed in GC and then referred to the finance office.

Cases in the Office of the GC fall into several categories, i.e., pre-debt not referred to Finance for billing and collecting, time payments, delinquent debts, Treasury cases, and write-offs. Case file packages must be reviewed and a determination must be made as to which procedures to follow to resolve debt processing in a timely and accurate manner. Satisfying these procedures is necessary for NOAA to achieve an unqualified audit from its auditors and MD to meet obligations as stated in Compendium of Debt Processing Guidelines and Procedures for Collection of Civil Monetary Penalties. Technical support services shall be required at the GC staff offices located in Gloucester, MA, St. Petersburg, FL., Long Beach, CA., Seattle, WA., Juneau, AK., and Silver Spring.

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a. The Contractor shall be required to provide technical support services to accomplish the following task:

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(2) Follow proper procedures and guidelines prior to referral of cases to Finance;

(3) Incorporate necessary procedures for GC action, including corresponding Enforcement Management Information System (EMIS) entries;

(4) Utilize standard forms and EMIS reports to ensure consistent submissions of case to Finance;

(5) Identify other ways to evaluate what/how frequently dollar amounts of cases being sent to or returned from Finance, and

(6) Forms and reports are intended to help modify assessment, settlement, and collection practices to increase percentage of full payment.

b. In addition to the project tasks, the Contractor shall provide the following:

1) The completion and presentation of periodic and special statistical reports

(2) Regular quarterly audits of financial information using the EMIS System

(3) Management of bankruptcy cases/completion of all necessary filings

(4) Keeping updated on the Department's financial reporting requirements

(5) Management of the collection process for problematic cases, including renegotiation when necessary, and

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(6) Monthly data reconciliations

(7) Serve as a liaison between GC and other Contractors in the
(8) development of a tickler system and a program to calculate
(9) interest and payment amounts;

Reports

a. Progress Reports

Within 10 days from the date of the award of the contract, the Contractor shall provide a Task Management Plan with a detailed work outline of the project and the Contractor's planned phasing of work by reporting period. A copy of this plan shall be provided to the COR and to the Contracting Officer. In addition, the Contractor shall be required to submit, to the COR, two detailed Progress Report no later than March 30, 2006 and September 30, 2006 advising of the work completed during the performance period and comparing new data with past data. GCEL will provide written feedback on the semi-annual reports and/or progress reports to the contractor within four (4) weeks of receiving them. The feedback will address the content and format of the submitted material, suggestions for improvement and any changes that GCEL would like implemented.

In addition, the Government shall require with its monthly invoice an interim report advising of the POC of the work completed during the month, the work forecast for the following period, and the names, titles and number of hours expended for each of the Contractor's professional personnel assigned to the contract, including officials of the Contractor, the Number actions receive from the regional offices, the case number, when assigned and the results and or current status. The report shall also include any additional information--including findings and recommendations --that may assist the Government in evaluating progress under this contract.

b. Final Report

Within 10 days of completion of the contract performance period, the Contractor shall submit, to the Government, a comprehensive draft report containing the Contractor's findings and recommendations. The report shall conform to the requirements of the contract, and include all necessary data, maps and exhibits to support findings and recommendations. It shall include a recapitulation of the amount of hours expended by each of the Contractor's employees, including officials of the Contractor. The report shall also include a brief summary, including short statements on the project's objectives, scope, methodology, information obtained, and conclusions. The Government will review the draft and return it to the Contractor within thirty (30) days after receipt with comments and instructions for a format to be used in the preparation of the final report. The Contractor shall incorporate the comments into a final report and furnish the Government with one copy upon contract completion.

c. In the event the Government does not return the draft copy of the report to the Contractor within the prescribed period, the Contractor shall be permitted an extra day for each day of delay caused by the Government. The Government shall not be liable for increased costs by reason of any such delay.

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IV. SCHEDULE OF DELIVERABLES

a. **Deliverables**

Following is a schedule of all deliverables, including administrative deliverables, required during the period of performance of this contract:

Item Description	Due Date	Deliver To
1. Review, research, and track actions of cases;	As needed	COR
2. Document basis for recommended debt processing actions;	As needed	COR
3. Review files and take action When cases are returned by Finance due to non-payment, inaccurate payment or other reasons;	10 business days	COR
4. Notify Finance, case attorney, or GCEL of final actions taken	10 business days	COR
5. Return to Finance, cases sent back to the regional office for corrections;	10 business days	COR
6. Coordinate efforts to develop a tickler system to ensure timely identification of delinquent, legally enforceable debts;	As needed	COR
7. Prepare two Progress Reports With comparison of new data to the past data.	March 30th and September 30th	COR & CO*

*Co= Contracting Officer

b. Inspection and Acceptance Criteria

Final inspection and acceptance of all work performed, reports and other deliverables will be performed at the place of delivery by the COTR.

General Acceptance Criteria

General quality measures, as set forth below, will be applied to each work product received from the Contractor under this statement of work.

1. Accuracy - Work Products shall be accurate in presentation, technical content, and adherence to accepted elements of style.

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2. Clarity - Work Products shall be unambiguous and relevant. Any/All diagrams shall be easy to understand and be relevant to the supporting narrative.

3. Consistency to Requirements - All work products must satisfy the requirements of this statement of work.

4. File Editing - All text and diagrammatic files shall be editable by the Government.

5. Format - Work Products shall be submitted in hard copy (where applicable) and in media mutually agreed upon prior to submission. Hard copy formats shall follow any specified Directives or Manuals.

6. Timeliness - Work Products shall be submitted on or before the due date specified in this statement of work or submitted in accordance with a later scheduled date determined by the Government.

c. Contract Type/ Period of Performance

This is a Firm Fixed Price Contract for [redacted] hours for services. The period of performance is June 1, 2007 - May 31, 2008.

d. Place of Performance

The primary place of performance shall be at the Contractors own offices, however, the Contractor shall be required to attend periodic meetings at the NOAA/GCEL offices located in Silver Spring, Maryland and in the regional offices as needed.

V. Delivery Order Administrative

1.0 Contracting Officer

The Contracting Officer (CO) for this effort is as follows:

Morie Gunter-Henderson
Department of Commerce
National Oceanic & Atmospheric Administration
Staff Office / External Clients, AD
1305 East West Highway, Silver Springs, MD 20910
Voice: 301.713.0838 Ext 186
Fax: 301.713.0806
Email: Morie.Gunter-Henderson@noaa.gov

2.0 Contract Administration

The Contract Administrator (CA) for this effort is as follows:

Pearlette Merriweather
Department of Commerce
National Oceanic & Atmospheric Administration
Staff Office / External Clients, AD
1305 East West Highway, Silver Springs, MD 20910
Voice: 301.713.0838 Ext 186
Fax: 301.713.0806
Email: pearlette.m.merriweather@noaa.gov

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3.0 Invoice Instructions

Invoices will be submitted covering hours of labor expended on a Monthly basis to the Program Management Analyst.

The Contractor shall provide two original copies of each invoice for work that is performed directly to the COTR:

To constitute a proper invoice it must include the items listed in paragraphs (3.1) through (3.9) of this section. If the invoice does not comply with these requirements, it will be returned within 7 days after the date the designated billing office received the invoice with a statement of the reasons why it is not a proper invoice. If such notice is not timely, then an adjusted due date for the purpose of determining an interest penalty, if any, will be established in accordance with Far 32.907.

3.1 Name and address of the contractor.

3.2 Contractors are strongly encouraged to assign a sequential Invoice Numbering.

3.3 Invoice date. (Contractors are encouraged to date invoices as close as possible to the date of mailing or transmission.)

3.4 Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).

3.5 Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.

3.6 Shipping and payment terms (e.g., shipment number and date of shipment, prompt payment discount terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

3.7 Name and address of contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

3.8 Name (where practicable), title, phone number, and mailing address of person to be notified in the event of a defective invoice.

3.9 Any other information or documentation required by the contract (such as evidence of shipment).

VI. Other Performance Requirements

1.0 Hours of Work
Contractor personnel are expected to conform to normal operating hours. The normal duty hours are 8:00 AM to 5:00 PM. Monday through Friday, with the exception of Federal Government holidays, with an allowance for a half-hour lunch period each day.

2.0 Government Holidays
The following Government holidays are normally observed by Government personnel: New Years Day, Martin Luther King's Birthday, Presidential Inauguration Day (metropolitan DC area only), President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Christmas Day, and any other day designated by Federal Statute, Executive Order, and/or Presidential Proclamation.

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3.0 Payment for Unauthorized Work
No payments will be made for any unauthorized supplies and/or services or for any unauthorized changes to the work specified herein. This includes any services performed by the Contractor of their own volition or at the request of an individual other than a duly appointed Contracting Officer. Only a duly appointed Contracting Officer is authorized to change the specifications, terms, and conditions under this effort.

4.0 Disclosure of Information
Information made available to the contractor by the Government for the performance or administration of this effort shall be used only for those purposes and shall not be used in any other way without the written agreement of the Contracting Officer.

The contractor agrees to assume responsibility for protecting the confidentiality of Government records, which are not public information. Each contractor or employee of the contractor to whom information may be made available or disclosed shall be notified in writing by the contractor that such information may be disclosed only for a purpose and to the extent authorized herein.

5.0 Limited Use of Data
Performance of this effort may require the contractor to access and use data and information proprietary to a Government agency or Government contractor which is of such a nature that its dissemination or use, other than in performance of this effort, would be adverse to the interests of the Government and/or others.

