



April 12, 2013

**MEMORANDUM FOR:** David M. Kennedy  
Deputy Under Secretary for Operations

A handwritten signature in blue ink, appearing to read "AKatsaros".

**FROM:** Andrew Katsaros  
Assistant Inspector General for Audit

**SUBJECT:** Resolution of Final Report No. OIG-13-011-I  
*NOAA Needs to Continue Streamlining the Rulemaking Process and  
Improve Transparency and Consistency in Fisheries Management*

We have reviewed NOAA's March 14, 2013, action plan, which summarizes the corrective actions NOAA will take in addressing the findings and recommendations in the subject report.

We believe that the actions NOAA has taken or plans to take meet the intent of our recommendations. In accordance with Department Administrative Order 213-5, we regard the recommendations as resolved.

We appreciate the cooperation received during the resolution process. Please direct any inquiries regarding this report to me at (202) 482-7859.

cc: Mack Cato, Audit Liaison, NOAA



UNITED STATES DEPARTMENT OF COMMERCE  
The Deputy Under Secretary for  
Operations  
Washington, D.C. 20230

MAR 14 2013

MEMORANDUM FOR: Todd J. Zinser  
Inspector General  
U.S. Department of Commerce

FROM: David M. Kennedy *dmk*  
Deputy Under Secretary  
for Operations

SUBJECT: The National Oceanic and Atmospheric Administration's Response  
to OIG Final Report – *NOAA Needs to Continue Streamlining the  
Rulemaking Process and Improve Transparency and Consistency  
in Fisheries Management*  
(Final Report No. OIG-13-011-1/January 16, 2013)

Attached is the National Oceanic and Atmospheric Administration's (NOAA) audit action plan in response to the Office of Inspector General's subject report. This plan describes the actions planned or taken to address the six recommendations and provides scheduled completion dates.

We appreciate the opportunity to respond to your report. If you have any questions, please contact Mack A. Cato, Director, Audit, Internal Control and Information Management Office at (301) 713-1148.

Attachment



## NOAA AUDIT ACTION PLAN

**Audit Report Title:** NOAA Needs to Continue Streamlining the Rulemaking Process and Improve Transparency and Consistency in Fisheries Management

**Audit Report Number:** Final Report No. OIG-13-011-1/January 16, 2013

**Audited Entity:** National Marine Fisheries Service (NMFS)

The timeframe for the actions planned in response to the Office of the Inspector General (OIG) recommendations 1, 2, and 3 are linked to ensure implementation of the new measures in an effective manner. To put these actions in context, a description of the timing for submission of financial disclosure forms is provided. Every December, NMFS solicits from Governors their lists of individuals to be considered for potential appointment as new fishery management council (Council) members under the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Around this time, NMFS also sends financial disclosure forms to current Council members who are required to disclose financial interests for an annual update. Governors submit their nominees for appointment to the Councils in March, along with completed financial disclosure forms for all nominees.

Under actions for recommendations 1, 2, and 3, NMFS plans to issue revised guidance in time for the 2014 nomination process and next round of updates for current Council members' annual financial disclosure forms. This ensures that the revised guidance will be applied to all Council members at the same time.

**OIG Recommendation #1:** We recommend that the Assistant Administrator for Fisheries strengthen policy guidance on financial disclosure by FMC voting members, with emphasis on how NOAA intends to handle specific consequences for conflicts or potential conflicts it identifies.

**Action Planned or Taken:** In consultation with the Ethics Law and Programs Division in the Department of Commerce's Office of General Counsel, NOAA will review its existing policies regarding financial disclosure by appointed Council members (i.e., those members required by the MSA to disclose financial interests and, if appropriate, to recuse themselves from voting on a particular issue). NOAA will revise the policy guidance on financial disclosures to clarify expectations and specific requirements for reporting financial interests, including how conflicts of interest are managed and the consequences of incorrect identification of financial interests and conflicts of interest. In addition, NOAA will provide a briefing for all Council members at least annually or at any meeting when new members are sworn in, addressing requirements for financial disclosure and conflicts of interest.

**Target Implementation Dates:**

- Issue guidance - December 31, 2013
- Initiate annual Council briefing process - At the first Council meeting for each Council in calendar year 2014 (after guidance is issued)

---

**OIG Concurrence**

---

**Date**

## NOAA AUDIT ACTION PLAN

**Audit Report Title:** NOAA Needs to Continue Streamlining the Rulemaking Process and Improve Transparency and Consistency in Fisheries Management

**Audit Report Number:** Final Report No. OIG-13-011-1/January 16, 2013

**Audited Entity:** National Marine Fisheries Service (NMFS)

**OIG Recommendation #2:** We recommend that the Assistant Administrator for Fisheries strengthen processes for formal reviews of financial interest disclosures, considering the time period the disclosure covers, how financial interest amounts relate to voting restrictions, and when affiliations with outside organizations should be reported.

**Action Planned or Taken:** In consultation with the Ethics Law and Programs Division in the Department of Commerce's Office of General Counsel, NOAA will review its existing processes for the formal internal review of appointed Council member's financial disclosures and revise its guidance to clarify criteria and requirements for review, and roles and responsibilities in the review process.

