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Description of document: Final report, the report of investigation, closing memo,

referral memo, and referral letter for each of 17 specified Department of Commerce Office of Inspector General

(OIG) closed investigations, 2011-2013

Requested date: 15-March-2013

Released date: 17-April-2013

Posted date: 16-December-2013

Source of document: FOIA Officer

Office of Inspector General U.S. Department of Commerce

1401 Constitution Avenue, N.W., Room 7892

Washington, DC 20230 Fax: 202.501.7335 Email: FOIA@oig.doc.gov Online FOIA Request Form

Note: See release letter for list investigations

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April 17, 2013

This is in response to your March 15, 2013 Freedom of Information Act (FOIA) request to the U.S. Department of Commerce Office of Inspector General (OIG), received by our office on March 20, 2013, in which you seek a copy of the final report, the report of investigation, the closing memo, the referral memo, and the referral letter for each of the following 17 OIG closed investigations:

- o 10-0210-I
- o 12-0333-P
- o 10-0126-I
- o 11-0441-I
- o 12-0162-I
- o 10-0247-V
- o 10-0496-M
- o 10-0497-I
- 0 12-0498
- o 12-0838-P
- 0 11-0197
- o 12-0513-I
- o 12-0862-P
- o 12-1147-P
- 12-1148-P12-1298-P
- 0 10-0466

A search of records maintained by the OIG has located 110 pages that are responsive to your request. We have reviewed these pages under the terms of FOIA and have determined that eight pages may be released in their entirety. One hundred and two (102) pages must be partially withheld under FOIA exemption (b)(7)(C), which protects information compiled for law enforcement purposes, the disclosure of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. 5 U.S.C. § 552(b)(7)(C). Ten (10) of those pages must also be partially withheld under FOIA exemption (b)(7)(A), which protects records or information compiled for law enforcement purposes to the extent that production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings. 5 U.S.C. § 552(b)(7)(A). Copies of these 110 pages are enclosed, with the relevant redactions noted.

Please note that Congress excluded three discrete categories of law enforcement and national security records from the requirements of FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of FOIA. This is a standard notification that is given to all OIG requesters and should not be taken as an indication that excluded records do, or do not, exist.

You have the right to appeal this partial denial of the FOIA request. An appeal must be received within 30 calendar days of the date of this response letter by the Assistant General Counsel for Administration (Office), Room 5898-C, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230. Your appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to 202-482-2552, or by FOIAonline, if you have an account in FOIAonline, at <a href="https://foiaonline.regulations.gov/foia/action/public/home#">https://foiaonline.regulations.gov/foia/action/public/home#</a>. The appeal must include a copy of the original request, this response to the request, and a statement of the reason why the withheld records should be made available and why denial of the records was in error. The submission (including e-mail, fax, and FOIAonline submissions) is not complete without the required attachments. The appeal letter, the envelope, the e-mail subject line, and the fax cover sheet should be clearly marked "Freedom of Information Act Appeal." The e-mail, fax machine, FOIAonline, and Office are monitored only on working days during normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday). FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next normal business day.

Sincerely,

Wade Green, Jr.

Counsel to the Inspector General

Enclosures

## All Redactions Pursuant to b(7) (c)



#### UNITED STATES DEPARTMENT OF COMMERCE Office of Inspector General Washington, DC 20230

July 1, 2011

National Oceanic and Atmospheric Administration

FROM:

Rick Beitel

Principal Assistant Inspector General

for Investigations and Whistleblower Protection

SUBJECT:

Results of Investigation, Re: Improprieties Involving OLE/NWED

Undercover Vessel

Attached for your review and appropriate action is our investigative report in the above-captioned matter. Our investigation was initiated based on information from confidential sources alleging improprieties on the part of

Northwest Enforcement Division (NWED) of the Office for Law Enforcement (OLE), based in Seattle, WA. In particular, the allegedly used NWED's new \$300,000 undercover (UC) vessel for unauthorized purposes in summer 2008, and the did not report the allegations to headquarters as required by OLE policy.