Contractor and/or contractor personnel shall not divulge or release data or information developed or obtained in performance of this effort, until made public by the Government, except to authorize Government personnel or upon written approval of the Contracting Officer (CO). The contractor shall not use, disclose, or reproduce proprietary data that bears a restrictive legend, other than as required in the performance of this effort. Nothing herein shall preclude the use of any data independently acquired by the contractor without such limitations or prohibit an agreement at no cost to the Government between the contractor and the data owner which provides for greater rights to the contractor.

6.0 Travel
The Contractor shall be required to travel to the NOAA Offices located in Gloucester, MA, St. Petersburg, FL; Long Beach, CA; Seattle, WA; Juneau, AK and Silver Spring. For the purpose of establishing a contract ceiling the Government shall establish a separate Contract Line Item (CLIN) in its Pricing Schedule for travel. All travel resulting from this requirement shall be in accordance with Government Federal Travel Regulations and must be authorized in advance by the Contracting Officers Representative (COR).

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1. 1352.201-70 CONTRACTING OFFICER'S AUTHORITY (MAR 2000)

The Contracting Officer is the only person authorized to make or approve any changes in any of the requirements of this contract and notwithstanding any provisions contained elsewhere in this contract, the said authority remains solely in the Contracting Officer. In the event the Contractor makes any changes at the direction of any person other than the Contracting Officer, the change will be considered to have been made without authority and no adjustment will be made in the contract terms and conditions, including price.

(End of clause)

2. 1352.201-71 CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR) (FEB 2005)

a. Robert Hogan is hereby designated as the Contracting Officer's Technical Representative (COTR). The COTR may be changed at any time by the Government without prior notice to the Contractor by a unilateral modification to the Contract. The COTR is located at:

Office of General Counsel
8484 georgia Avenue
Silver Spring, MD 20910
robert.j.hogan@noaa.gov
301.427.2202 ext 140

b. The responsibilities and limitations of the COTR are as follows:

(1) The COTR is responsible for the technical aspects of the project and serves as technical liaison with the Contractor. The COTR is also responsible for the final inspection and acceptance of all reports, and such other responsibilities as may be specified in the contract.

(2) The COTR is not authorized to make any commitments or otherwise obligate the Government or authorize any changes which affect the Contract price, terms or conditions. Any Contractor request for changes shall be referred to the Contracting Officer directly or through the COTR. No such changes shall be made without the expressed prior authorization of the Contracting Officer (CO). The CO may designate assistant or alternate COTR(s) to act for the COTR by naming such assistant/alternate(s) in writing and transmitting a copy of such designation to the Contractor.

(End of clause)

3. 1352.208-70 PRINTING (MAR 2000)

Unless otherwise specified in this contract, the Contractor shall not engage in, or subcontract for, any printing (as that term is defined in Title I of the Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with performing under this contract. Provided, however, that performing a requirement under this contract involving the duplicating of less than 5,000 units of only one page, or less than 25,000 units in the aggregate of multiple pages, such pages are not exceeding a maximum image size of 10 and 3/4 inches by 14 and 1/4 inches, will not be deemed printing.

(End of clause)

4. 1352.209-71 ORGANIZATIONAL CONFLICT OF INTEREST (MAR 2000)

(a) The Contractor warrants that, to the best of the Contractor's knowledge and belief, there are no relevant facts or circumstances which would give rise to an organizational conflict of interest, as defined in FAR Subpart 9.5, or that the Contractor has disclosed all such relevant information.

(b) The Contractor agrees that if an actual or potential organizational conflict of interest is discovered after award, the Contractor will make a full disclosure in writing to the Contracting Officer. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Contracting Officer, to avoid, mitigate, or neutralize the actual or potential conflict.

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(c) Remedies - The Contracting Officer may terminate this contract for convenience, in whole or in part, if it deems such termination necessary to avoid an organizational conflict of interest. If the Contractor was aware of a potential organizational conflict of interest prior to award or discovered an actual or potential conflict after award and did not disclose or misrepresented relevant information to the Contracting Officer, the Government may terminate the contract for default, debar the Contractor for Government contracting, or pursue such other remedies as may be permitted by law or this contract.

(d) The Contractor further agrees to insert provisions which shall conform substantially to the language of this clause, including this paragraph (d), in any subcontract or consultant agreement hereunder.

(End of clause)

5. 1352.209-72 RESTRICTIONS AGAINST DISCLOSURE (MAR 2000)

a. The Contractor agrees, in the performance of this contract, to keep the information furnished by the Government and designated by the Contracting Officer or Contracting Officer's Technical Representative in the strictest confidence. The Contractor also agrees not to publish or otherwise divulge such information in whole or in part, in any manner or form, nor to authorize or permit others to do so, taking such reasonable measures as are necessary to restrict access to such information while in the Contractor's possession, to those employees needing such information to perform the work provided herein, i.e., on a "need to know" basis. The Contractor agrees to immediately notify the Contracting Officer in writing in the event that the Contractor determines or has reason to suspect a breach of this requirement.

b. The Contractor agrees that it will not disclose any information described in Subsection A to any persons or individual unless prior written approval is obtained from the Contracting Officer. The Contractor agrees to insert the substance of this clause in any consultant agreement or subcontract hereunder.

(End of clause)

6. 1352.209-73 COMPLIANCE WITH THE LAWS (MAR 2000)

The Contractor shall comply with all applicable laws and rules and regulations having the force of law which deal with or relate to performance hereunder or the employment by the Contractor of the employees.

(End of clause)

7. 52.212-4 CONTRACT TERMS AND CONDITIONS--COMMERCIAL ITEMS (FEB 2007)

(a) "Inspection/Acceptance." The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights--

(1) Within a reasonable time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) "Assignment." The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (e.g., use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) "Changes." Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

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(d) "Disputes." This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) "Definitions." The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

(f) "Excusable delays." The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) "Invoice."

(1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include--

(i) Name and address of the Contractor;

(ii) Invoice date and number;

(iii) Contract number, contract line item number and, if applicable, the order number;

(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;

(vi) Terms of any discount for prompt payment offered;

(vii) Name and address of official to whom payment is to be sent;

(viii) Name, title, and phone number of person to notify in event of defective invoice; and

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer-Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer-Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315.

(h) "Patent indemnity." The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) "Payment."--

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(1) "Items accepted." Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) "Prompt payment." The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR part 1315.

(3) "Electronic Funds Transfer (EFT)." If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.

(4) "Discount." In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) "Overpayments." If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

(j) "Risk of loss." Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) "Taxes." The contract price includes all applicable Federal, State, and local taxes and duties.

(l) "Termination for the Government's convenience." The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) "Termination for cause." The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) "Title." Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) "Warranty." The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) "Limitation of liability." Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) "Other compliances." The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

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(r) "Compliance with laws unique to Government contracts." The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 3701, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

(s) "Order of precedence." Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

(1) The schedule of supplies/services.

(2) The Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause.

(3) The clause at 52.212-5.

(4) Addenda to this solicitation or contract, including any license agreements for computer software.

(5) Solicitation provisions if this is a solicitation.

(6) Other paragraphs of this clause.

(7) The Standard Form 1449.

(8) Other documents, exhibits, and attachments.

(9) The specification.

(t) "Central Contractor Registration (CCR)."

(1) Unless exempted by an addendum to this contract, the Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(2)

(i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in FAR Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to

(A) change the name in the CCR database;

(B) comply with the requirements of Subpart 42.12; and

(C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (t)(2)(i) of this clause, or fails to perform the agreement at paragraph (t)(2)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(3) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(4) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at http://www.ccr.gov or by calling 1-888-227-2423 or 269-961-5757.

(End of Clause)

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8. 52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS--COMMERCIAL ITEMS (MAR 2007)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clause, which is incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) 52.233-3, Protest after Award (Aug 1996) (31 U.S.C. 3553).

(2) 5.233-4, Applicable Law for Breach of Contract Claim (Oct 2004) (Pub. L. 108-77, 108-78).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

_____ (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Sep 2006), with Alternate I (Oct 1995)(41 U.S.C. 253g and 10 U.S.C. 2402).

_____ (2) 52.219-3, Notice of Total HUBZone Set-Aside (Jan 1999) (15 U.S.C. 657a).

_____ (3) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (July 2005) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).

(4) [Reserved]

(5)

_____ (i) 52.219-6, Notice of Total Small Business Set-Aside (June 2003) (15 U.S.C. 644).

_____ (ii) Alternate I (Oct 1995) of 52.219-6.

_____ (iii) Alternate II (Mar 2004) of 52.219-6.

(6)

_____ (i) 52.219-7, Notice of Partial Small Business Set-Aside (June 2003) (15 U.S.C. 644).

_____ (ii) Alternate I (Oct 1995) of 52.219-7.

_____ (iii) Alternate II (Mar 2004) of 52.219-7.

_____ (7) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)).

(8)

_____ (i) 52.219-9, Small Business Subcontracting Plan (Sept 2006) (15 U.S.C. 637(d)(4).

_____ (ii) Alternate I (Oct 2001) of 52.219-9.

_____ (iii) Alternate II (Oct 2001) of 52.219-9.

_____ (9) 52.219-14, Limitations on Subcontracting (Dec 1996) (15 U.S.C. 637(a)(14)).

_____ (10) 52.219-16, Liquidated Damages--Subcontracting Plan (Jan 1999) (15 U.S.C. 637(d)(4)(F)(i)).

(11)

_____ (i) 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (Sept 2005) (10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).