**Target Implementation Date:** Issue internal guidance - February 1, 2014

---

**OIG Concurrence**

---

**Date**

## NOAA AUDIT ACTION PLAN

**Audit Report Title:** NOAA Needs to Continue Streamlining the Rulemaking Process and Improve Transparency and Consistency in Fisheries Management

**Audit Report Number:** Final Report No. OIG-13-011-1/January 16, 2013

**Audited Entity:** National Marine Fisheries Service (NMFS)

**OIG Recommendation #3:** We recommend that the Assistant Administrator for Fisheries strengthen criteria for identifying conflicts of interest and processes to follow up on any conflicts that are identified.

**Action Planned or Taken:** In consultation with the Ethics Law and Programs Division in the Department of Commerce's Office of General Counsel, NOAA will review its existing policies and processes related to identifying conflicts of interest for appointed Council members and revise guidance for identifying and addressing conflicts of interest.

**Target Implementation Date:** Issue guidance - February 1, 2014

---

**OIG Concurrence**

---

**Date**

## NOAA AUDIT ACTION PLAN

**Audit Report Title:** NOAA Needs to Continue Streamlining the Rulemaking Process and Improve Transparency and Consistency in Fisheries Management

**Audit Report Number:** Final Report No. OIG-13-011-1/January 16, 2013

**Audited Entity:** National Marine Fisheries Service (NMFS)

**OIG Recommendation #4:** We recommend that the Assistant Administrator for Fisheries finalize draft Operational Guidelines and provide them to NMFS regional offices.

**Action Planned or Taken:** Since a draft of operational guidelines was last circulated in 2005, there have been several significant developments. Most notably, the Magnuson-Stevens Fishery Conservation and Management Act (MSA) was significantly amended in 2007, and over the course of the last 6 years, NOAA has made changes to its fishery management processes in response to new requirements in the MSA. In addition, NOAA has undertaken efforts to improve regulations and conduct regulatory reviews pursuant to President Obama's Executive Order 13563. Even though the 2005 draft was not finalized, NOAA has made progress in implementing regulatory process improvements, and each NMFS region in collaboration with the NOAA Office of the General Counsel has well-developed and well-functioning individual coordination systems for managing the MSA regulatory processes.

For these reasons, NOAA does not plan to finalize the 2005 draft of the operational guidelines. Instead, NOAA plans to review and assess the experiences of NMFS Regions, the NOAA Office of the General Counsel, and Councils, including identifying the best practices and considering additional opportunities for increasing streamlining and transparency in the fishery management process. NOAA will develop new guidelines based on this review, and consistent with agency resources, will identify any additional opportunities for further streamlining and increasing transparency and will work to improve current procedures and requirements. NOAA will complete this review and revision in close coordination with the Regional Councils.

**Target Implementation Dates:**

- Provide draft assessment and options for revisions to the Council Coordinating Committee - February 2014
- Provide new draft operational guidelines for review by the Council Coordinating Committee - February 2015
- Issue final operational guidelines - September 30, 2015

---

**OIG Concurrence**

---

**Date**

## NOAA AUDIT ACTION PLAN

**Audit Report Title:** NOAA Needs to Continue Streamlining the Rulemaking Process and Improve Transparency and Consistency in Fisheries Management

**Audit Report Number:** Final Report No. OIG-13-011-1/January 16, 2013

**Audited Entity:** National Marine Fisheries Service (NMFS)

**OIG Recommendation #5:** We recommend that the Assistant Administrator for Fisheries finalize regional operating agreements between NMFS regional offices and Councils.

**Action Planned or Taken:** NOAA will develop and approve regional operating agreements that identify the roles and responsibilities of the Region and Council, communication protocols, and process for working together during the development of fishery management plans, amendments, and regulations, including discussion of how roles, responsibilities, and milestones will be set and communicated for specific actions.

**Target Implementation Date:** NOAA will work with each Regional Council to prepare draft regional operating agreements for Council review and signature - December 31, 2013.

---

**OIG Concurrence**

---

**Date**

## NOAA AUDIT ACTION PLAN

**Audit Report Title:** NOAA Needs to Continue Streamlining the Rulemaking Process and Improve Transparency and Consistency in Fisheries Management

**Audit Report Number:** Final Report No. OIG-13-011-1/January 16, 2013

**Audited Entity:** National Marine Fisheries Service (NMFS)

**OIG Recommendation #6:** We recommend that the Assistant Administrator for Fisheries develop uniform procedures for the collection, management, and maintenance of documents supporting decisions and administrative records associated with fishery regulations.

**Action Planned or Taken:** Although documents and other materials related to fishery management actions are retained consistent with requirements under the Federal Records Act, given the large volume of actions taken, NOAA compiles administrative records only in those instances where litigation challenging a regulation is filed or, sometimes, where litigation is expected. Further, it is not feasible to have a uniform practice for compiling an administrative record. In some cases, NOAA may take joint action with another agency that utilizes a different approach to assembling administrative records, or controlling legal precedent or other litigation considerations may dictate a different approach.

Consistent with these principles and prior to this OIG report, the NOAA Office of the General Counsel in December 2012 revised its NOAA Guidelines for Compiling an Agency Administrative Record. NOAA will conduct training on NOAA Guidelines for Compiling an Agency Administrative Record. Also, NOAA will communicate records policy and procedures to all NMFS employees, Council members, and Council staff.

**Target Implementation Dates:**

- Communicate records policy and procedures - May 1, 2013
- Complete administrative record training - September 30, 2013

---

**OIG Concurrence**

---

**Date**