Additionally, we investigated the circumstances of OLE's acquisition of this UC vessel, a 35-foot Boston Whaler Model 345 Conquest cabin boat, which OLE procured in early 2008 using NOAA's Asset Forfeiture Fund (AFF). As documented, NWED's primary expressed purpose for acquiring this vessel was to serve as an unmarked surveillance platform to help protect killer whales (a.k.a. orcas) from whale-watching and other vessels in Puget Sound that may cause harm to these endangered mammals.

Our investigation included sworn, audio-recorded interviews of

We also interviewed

other current and former NWED managers and staff, the cognizant NOAA contracting officer, a senior Departmental procurement attorney, and other witnesses. Additionally, we obtained and examined numerous records pertaining to the acquisition and use of the UC vessel.

#### **Summary Findings**

As detailed in the report, our investigation substantiated, in large part, the allegations regarding misuse of the UC vessel, and we also identified irregularities involving its acquisition. Our major findings are summarized as follows:

- violated agency policy and ethical standards by operating the UC vessel with his wife and/or friends aboard on at least three occasions in the summer 2008, each of which involved dockside restaurant destinations during the workweek. The first such occurrence was on the date of the vessel's initial launch. He further violated agency policy by failing to record his approximately 40 hours of UC vessel operations during that period. In addition, he allowed the parents of a subordinate agent aboard another OLE boat while underway (i.e., moving) after the UC vessel experienced engine failure, in violation of policy and ethical standards. The subordinate agent's parents were present for at least one boarding of a whalewatching vessel and a trip across Puget Sound to a restaurant.
- expressed that he considered his use of the UC vessel in summer 2008 to be appropriate because he needed to log hours for vessel and engine break-in purposes, which he described as "sea trials." He considered restaurant destinations appropriate for the purpose of practicing docking, which he said was essential due to the large size of the UC vessel and because it was equipped with a sensitive bow thruster. While acknowledging that non-OLE persons aboard were personal acquaintances, he considered their presence to be appropriate and permissible under OLE's policy, although he acknowledged that may not have been aware as required. Further, he told us that he did not believe agency policy required him to make any record, including in the vessel logbook, of trips made for break-in purposes; that to his knowledge the policy only required logging actual patrol operations. Our investigation found these assertions to be rationalizations lacking validity and candor.
- By our calculation, special operated the UC vessel over 100 miles for his three known excursions to restaurants during which the evidence shows that his wife and/or friends were aboard, and at least 60 miles with a subordinate agent's parents aboard a marked patrol boat—which included whale-watching, traveling to and from a restaurant, and at least one vessel boarding, which is inherently dangerous. We find no reasonable official purpose was served through such operation of these vessels, including when considering the high cost of fuel, personnel time, and potential liability, and the fact that his approximately 40 hours operating the UC vessel were not logged as required. We concluded that rather than use the UC vessel to train and familiarize other OLE agents and partner state enforcement officers, used the vessel for, as described by one of his non-OLE passengers, "pleasure cruis[ing]."
- When contemporaneously questioned by the standard in September 2008, and later by OIG for this investigation, was not candid about unauthorized persons aboard the UC vessel, in violation of agency policy and the Standards of Ethical Conduct. Specifically, he told to be in September 2008 that his wife had not been on the UC vessel while it was underway, and told us when we interviewed him that he did not recall her ever being aboard underway. Based on compelling evidence, these assertions are not true. In addition, was not candid with us about the subordinate agent's parents being aboard OLE's marked patrol vessel.
- The evidence shows that mishandled mishandled alleged misuse of the UC vessel, to include failing to refer the matter to OLE headquarters for investigation in accordance with OLE policy.