_____ (ii) Alternate I (June 2003) of 52.219-23.

_____ (12) 52.219-25, Small Disadvantaged Business Participation Program-

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Disadvantaged Status and Reporting (Oct 1999) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
_____ (13) 52.219-26, Small Disadvantaged Business Participation Program-
Incentive Subcontracting (Oct 2000) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
XX (14) 52.219-27, Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (May 2004).
_____ (15) 52.222-3, Convict Labor (June 2003) (E.O. 11755).
XX (16) 52.222-19, Child Labor-Cooperation with Authorities and Remedies (Jan 2006) (E.O. 13126).
XX (17) 52.222-21, Prohibition of Segregated Facilities (Feb 1999).
XX (18) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).
XX (19) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212).
XX (20) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793).
_____ (21) 52.222-37, Employment Reports on Special Disabled Veterans,
Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212).
_____ (22) 52.222-39, Notification of Employee Rights Concerning Payment of
Union Dues or Fees (DEC 2004) (E.O. 13201).
(23)
_____ (i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (Aug 2000) (42 U.S.C. 6962(c)(3)(A)(ii)).
_____ (ii) Alternate I (Aug 2000) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)).
_____ (24) 52.225-1, Buy American Act-Supplies (June 2003)(41 U.S.C. 10a-10d).
(25)
_____ (i) 52.225-3, Buy American Act-Free Trade Agreements-Israeli
Trade Act (Nov 2006) (41 U.S.C. 10a-10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, Pub. L. 108-77, 108-78, 108-286, 109-53 and 109-169.
_____ (ii) Alternate I (Jan 2004) of 52.225-3.
XX (iii) Alternate II (Jan 2004) of 52.225-3.
_____ (26) 52.225-5, Trade Agreements (Nov 2006) (19 U.S.C. 2501, et seq.,
19 U.S.C. 3301 note).
_____ (27) 52.225-13, Restrictions on Certain Foreign Purchases (Feb 2006)
(E.o.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).
_____ (28) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (42 U.S.C. 5150).
_____ (29) 52.226-5, Restrictions on Subcontracting Outside Disaster or
Emergency Area (42 U.S.C. 5150).
_____ (30) 52.232-29, Terms for Financing of Purchases of Commercial Items
(Feb 2002) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).
XX (31) 52.232-30, Installment Payments for Commercial Items (Oct 1995) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).
_____ (32) 52.232-33, Payment by Electronic Funds Transfer-Central Contractor Registration (Oct 2003) (31 U.S.C. 3332).
_____ (33) 52.232-34, Payment by Electronic Funds Transfer-Other than
Central Contractor Registration (May 1999) (31 U.S.C. 3332).

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_____ (34) 52.232-36, Payment by Third Party (May 1999)(31 U.S.C. 3332).

_____ (35) 52.239-1, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).

(36)

_____ (i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx 1241(b) and 10 U.S.C. 2631).

_____ (ii) Alternate I (Apr 1984) of 52.247-64.

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

_____ (1) 52.222-41, Service Contract Act of 1965, as Amended (July 2005) (41 U.S.C. 351, et seq.),

_____ (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (May 1989) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

_____ (3) 52.222-43, Fair Labor Standards Act and Service Contract Act-Price Adjustment (Multiple Year and Option Contracts) (May 1989) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

_____ (4) 52.222-44, Fair Labor Standards Act and Service Contract Act-Price Adjustment (Feb 2002) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

(d) Comptroller General Examination of Record. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records-Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)

(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in paragraphs (i) through (vii of this paragraph in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause--

(i) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $550,000 ($1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

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(ii) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).

(iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212).

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).

(v) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004) (E.O. 13201).

(vi) 52.222-41, Service Contract Act of 1965, as Amended (July 2005), flow down required for all subcontracts subject to the Service Contract Act of 1965 (41 U.S.C. 351, et seq.).

(vii) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx 1241 (b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of Clause)

9. 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor within 30 days provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 2 years.

(End of Clause)

10. 1352.231-70 DUPLICATION OF EFFORT (MAR 2000)

The Contractor hereby certifies that costs for work to be performed under this contract and any subcontract hereunder are not duplicative of any costs charged against any other Government contract, subcontract, or other Government source. The Contractor agrees to advise the Contracting Officer, in writing, of any other Government contract or subcontract it has performed or is performing which involves work directly related to the purpose of this contract. The Contractor also certifies and agrees that any and all work performed under this contract shall be directly and exclusively for the use and benefit of the Government, and not incidental to any other work, pursuit, research, or purpose of the Contractor, whose responsibility it will be to account for it accordingly.

(End of clause)

11. 1352.233-70 HARMLESS FROM LIABILITY (MAR 2000)

The Contractor shall hold and save the Government, its officers, agents, and employees harmless from liability of any nature or kind, including costs and expenses to which they may be subject to or on account of any or all suits or damages of any character whatsoever resulting from injuries or damages sustained by any person or persons or property by virtue of performance of this contract, arising or resulting in whole or in part from the fault, negligence, wrongful act or wrongful omission of the contractor, or any subcontractor, their employees, and agents.

(End of clause)

12. 1352.237-71 SECURITY PROCESSING REQUIREMENTS FOR CONTRACTOR/SUBCONTRACTOR PERSONNEL WORKING ON A DEPARTMENT OF COMMERCE SITE OR IT SYSTEM (HIGH OR MODERATE RISK CONTRACTS) (DEC 2006)

A. Investigative Requirements for High and Moderate Risk Contracts

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All contractor (and subcontractor) personnel proposed to be employed under a High or Moderate Risk contract shall undergo security processing by the Department's Office of Security before being eligible to work on the premises of any Department of Commerce facility, or through a Department of Commerce IT system. All Department of Commerce security processing pertinent to this contract will be conducted at no cost to the contractor. The level of contract risk will determine the type and scope of such processing as noted below.

1. Non-IT Service Contracts
   a. High Risk - Background Investigation (BI)
   b. Moderate Risk - Moderate Background Investigation (MBI)
2. IT Service Contracts
   a. High Risk IT - Background Investigation (BI)
   b. Moderate Risk IT - Background Investigation (BI)
3. In addition to the investigations noted above, non-U.S. citizens must have a pre-appointment check that includes a Customs and Immigration Service (CIS - formerly Immigration and Naturalization Service) agency check.

B. Additional Requirements for Foreign Nationals (Non-U.S. Citizens)

To be employed under this contract within the United States, non-U.S. citizens must have:

1. Official legal status in the United States
2. Continuously resided in the United States for the last two years; and
3. Advance approval from the servicing Security Officer of the contracting operating unit in consultation with the Office of Security (OSY) headquarters. (OSY routinely consults with appropriate agencies regarding the use of non-U.S. citizens on contracts and can provide up-to-date information concerning this matter.)

C. Security Processing Requirement

1. Processing requirements for High and Moderate Risk Contracts are as follows:
   a. The contractor must complete and submit the following forms to the Contracting Officer Representative (COR):
      i. Standard Form 85P (SF 85P), Questionnaire for Public Trust Positions;
      ii. FD 258, Fingerprint Chart with OPM's designation in the ORI Block; and
      iii. Credit Release Authorization.
   b. The COR will review these forms for completeness, initiate the CD-254, Contract Security Classification Specification, and forward the documents to the cognizant Security Officer.
   c. Upon completion of the security processing, the Office of Security, through the servicing Security Officer and the COR, will notify the contractor in writing of the individual's eligibility to be given access to a Department of Commerce facility or Department of Commerce IT system.
2. Security processing shall consist of limited personal background inquiries pertaining to verification of name, physical description, marital status, present and former residences, education, employment history, criminal record, personal references, medical fitness, fingerprint classification, and other pertinent information. For non-U.S. citizens, the COR must request an Immigration and Customs Enforcement (formerly INS) agency check. It is the option of the Office of Security to repeat the security processing on any contract employee at its discretion.

D. Notification of Disqualifying Information

If the Office of Security receives disqualifying information on a contract employee, the COR will be notified. The COR, in coordination with the contracting officer, will immediately remove the contract employee from duty requiring access to Departmental facilities or IT systems. Contract employees may be barred from working on the premises of a facility for any of the following:

1. Conviction of a felony of a crime of violence or of a misdemeanor involving moral turpitude.
2. Falsification of information entered on security screening forms or of other documents submitted to the Department.
3. Improper conduct once performing on the contract, including criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct or other

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conduct prejudicial to the Government regardless of whether the conduct directly related to the contract.

4. Any behavior judged to pose a potential threat to Departmental information systems, personnel, property, or other assets.

NOTE: Failure to comply with the requirements may result in termination of the contract or removal of some contract employees from Department of Commerce facilities or access to IT systems.

E. Access to National security Information

Compliance with these requirements shall not be construed as providing a contract employee clearance to have access to national security information.

F. The Contractor shall include the substance of this clause, including this paragraph, in all subcontracts.

(End of Clause)

13. 1352.237-73 KEY PERSONNEL (MAR 2000)

a. The Contractor shall assign to this contract the following Key Personnel:
Julia Hellerman Collection Specialist

b. The Contractor shall obtain the consent of the Contracting Officer prior to making Key Personnel substitutions. Replacements for Key Personnel must possess qualifications equal to or exceeding the qualifications of the personnel being replaced specified.

c. Requests for changes shall be submitted to the Contracting Officer at least 15 working days prior to making any permanent substitutions. The request should contain a detailed explanation of the circumstances necessitating the proposed substitutions, complete resumes for the proposed substitutes, and any additional information requested by the Contracting Officer. The Contracting Officer will notify the Contractor within 10 working days after receipt of all required information of the decision on substitutions. The contract will be modified to reflect any approved changes.

(End of clause)

14. 1352.239-73 SECURITY REQUIREMENTS FOR INFORMATION TECHNOLOGY RESOURCES (DEC 2006)

(a) Applicability.

This clause is applicable to all contracts that require Contractor electronic access to Department of Commerce sensitive non-national security or national security information contained in systems, or administrative control of systems that process or store information, that directly support the mission of the Agency.

(b) Definitions.

For purposes of this clause the term "Sensitive" is defined by the guidance set forth in:

(1) Sensitive information "... any information, the loss, misuse, or unauthorized access, to or modification of which could adversely affect the national interest or the, conduct of federal programs, or the privacy to which individuals are entitled under section 552a of title 5, United States Code (The Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense or foreign policy."

(2) For purposes of this clause, the term "National Security" is defined by the guidance set forth in:

(i) The DOC IT Security Program Policy and Minimum Implementation Standards, Section 4.3 (http://www.osec.doc.gov/cio/ITSIT/DOC-IT-Security-Program-Policy.htm).

(ii) The DOC Security Manual, Chapter 18 (http://home.commerce.gov/osy/SecurityManual/Security%20Manual%20Contents2.pdf)

(iii) Executive Order 12958, as amended, Classified National Security Information. Classified or national security information is information that has been specifically authorized to be protected from unauthorized disclosure in

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the interest of national defense or foreign policy under an Executive Order or Act of Congress.

(3) Information technology resources include, but are not limited to, hardware, application software, system software, and information (data). Information technology services include, but are not limited to, the management, operation (including input, processing, transmission, and output), maintenance, programming, and system administration of computer systems, networks, and telecommunications systems.

(c) The Contractor shall be responsible for implementing sufficient Information Technology security, to reasonably prevent the compromise of DOC IT resources for all of the contractor's systems that are interconnected with a DOC network or DOC systems that are operated by the Contractor.

(d) All Contractor personnel performing under this contract and Contractor equipment used to process or store DOC data, or to connect to DOC networks, must comply with the requirements contained in the DOC Information Technology Management Handbook (http://www.osec.doc.gov/cio/cio_it_policy_page.htm), or equivalent/more specific agency or bureau guidance as specified immediately hereafter: _____

(e) Contractor personnel requiring a user account for access to systems operated by the Contractor for DOC or interconnected to a DOC network to perform contract services shall be screened at an appropriate level in accordance with Commerce Acquisition Manual 1337.70, Security Processing Requirements for Service Contracts.

(f) Within 5 days after contract award, the Contractor shall certify in writing to the COR that its employees, in performance of the contract, have completed initial IT security orientation training in DOC IT Security policies, procedures, computer ethics, and best practices, in accordance with DOC IT Security Program Policy, chapter 15, section 15.3. The COR will inform the Contractor of any other available DOC training resources. Annually thereafter the Contractor shall certify in writing to the COR that its employees, in performance of the contract, have completed annual refresher training as required by section 15.4 of the DOC IT Security Program Policy.

(g) Within 5 days of contract award, the Contractor shall provide the COR with signed acknowledgement of the provisions as contained in Commerce Acquisition Regulation (CAR), 1352.209-72, Restrictions Against Disclosures.

(h) The Contractor shall afford DOC, including the Office of Inspector General, access to the Contractor's and subcontractor's facilities, installations, operations, documentation, databases, and personnel used in performance of the contract. Access shall be provided to the extent required to carry out a program of IT inspection, investigation, and audit to safeguard against threats and hazards to the integrity, availability, and confidentiality of DOC data or to the function of computer systems operated on behalf of DOC, and to preserve evidence of computer crime.

(i) For all Contractor-owned systems for which performance of the contract requires interconnection with a DOC network or that DOC data be stored or processed on them, the Contractor shall provide, implement, and maintain a System Accreditation Package in accordance with chapter 6 of the DOC IT Security Program Policy. Specifically, the Contractor shall:

(1) Within 14 days after contract award, the contractor shall submit for DOC approval a System Certification Work Plan, including project management information (at a minimum the tasks, resources, and milestones) for the certification effort, in accordance with DOC IT Security Program Policy, Section 6.5.2 and _____ The Certification Work Plan, approved by the COR, in consultation with the DOC IT Security Officer, or Agency/Bureau IT Security Manager/Officer, shall be incorporated as part of the contract and used by the COR to monitor performance of certification activities by the contractor of the system that will process DOC data or connect to DOC networks. Failure to submit and receive approval of the Certification Work Plan may result in termination of the contract.

(2) Upon approval, the Contractor shall follow the work plan schedule to complete system certification activities in accordance with DOC IT Security Program Policy section 6.2, and provide the COR with the completed System Security Plan and Certification Documentation Package portions of the System

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Accreditation Package for approval and system accreditation by an appointed DOC official.

(3) Upon receipt of the Security Assessment Report and Authorizing Official's written accreditation decision from the COR, the Contractor shall maintain the approved level of system security as documented in the Security Accreditation Package, and assist the COR in annual assessments of control effectiveness in accordance with DOC IT Security Program Policy, section 6.3.1.2.

(j) The Contractor shall incorporate this clause in all subcontracts that meet the conditions in paragraph (a) of this clause.

(End of clause)

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Statement of Work
Collections Analyst – GCEL
December 8, 2006

Introduction

The Department of Commerce (DOC) National Oceanic Atmospheric and Administration (NOAA) Office of General Counsel for Enforcement and Litigation (GCEL) has a requirement for the ongoing services of a collections analyst to serve as a technical consultant, financial advisor, and penalty collections specialist for NOAA GCEL attorneys responsible for prosecuting Administrative cases against violators of marine natural resource laws administered by NOAA.

GCEL is located at 8484 Georgia Avenue, Ste. 400, Silver Spring, MD, and has 5 regional offices located in Gloucester, MA, St. Petersburg, FL, Long Beach, CA, Seattle, WA, and Juneau, AK.

Scope of Work

In its 1997 audit of NOAA's FY 1996 financial statements, KPMG made certain findings and recommendations requiring changes in the procedures NOAA General Counsel (GC) use in its collection work. In response to the findings and recommendations, GC and NOAA Finance (Finance) worked together to develop procedures that would result in Finance assuming all financial responsibility for accounting, billing, and collecting civil monetary penalties for cases where a legally enforceable debts exist. Procedures were designed to ensure that legally enforceable debts are timely processed in GC and then referred to Finance. Cases in GC fall into several categories, i.e., pre-debt not referred to Finance for billing and collecting, time payments, delinquent debts, Treasury cases, and write-offs. Case file packages must be reviewed and a determination must be made as to which procedures to follow to resolve debt processing in a timely and accurate manner. Satisfying these procedures is necessary for NOAA to achieve an unqualified audit from KPMG. Current staff is insufficient to process all collection work in a timely way. The contractor will be under the supervision of the Assistant General Counsel for Enforcement and Litigation.

To fulfill its responsibilities under the KPMG audit, GCEL requires a contractor who shall be responsible for: reviewing and assessing cases for valid debt, availability of debtor information, collection efforts to date, final disposition of seized proceeds, and likelihood of collection success; following proper NOAA procedures and guidelines prior to referral of cases to NOAA Finance; incorporating necessary procedures for GCEL action, including corresponding Enforcement Management Information System (EMIS) entries; utilizing standard forms and EMIS reports to ensure consistent submissions of case to NOAA Finance; identifying different ways to evaluate what/how frequently dollar amounts of cases being sent to or returned from NOAA Finance; and prepare forms and reports intended to help modify assessment, settlement, and collection practices to increase percentage of full payment.

Project Tasks

2006-2009-SS-C-37

Award of this contract will assist GC staff (located in Gloucester, MA, St. Petersburg, FL., Long Beach, CA., Seattle, WA., Juneau, AK., and Silver Spring, MD) to meet obligations as stated in Compendium of Debt Processing Guidelines and Procedures for Collection of Civil Monetary Penalties. This will be accomplished as follows:

(1) Review and assess cases for valid debt, availability of debtor information, collection efforts to date, final disposition of seized proceeds, and likelihood of collection success;

(2) Follow proper procedures and guidelines prior to referral of cases to Finance;

(3) Incorporate necessary procedures for GC action, including corresponding Enforcement Management Information System (EMIS) entries;

(4) Utilize standard forms and EMIS reports to ensure consistent submissions of case to Finance;.

(5) Identify other ways to evaluate what/how frequently dollar amounts of cases being sent to or returned from Finance, and

(6) Forms and reports are intended to help modify assessment, settlement, and collection practices to increase percentage of full payment.

Deliverables & Monitoring

Products and services to be expected from the contractor include:

(1) Review, research, and track actions of cases as necessary;

(2) Input data into EMIS as necessary;

(3) Document basis for recommended debt processing actions as necessary;

(4) Review files and take action within ten (10) business days when cases are returned by Finance due to non-payment, inaccurate payment, or other reasons;

(5) Notify Finance, case attorney, or GCEL of final actions taken on cases within ten (10) business days;

(6) Return to Finance, within ten (10) business days, cases sent back to the regional office for corrections;

(7) Coordinate efforts to develop a tickler system to ensure timely identification of delinquent, legally enforceable debts;

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(8) Act as a liaison between GC and other contractors in the development of a tickler system and a program to calculate interest and payment amounts;

(9) Prepare two reports at six (6) month intervals which includes comparison of new data to past data. Should include one report at end of FY year and other report at half-way point, and

(10) GCEL will provide written feedback on the semi-annual reports and/or progress reports to the contractor within four (4) weeks of receiving them. The feedback should address the content and format of the submitted material, suggestions for improvement and any changes that GCEL would like implemented.

(11) The Collections Analyst will be required to control, to protect, and not to disclose confidential and sensitive documents and information.

Costs, Payments & Billing

Contractor's hourly wage will be [redacted] per hour. The contractor shall submit invoices covering hours of labor expended on a bi-weekly basis. On a monthly basis or when submitted invoices for contract related telephone and internet services will be reimbursed by NOAA-GCEL. The contractor's performance will be monitored and evaluated by a COTR selected by the requesting authorizing official. When travel is involved contractor will submit relevant invoices for reimbursement in accordance with NOAA travel regulations.

Location

NOAA/GCEL
8484 Georgia Avenue 4th Floor, Suite 400
Silver Spring, MD

An alternative work site is authorized.

Travel

A minimum amount of travel will be required on an as needed basis. Contractor will be reimbursed for all travel associated with project. Contractor will submit invoices and receipts. Travel must be in compliance with NOAA travel and finance regulations and requirements.

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Evaluation Criteria

Contractor shall possess a degree in Master's finance, management, and/or administration;

Contractor shall possess at least 3 years working knowledge of EMIS, EMIS codes, and EMIS data input fields;

Contractor shall possess at least 3 years working knowledge of US Treasury and NOAA collections laws, rules, regulations, procedures, and terminologies regarding collections processing;

Contractor shall possess at least 3 years working knowledge of GCEL administrative hearings process, and specifically have a working knowledge of the GCEL collections procedures;

Contractor shall have strong negotiating skills, and have a working knowledge of negotiating with commercial fishermen and/or their representative as they make up the vast majority of collections matters in GCEL.

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AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. Contract ID Code	Page	of Pages
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2. Amendment/Modification No.	3. Effective Date	4. Requisition/Purchase Req. No.	5. Project No. (if applicable)
0001	May 15, 2008	NW957650-8-36698	

6. Issued By — Code AJF30024
NWS ACQUISITION DIVISION /OFA63
1325 EAST-WEST HWY.
SSMC-2 RM 11226
SILVER SPRING, MD 20910
MARILYN B. WHALEY 301-713-3405

7. Administered By (If other than Item 6) — Code
SEE BLOCK 6

8. Name and Address of Contractor (No., Street, County, and Zip Code)
JULIA HELLERMAN
866 9TH STREET
BOULDER CO 803027529
Vendor ID: 00000009
DUNS: 123798212
CAGE: 3QLZ7

Code — Facility Code

(X) 9A. Amendment of Solicitation No.

9B. Date (See Item 11)

X 10A. Modification of Contract/Order No.
DG1330-07-SE-2581

10B. Date (See Item 13)
May 16, 2007

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended ☐ is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing items 8 and 15, and returning ____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. Accounting and Appropriation Data (if required)
See Schedule $ US 96,000.00

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACT/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

(x) A. This change order is issued pursuant to: (Specify authority) The changes set forth in Item 14 are made in the Contract Order No. in Item 10A.

B. The above numbered Contract/Order is modified to reflect the administrative changes (such as changes in paying office, appropriation date, etc.) Set fourth Item 14, pursuant to the authority of FAR 43.103 (b)

C. This supplemental agreement is entered into pursuant to authority of:

X D. Other (Specify type of modification and authority)
FAR 52.217-9, Option to Extend the Term of the Contract and Mutual Agreement of the Parties

E. IMPORTANT: Contractor ☐ is not, ☒ is required to sign this document and return 3 copies to the issuing office.

14. Description of Amendment/Modification (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

The purpose of this modification is to exercise and fully fund the options for CLINS 0003 and 0004, for the period 06/08/2008 through 06/07/2009, in the total amount of $96,000 pursuant to FAR 52.217-9, Option to Extend the Term of the Contract.

This modification increases the total order and funded amounts from $96,000 by $96,000 to $192,000.

The order expiration date of 06/07/2008 is extended by one year through 06/07/2009.

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. Name and Title of Signer (Type or Print)		16A. Name and title of Contracting Officer (Type or Print)	
		MARILYN B. WHALEY Contracting Officer Marilyn.Whaley@noaa.gov	301-713-3405
15B. Contractor/Offeror (Signature of person authorized to sign)	15C. Date Signed	16B. United States of America (Signature of Contracting Officer)	16C. Date Signed May 15, 2008

NSN 7540-01-152-8070 — 30-105 — STANDARD FORM 30 (REV. 10-83)
PREVIOUS EDITIONS UNUSABLE — Prescribed by GSA FAR (48 CFR) 53.243

2006-2009-SS-C-HH

Effective as of the date of this modification, the Government and the contractor mutually agree to modify the order as follows:

Line Items 0003 and 0004 are exercised and fully funded as shown in the Schedule.

2006-2007-SS-C-42

ORDER F... SUPPLIES OR SERVICES

PAGE 1 OF PAGES 6

IMPORTANT: Mark all packages and papers with contract and/or order numbers.

1. DATE OF ORDER: 14 Aug 2009
2. CONTRACT NO. (if any): GS07F0519N
3. ORDER NO.: DG133009BU0067/C002
4. REQUISITION/REFERENCE NO.: NW957650-09-22051
5. ISSUING OFFICE Address correspondence to: AJF00012
ACQUISITION & GRANTS OFFICE /OFA6
1335 EAST-WEST HWY., SSMC-1 RM 6300

SILVER SPRING, MD 20910
PRATTSIE L. ARTIS 301-713-0820 x182

6. SHIP TO: AD100031
a. NAME OF CONSIGNEE: DEPUTY GENERAL COUNSEL /GCEL
b. STREET ADDRESS: 8484 GEORGIA AVE, RM 400
c. CITY: SILVER SPRING
d. STATE: MD
e. ZIP CODE: 20910-5612
f. SHIP VIA

7. TO: 00001222 TIN: 522257635
a. NAME OF CONTRACTOR: TIGER PERSONNEL SERVICES, INC DUNS: 843350203
b. COMPANY NAME
c. STREET ADDRESS: 1320 FENWICK LANE, SUITE 500
d. CITY: SILVER SPRING e. STATE: MD f. ZIP: 209103560

8. TYPE OF ORDER
a. PURCHASE — REFERENCE YOUR: Please furnish the following on the terms and conditions specified on both sides of this order and on the attached sheet, if any, including delivery as indicated.
b. DELIVERY — Except for billing instructions on the reverse, this delivery order is subject to instructions contained on this side only of this form and is issued subject to the terms and conditions of the above-numbered contract.

9. ACCOUNTING AND APPROPRIATION BOC: OBLIGATED AMT: $154,678.40
10. REQUISITIONING OFFICE: GCEL

11. BUSINESS CLASSIFICATION (Check appropriate box(es))
☐ a. Small ☐ b. Other than small ☒ c. Disadvantaged ☒ d. Women-owned ☐ e. HUBZone ☐ f. Emerging small business ☐ g. Service-disabled veteran-owned

12. F.O.B. POINT: DESTINATION
13. PLACE OF
a. INSPECTION: AD100031
b. ACCEPTANCE: AD100031
14. GOVERNMENT B/L NO.
15. DELIVER TO F.O.B. POINT ON OR BEFORE: 16 Aug 2011
16. DISCOUNT TERMS: 00.00% 0 Days Net 30

17. SCHEDULE (See reverse for Rejections)

ITEM NO. (a)	SUPPLIES OR SERVICES (b)	QUANTITY ORDERED (c)	UNIT (d)	UNIT PRICE (e)	AMOUNT (f)	QTY ACCEPT. (g)
0001	As an independent Contractor, and not as an agent of the Government, provide services in accordance with the Statement of Work entitled, Legal Assistant (Collections), dated June 25, 2009, attached hereto, for the Office of General Counsel for Enforcement and Litigation (GCEL). The period of performance shall be from the date of award through August 16, 2011. The loaded hourly rates shall be in	[redacted]	HR	[redacted]	98,238.40	

18. SHIPPING POINT
19. GROSS SHIPPING WEIGHT
20. INVOICE NO.
21. MAIL INVOICE TO:
a. NAME
b. STREET ADDRESS (or P.O. Box)
c. CITY
d. STATE
e. ZIP CODE

SEE BILLING INSTRUCTIONS ON REVERSE

17(h) TOTAL (Cont. pages)

US$ 154,678.40 — 17(i) GRAND TOTAL

22. UNITED STATES OF AMERICA BY (Signature): Linda D. Brainard
23. NAME (Typed): LINDA D. BRAINARD 301-713-0820 131
(TITLE CONTRACTING/ORDERING OFFICER)

OPTIONAL FORM 347 (REV. 4/2006)
Prescribed by GSA/FAR 48 CFR 53.213(f)

ORDER FOR SU[illegible]S OR SERVICES - Continual

PAGE 2 OF PAGES 6

IMPORTANT: Mark all packages and papers with contract and/or order numbers.

DATE OF ORDER	CONTRACT NO. (if any)	ORDER NO.
14 Aug 2009	GS07F0519N	DG133009BU0067/C002

ITEM NO. (a)	SUPPLIES OR SERVICES (b)	QUANTITY ORDERED (c)	UNIT (d)	UNIT PRICE (e)	AMOUNT (f)	QTY ACCEPT. (g)
	accordance with the contractor's GSA schedule rate less the negotiated discount. This Call is issued at a Firm Fixed Price of $154,678.40.					
	YEAR ONE FIRM FIXED PRICE $98,238.40					
0002	YEAR TWO FIRM FIXED PRICE $50,440.00	[redacted]	HR	[redacted]	50,440.00	
0003	REIMBURSABLE TRAVEL		EA		6,000.00	
	In accordance with Federal Travel Regulations Not to Exceed $6,000					

H605-41331-79W7 with DISTILLER
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(Call 2 -Firm Fixed Price)

Legal Assistant (Collections)
Statement of Work
June 25, 2009

Introduction

The Department of Commerce (DOC) National Oceanic Atmospheric and Administration (NOAA) Office of General Counsel for Enforcement and Litigation (GCEL) is responsible for prosecuting Administrative cases against violators of marine natural resource laws administered by NOAA. The government requires technical, financial, and penalty collections expertise for the processing of debt collection cases in a timely manner.

Background

In its I997audit of NOAA's FY 1996 financial statements, KPMG made certain findings and recommendations requiring changes in the procedures NOAA General Counsel (GC) use in its collection work. In response to the audit findings and recommendations, GC and NOAA Finance (Finance) worked together to develop procedures that would result in Finance assuming all financial responsibility for accounting, billing, and collecting civil monetary penalties for cases where a legally enforceable debts exist. Procedures were designed to ensure that legally enforceable debts are timely processed in GC and then referred to Finance. Cases in GC fall into several categories, i.e., pre-debt not referred to Finance for billing and collecting, time payments, delinquent debts, Treasury cases, and write-offs. Case file packages must be reviewed and a determination must be made as to which procedures to follow to resolve debt processing in a timely and accurate manner. Satisfying these procedures is necessary for NOAA to achieve an unqualified audit from KPMG.

Objective

To fulfill its responsibilities under the KPMG, the contractor who shall be responsible for reviewing and assessing cases for valid debt, availability of debtor information, collection efforts to date, final disposition of seized proceeds, and likelihood of collection success; following proper NOAA procedures and guidelines prior to referral of cases to NOAA Finance; incorporating necessary procedures for GCEL action, including corresponding Enforcement Management Information System (EMIS) entries; utilizing standard forms and EMIS reports to ensure consistent submissions of case to NOAA Finance; identifying different ways to evaluate what/how frequently dollar amounts of cases being sent to or returned from NOAA Finance; and prepare forms and reports intended to help modify assessment, settlement, and collection practices to increase percentage of full payment. The contractor shall be advised by the Assistant General Counsel for Enforcement and Litigation.

The contractor shall support GCEL staff located in Silver Spring, MD; Gloucester, MA; St. Petersburg, FL; Long Beach, CA; Seattle, WA; Juneau, AK, and Honolulu. HI, to meet its obligations as stated in the Compendium of Debt Processing Guidelines and Procedures for Collection of Civil Monetary Penalties.

The contractor shall perform the following tasks:

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(l) Review and assess cases for valid debt, availability of debtor information, collection efforts to date, final disposition of seized proceeds, and likelihood of collection success;

(2) Follow proper NOAA procedures and guidelines prior to referral of cases to Finance;

(3) Incorporate appropriate and necessary procedures for GC action, including corresponding Enforcement Management information System (EMIS) entries;

(4) Utilize standard forms and EMIS reports to ensure consistent submissions of case to Finance;

(5) Identify other ways to evaluate what/how frequently dollar amounts of cases being sent to or returned from Finance; and

(6) Prepare and submit forms and reports intended to help modify assessment settlement, and collection practices to increase percentage of full payment.

Deliverables & Monitoring

Products and services to be expected from the contractor include:

(1) Review, research, and track actions of cases as necessary;

(2) Input data into EMIS as necessary:

(3) Document basis for recommended debt processing actions as necessary;

(4) Review files and take action within ten (10) business days when cases are returned by Finance due to non-payment, inaccurate payment, or other reasons;

(5) Notify Finance, case attorney, or GCEL of final actions taken on cases within ten (10) business days;

(6) Return to Finance, within ten (10) business days, cases sent back to the regional office for corrections;

(7) Coordinate efforts to develop a tickler system (MS spreadsheet) to ensure timely identification of delinquent, legally enforceable debts:

(8) Act as a liaison between GC and other contractors in the development of a tickler system (MS spreadsheet) and a program to calculate interest and payment accounts;

(9) Prepare bi-annual reports which include comparison of new data to past data. The reports shall become due for the period ending Mar 30 and Sep 30.

(10) GCEL will provide written feedback on the semi-annual reports and/or progress reports to the contractor within four (4) weeks of receipt. The feedback should address the content and format of the submitted material suggestions for improvement and any changes that GCEL would like implemented.

(11) The Contractor shall be required to control data and not to disclose confidential and sensitive documents and information.

(12) The Contractor, as required by the attorneys, shall prepare and/or submit additional reports.

Period of Performance

The period of performance shall be for a base period of twelve months, plus an optional period of twelve months.

Place of Performance / Travel

All work shall be performed off-site at the contractor's location. The contractor may be required to attend quarterly meetings, as requested, on-site its government offices. Travel may be authorized in accordance with Federal Travel Regulations. Travel may be required to NOAA's offices located in Gloucester, MA; St. Petersburg, FL; Long Beach, CA; Seattle, WA; Juneau, AK, and Honolulu. HI.

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Government Point of Contact

Richard Mannix
8484 Georgia Avenue
Silver Spring, MD 20910
Telephone: 301-427-2202 Fax: 301-427-2211

Contractor Qualifications

- The Contractor shall possess a degree in finance, management, business and/or administration;
- The Contractor shall possess working knowledge of EMIS, EMIS codes, and EMIS data input fields,
- The Contractor shall possess working knowledge of US Treasury and NOAA collections laws, rules, regulations, procedures, and terminologies regarding collections processing;
- The Contractor shall possess working knowledge of GCEL administrative hearings process, and specifically have a working knowledge of the GCEL collection procedures,
- The Contractor shall have the capability to process collections in accordance with the federal guidelines and policies and processes, and have a working knowledge of commercial fishermen and/or their representatives as they make up the vast majority of collections matters in GCEL.

Non-disclosure of Correspondence

All correspondence including reports shall not be disclosed, published or released to any individual or organization without prior approval of the NOAA Contracting Officer. This includes any electronic form for distribution on electronic media or over the internet.

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ORDER FOR SUPPLIES OR SERVICES

PAGE 1 OF PAGES 6

IMPORTANT: Mark all packages and papers with contract and/or order numbers.

1. DATE OF ORDER: 14 Aug 2009
2. CONTRACT NO. (if any): GS07F0519N
3. ORDER NO.: DG133009BU0067/C002
4. REQUISITION/REFERENCE NO.: NW957650-09-22051
5. ISSUING OFFICE Address correspondence to: AJF00012
ACQUISITION & GRANTS OFFICE /OFA6
1335 EAST-WEST HWY., SSMC-1 RM 6300
SILVER SPRING, MD 20910
PRATTSIE L. ARTIS 301-713-0820 x182

6. SHIP TO: AD100031
a. NAME OF CONSIGNEE: DEPUTY GENERAL COUNSEL /GCEL
b. STREET ADDRESS: 8484 GEORGIA AVE, RM 400
c. CITY: SILVER SPRING
d. STATE: MD
e. ZIP CODE: 20910-5612
f. SHIP VIA

7. TO: 00001222 TIN: 522257635
a. NAME OF CONTRACTOR: TIGER PERSONNEL SERVICES, INC DUNS: 843350203
b. COMPANY NAME
c. STREET ADDRESS: 1320 FENWICK LANE, SUITE 500
d. CITY SILVER SPRING e. STATE MD f. ZIP 209103560

8. TYPE OF ORDER
a. PURCHASE — REFERENCE YOUR: Please furnish the following on the terms and conditions specified on both sides of this order and on the attached sheet, if any, including delivery as indicated.
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9. ACCOUNTING AND APPROPRIATION BOC: OBLIGATED AMT: $154,678.40
10. REQUISITIONING OFFICE: GCEL

11. BUSINESS CLASSIFICATION (Check appropriate box(es))
☐ a. Small ☐ b. Other than small ☒ c. Disadvantaged ☒ d. Women-owned ☐ e. HUBZone ☐ f. Emerging small business ☐ g. Service-disabled veteran-owned

12. F.O.B. POINT: DESTINATION
13. PLACE OF
a. INSPECTION: AD100031
b. ACCEPTANCE: AD100031
14. GOVERNMENT B/L NO.
15. DELIVER TO F.O.B. POINT ON OR BEFORE: 16 Aug 2011
16. DISCOUNT TERMS: 00.00% 0 Days Net 30

17. SCHEDULE (See reverse for Relections)

ITEM NO. (a)	SUPPLIES OR SERVICES (b)	QUANTITY ORDERED (c)	UNIT (d)	UNIT PRICE (e)	AMOUNT (f)	QTY ACCEPT. (g)
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SEE BILLING INSTRUCTIONS ON REVERSE

18. SHIPPING POINT
19. GROSS SHIPPING WEIGHT
20. INVOICE NO.
21. MAIL INVOICE TO:
a. NAME
b. STREET ADDRESS (or P.O. Box)
c. CITY
d. STATE
e. ZIP CODE

17(h) TOTAL (Cont. pages)
17(i) GRAND TOTAL: US$ 154,678.40

22. UNITED STATES OF AMERICA BY (Signature): Linda D. Brainard
23. NAME (Typed): LINDA D. BRAINARD 301-713-0820 131
(TITLE CONTRACTING/ORDERING OFFICER)

OPTIONAL FORM 347 (REV. 4/2006)
Prescribed by GSA/FAR 48 CFR 53.213(f)

ORDER FOR SU `S OR SERVICES - Continuat

PAGE	OF PAGES
2	6

IMPORTANT: Mark all packages and papers with contract and/or order numbers.

DATE OF ORDER	CONTRACT NO. *(if any)*	ORDER NO.
14 Aug 2009	GS07F0519N	DG133009BU0067/C002

ITEM NO. (a)	SUPPLIES OR SERVICES (b)	QUANTITY ORDERED (c)	UNIT (d)	UNIT PRICE (e)	AMOUNT (f)	QTY ACCEP (g)
	accordance with the contractor's GSA schedule rate less the negotiated discount. This Call is issued at a Firm Fixed Price of $154,678.40.					
	YEAR ONE FIRM FIXED PRICE $98,238.40					
0002	YEAR TWO FIRM FIXED PRICE $50,440.00	[redacted]	HR	[redacted]	50,440.00	
0003	REIMBURSABLE TRAVEL		EA		6,000.00	
	In accordance with Federal Travel Regulations Not to Exceed $6,000					

H605-41331-79W7 with DISTILLER
VerDate Nov 24 2008 09:59 Mar 14, 2012 Jkt 068010 PO 00000 Frm 00220 Fmt 6601 Sfmt 6601 P:\DOCS\68010.TXT JOYCE
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ASSET FORFEITURE FUND
DETAILED PROGRAM COSTS
FOR THE PERIOD APRIL 1, 2010 THROUGH MARCH 31, 2011
(IN THOUSANDS)

PROGRAM COSTS		
Contractual Services		
INFORMATION TECHNOLOGY/ADP TRAINING	$ 178	
MANAGEMENT AND PROFESSIONAL SUPPORT SERVICES	1,125	
REPAIRS TO VESSELS	2	
MAINTENANCE OF EQUIPMENT	3	
ADP AND TELECOMMUNICATIONS CONTRACTUAL SERVICES	2	
NOAA WEATHER RADIO OPERATION AND/OR MAINTENANCE CONTRACTS	1	
OTHER TRAINING BY UNIVERSITY OR OTHER NON- FEDERAL SOURCE (Non-ADP)	9	
MISCELLANEOUS CONTRACTUAL SERVICES	1,150	
TRAINING BY OFFICE OF PERSONNEL MANAGEMENT (OPM) AND OTHER FEDERAL AGENCIES (Non-ADP)	133	
SERVICES FROM OTHER FEDERAL AGENCIES	231	
Total Contractual Services		2,834
Equipment (non-capitalizable)		
SHIPS, SMALL CRAFT AND OTHER NON-CAPITALIZABLE EQUIPMENT	108	
NON-CAPITALIZED ADP AND TELECOMMUNICATIONS EQUIPMENT	67	
Total Equipment (non-capitalizable)		175
Interest Expense		
PENALTY PAYMENTS FOR PROMPT PAYMENT ACT		1
Printing and Reproduction		
PUBLICATIONS	9	
PRINTING	3	
Total Printing and Reproduction		12
Rent, communications and utilities		
RENTAL PAYMENTS TO GSA	1	
RENTAL PAYMENTS TO OTHERS	44	
PAYMENTS FOR POSTAGE TO THE U.S. POSTAL SERVICE	30	
UTILITY SERVICES	1	
RENTAL OF EQUIPMENT (Non ADP and Telecommunications)	3	
TELECOMMUNICATIONS (UTILITY) DATA/NETWORK SERVICES	5	
TELECOMMUNICATIONS (UTILITY) FTS SERVICES	7	
TELECOMMUNICATIONS (UTILITY) LOCAL SERVICES	128	
TELECOMMUNICATIONS (UTILITY) TOLL CALLS	3	
Total Rent, communication and utilities		222
Supplies, materials, and other costs		
REAL ESTATE AND EMPLOYEE LABOR EXPENSES (1)	(84)	
GSA CUSTOMER SUPPLY CENTER	3	
PURCHASES - MAINTENANCE OF VESSELS	8	
PURCHASES OF ADP SUPPLIES	15	
PURCHASES (Operating Supplies)	200	
GENERAL OFFICE SUPPLIES	24	
Total Supplies, materials, and other costs		166
Travel and Transportation		
RENTAL OF PASSENGER CARRYING VEHICLES (GSA Motor Pools)	1	
EXPENSES RELATED TO DOMESTIC TRAVEL – (Hotel, per diem, and other travel expenses other than airfare.)	433	
EXPENSES RELATED TO DOMESTIC TRAVEL -(Airfare)	231	
EXPENSES RELATED TO FOREIGN TRAVEL - (Hotel, per diem, and other travel expenses other than airfare.)	34	
EXPENSES RELATED TO FOREIGN TRAVEL - (Airfare)	28	
TRANSPORTATION OF THINGS	14	
GSA TRUCKS RENTAL	4	745
Total Travel and Transportation		
Contingent Liability		
SPECIAL MASTER RECOMMENDATIONS TO REIMBURSE 11 OF 30 COMPLAINANTS		650
NET COST OF OPERATIONS		$ 4,805

HEARING OF THE SUBCOMMITTEE ON FEDERAL FINANCIAL MANAGEMENT, GOVERNMENT INFORMATION, FEDERAL SERVICES, AND INTERNATIONAL SECURITY

"How Is NOAA Managing Funds to Protect the Domestic Fishing Industry?"

Monday, June 20, 2011

Post-Hearing Questions for the Record

Submitted to Stephen Ouellette, Esq.

From Senator Scott P. Brown

QUESTIONS FOR THE RECORD

Attorney Ouellette.
Partner, Ouellette & Smith PA

1. Question: In your testimony, on page 12 you state, "As government expenditures on fishery management in the Northeast rise each year, the industry decreases in almost inverse proportion. You also state that, "NOAA is doing a very good job expending monies if the intent of Congress is to create the world's largest aquarium off of New England, but a very poor job if the intent is to protect our domestic fishing industry".

   What specific changes to Magnuson-Stevens do recommend to ensure that "optimum yield" is achieved while protecting and preserving the resource at sustainable levels?

2. Question: The Commonwealth of Massachusetts provides uniformed enforcement officers to enforce federal fisheries statutes under a Joint Enforcement Agreement (JEA) with NOAA. The Commonwealth, like other states that participate in JEAs, receives funding from NOAA for services rendered.

   Your written testimony indicates that one Massachusetts officer operating under a JEA was required by NOAA policy to board a single vessel virtually daily for over a month, because this was the only regulated vessel in the officer's region. No violations were found any of the visits.

   Do you believe that NOAA's JEA policies could be improved to ensure that federal enforcement funds are used more efficiently and do not result in unnecessary burdens on state

officials and industry? If so, please describe suggested improvements.

3. Question: In your testimony, on page 6, you state that there "too many enforcers chasing too few fishermen". In your expert opinion, could NOAA reduce its spending on enforcement given that the regulated fleet has declined while electronic monitoring and government observers have become more prevalent?
4. Question: In your testimony before the subcommittee, you alluded to NOAA recently shifting enforcement cases from civil to criminal violations, possibly as a response scrutiny about the number of NOAA criminal investigators.

   In your written testimony, you stated "Congress needs to investigate whether NOAA is improperly elevating Magnuson violations to criminal cases."

   Please provide details about which Magnuson-Stevens Act provisions are involved and relate any recent examples where you believe a case should have been pursued civilly rather than criminally.

5. Question: The National Marine Fisheries Service and the Fish and Wildlife Service are two federal agencies which develop and implement federal fisheries policies. Do you feel that these agencies differ in their enforcement methods, and if so, could you briefly explain how?

6. Question: The NMFS and FWS have significant overlaps in terms of the statutes they enforce. Do you believe that the federal government's efficiency in achieving fisheries goals is inhibited by the lack of a single regulator? Please provide any suggestions about reorganization, consolidation, streamlining, or collaboration among fisheries-related agencies at all levels of government.

7. Question: A commonly heard complaint in the fishing industry is that fishing regulations are overly complicated making them hard to enforce and obey.

   What recommendations do you have to make the process more efficient and the rules more comprehensible?

8. Question: The NOAA Commissioned Corps, also known as the NOAA Corps, operates research platforms for oceans and atmospheric science. Their ships and planes are under the command of commissioned officers. These officers receive military-like benefits. Earth science research dollars are scarce and other federally-funded oceans research support, including on Navy research ships, is conducted by civilians.

   Given the success of alternative research platforms, do you believe that the NOAA Commissioned Corps is an appropriate use of federal oceans research dollars?

HEARING OF THE SUBCOMMITTEE ON FEDERAL FINANCIAL MANAGEMENT, GOVERNMENT INFORMATION, FEDERAL SERVICES, AND INTERNATIONAL SECURITY

"How Is NOAA Managing Funds to Protect the Domestic Fishing Industry?"

Monday, June 20, 2011

Post-Hearing Questions for the Record

Submitted to Dr. Brian Rothschild

From Senator Scott P. Brown

QUESTIONS FOR THE RECORD

Professor Rothschild
Montgomery Charter Professor, University of Massachusetts – Dartmouth

1. Question: At a time when our country faces enormous fiscal challenges, it is more important than ever that every taxpayer dollar is spent wisely. Based on your extensive knowledge of the fisheries and your testimony on page 3 that:
"One would have thought that the implementation of the catch-share system would have eliminated severe underfishing. But regulations maintained under the catch-share system did not account for the mixed-species nature of the fishery, and instead of catching 95,000 tons of fish as deemed possible by NOAA scientists, the catch amounted to 33,000 tons. This waste of 62,000 tons of fish has a value of about $200 million at the dock, or $800 million by the time it reached consumers. To put this amount of waste into perspective, consider that discussions relative to buying out the fleet have indicated that $50 million might be a reasonable number."

   Question: Is our spending on the fisheries in the New England region being wasted or spent inefficiently in any manner?

According to my statistics, the Federal Government spends about $160 million per year managing the fisheries of New England and the Mid-Atlantic. It is difficult to make complete calculations, but it is clear that underfishing accounts for a waste of $300 million a year at the dock. The last scallop opening probably wasted $10 million. The total at the dock landings for New England and the Mid-Atlantic are about 1 billion. However, about one-third of this is scallops, another one-third is lobster. Relatively little is spent on these species, so one interpretation could be that we spend a lot of money on relatively low values of fish. At any rate, for the amount of budget we are spending, it would seem that we would come up with an economically more efficient management system.

Follow-up question: Could you describe how you arrived at the numbers in this part of the citation:

"and instead of catching 95,000 tons of fish as deemed possible by NOAA scientists, the catch amounted to 33,000 tons. This waste of 62,000 tons of fish has a value of about $200 million at the dock, or $800 million by the time it reached consumers."

We added the total allowable catch of fish for each year. This amounted to about 140,000 tons. In other words, 140,000 tons of fish could be caught without breaking any conservation regulations. The actual catch of fish was 40,000 tons. So in round numbers, 100,000 tons of fish have been wasted. At $1.50 a pound, this amounts to approximately a $300 million waste. If we multiply these at the dock values by a factor of four (standard economic multiplier), the wasted fish are worth $1.2 billion by the time they leave the economy. (These statistics are updated from the time of my testimony.)

2. Question: You wrote in your submitted testimony that "In order to appreciate how well we are expending our fiscal resources in catch-share management; we should have metrics of performance." You also state:

   "We may know how much the catch-share program costs, but we do not know what we are receiving for these expenditures. Remarkably, the launch of the catch-share system was not accompanied by any evident plan to monitor economic performance. This omission is not only remarkable from the point of view of an evident lapse in good public policy, it is also remarkable because it violates the clear intent of Congress stipulated in National Standard 8 (which requires that the agency take into account social and economic data when formulating fisheries management plans)."

   Question: What metrics of economic performance should Congress focus on to measure the success or failure of the catch-share management system?

Metrics of performance that should be considered are catch, waste by overfishing, waste by underfishing, waste by bycatch, jobs, leasing costs, and management costs.

3. Question: You wrote in your submitted testimony that "A particularly interesting statistic relating to performance is that the landings in 2010 under the catch-share system are identical to the landings in 2009 under the days-at-sea system: 33,000 tons. Surely the catch-share system is more expensive both to the public and private sectors and, as a consequence, one might have to conclude, as the data roles in, that the catch-share system was not a big improvement over the days-at-sea system, except to those who were reallocated reasonably large quantities of resource."

   Question: Please provide any suggested efficiency improvements to the catch –shares management system.

   The first improvement in efficiency can be achieved by using a mixed stock exclusion where catches of the most abundant fish would not be limited by catches of the least abundant fish. A detailed investigation needs to be undertaken to determine the exact reasons that regulations create gross underfishing.

4. Question: You wrote in your submitted testimony that "I do not believe that NOAA is well placed to develop a shared vision of reformed fishery management."

   As someone who helped craft the Magnuson-Stevens Act and has been involved both internally and on a grant basis with NOAA for many years, you are uniquely positioned to discuss the history of modern fishery management.

   Question: Given your first-hand experience in various fishery management reforms, why do you say that NOAA is not well placed to plan and execute the reforms we need today?

   NOAA is not well placed to plan and execute the reforms because they know what needs to be done and nothing is happening. The Preston Pate report has been available for almost a year, and the response relates to re-reciting the symptoms identified by Pate and general statements, but not a specific time-phased action plan.

   Follow-up question: Please provide any suggestions about reorganization, consolidation, streamlining, or collaboration among fisheries-related agencies at all levels of government.

   I recommend a national fisheries board and an ad hoc commission that are essentially external to NOAA to solve these problems. I am attaching an op ed piece that discusses these.

   Follow-up question: I understand that the former U.S. Oceans Commission found that

many federal agencies share oceans-related responsibilities. Do you believe that NOAA's efficiency is inhibited by the lack of a truly central federal oceans agency?

I do not believe that NOAA's efficiency in fisheries is inhibited by a truly central federal oceans agency. NOAA's problems in fisheries relate to day-to-day tactical management issues that cannot be addressed by a central agency. We need more oversight, not more bureaucracy.

5. Question: The National Marine Fisheries Service and the Fish and Wildlife Service are two federal agencies which develop and implement federal fisheries policies. They are only two of several federal agencies that deal with water ecosystems.

   Do you believe that federal fisheries funds could be better spent through a reorganization of federal fisheries activities?

   I do believe that federal fisheries funds could be better spent by a reorganization of federal fisheries activities. The waste right now is not as much between NMFS and FWS as it is between the Councils and NOAA.

6. Question: A commonly heard complaint in the industry is that fishing regulations are overly complicated making them hard to enforce and obey.

   What recommendations do you have to make the process more efficient and the rules more comprehensible?

   It is true that fishing regulations are overly complicated. NOAA leadership needs to ensure simplification of the regulations and needs to make scientific analysis more transparent.

7. Question: The NOAA Commissioned Corps, also known as the NOAA Corps, operates research platforms for oceans and atmospheric science. Their ships and planes are under the command of commissioned officers. These officers receive military-like benefits. Earth science research dollars are scarce and other federally-funded oceans research support, including on Navy research ships, is conducted by civilians.

   Do civilian-run vessels deliver approximately the same quality of research support as those run by the NOAA Corps?

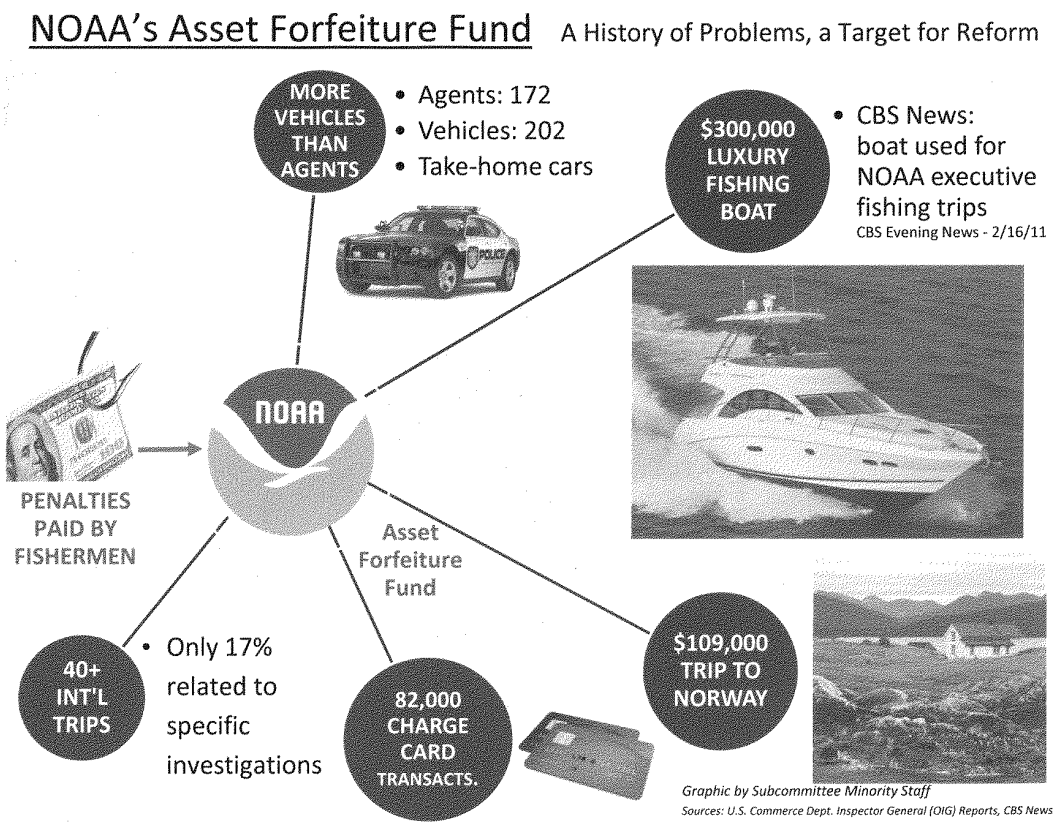
   I had experience with civilian-run vessels years ago when I worked in Hawaii and found them to be as efficient as the NOAA Corps of vessels.

8. As you know, many scientific institutions conduct oceans research. These range from academic institutions such as the Massachusetts Marine Fisheries Institute to charitable organizations like the Schmidt Oceanographic Institute. State and federal government also conduct maritime science. Much of that science is funded by

NOAA or another federal agency and an increasing amount is conducted by civilians either working for NOAA or another organization.

Given the large number of successful experiments being done today on non-NOAA vessels, do you believe that the scientific community still requires the services of a commissioned NOAA Corps?

I think the NOAA Corps requires hard analysis inasmuch as the requirements for a commissioned corps and reductions in funding suggest looking at alternatives that may be more cost effective.



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