•	moorage, fuel, and other vessel costs charged to his personal credit card between July 2008 and August 2009, ostensibly to avoid compromising the vessel's UC status. Nearly \$9,400 of this amount was reimbursed from the AFF at authorized under OLE policy. According to the used his personal credit card for these charges versus his assigned OLE purchase credit card, because an undercover credit card did not exist at the time and he did not want to risk compromising the vessel's UC status. The vas the approval authority for most of these reimbursement claims. When this practice was discovered and questioned by OLE headquarters in April 2009, suggested to the control of the con
	allow use of the AFF to pay for UC vessel operational costs.  such interpretation and assistant ast vouchered UC vessel costs charged against the AFF on April 15, 2000. The hallows of his principles are the formula of the formula of his principles.
	April 15, 2009. The balance of his reimbursements from that date forward, until his final voucher in August 2009, were not charged to the AFF. Each acknowledged that he may have accrued airline/travel miles in using his personal credit card, but denied that this was ever a motivation for such use.
•	We found that the conclusion of

• We found that the conclusion of our initial interview of the conclusion of the conclusion of our initial interview of the conclusion of t

"Lastly, our request is that...given the sensitivity of the matters that we're investigating and the need for...operational security, we would like to ask that you not discuss what we've addressed with you here today...with anyone in your organization..."

sponded, "Duly noted," but shortly thereafter disregarded our request. Later that same day, according to another OLE agent, called him and discussed the substance of our interview earlier that day, namely the August 2008 trip when the other agent's parents were aboard the patrol vessel, and even queried the agent (whom we had not interviewed) about that trip.

October 2007 memorandum of request for AFF-acquisition of the specific UC vessel misrepresented the views of OLE's Vessel Steering Committee, contributing to OLE headquarters foregoing review by the Committee and approving acquisition of that vessel, prior to required procurement procedures being applied. The procurement request originated with the and was endorsed by the told us he identified the Boston Whaler Model 345 Conquest through undocumented market research, boat shows, and talking to other law enforcement officers. While purchase ultimately followed a limited competition after Departmental counsel objected to sole-source procurement, OLE's actions created, at a minimum, the appearance of violating the Competition in Contracting Act and Federal Acquisition Regulations, and thus exposed NOAA to potential liability. The senior Departmental procurement attorney who, at the time, objected to NOAA's sole-source justification, told us his impression was that this was "wired from the start to get that one boat."

• The UC vessel has had minimal operational use. Its logbook shows that just nine law enforcement patrol operations (i.e., whale patrols pursuant to the Marine Mammal Protection Act and Endangered Species Act) have been conducted since the boat was delivered in June 2008 thru May 2011. The first such patrol occurred in July 2009—over a year after the vessel was acquired—and the last patrol took place in September 2010. The UC vessel has been operated for a total of just 119 hours through September 20, 2010, the date of the last logbook entry. The logbooks and our interviews reflect that operational time has been limited by numerous maintenance and mechanical problems, including fuel leaks and malfunctioning navigational equipment, as well as based on NWED staffing constraints. As of our initial interview, had not seen the UC vessel in-person, despite it being moored less than a half-hour from her office. Due to its size, trailering is not practical and moorage fees alone cost over \$400 per month. Moreover, fuel costs are substantial due to the UC vessel's three large (6 cylinder) engines.

On May 31, 2011, the U.S. Attorney's Office for the District of Maryland declined criminal prosecution of the control of administrative remedies. The cognizant Assistant U.S. Attorney specifically recommended administrative action be pursued against and that the Government be made whole for the cost of fuel and time attributable to misconduct involving the UC vessel.

#### Recommendations

- 1. Federal law enforcement officers are held to a higher standard of conduct. OLE's own disciplinary policy states that "because law enforcement employees occupy positions of special trust and responsibility, they must maintain the highest standards of conduct." Our investigative findings reflect serious misconduct and poor judgment on the part of the subject to include his evident lack of candor, along with policy violations on the part of Accordingly, we recommend that appropriate administrative action be considered for the based on their respective levels of culpability for the improprieties involving the use and acquisition of the UC vessel.
- 2. Given its minimal use to date and relative high cost to maintain, we recommend that cost-benefit analysis be carried out to determine whether the UC vessel is a necessary operational asset for the accomplishment of NWED's and OLE's mission. We further recommend that alternatives be considered, such as renting or leasing vessels, using unmarked vessels owned by other federal and state agencies, and placing agents covertly aboard commercial whale-watching vessels as NWED and at least three other OLE regions historically have done.
- 3. OLE's original documented request and approval to purchase the Boston Whaler 345 Conquest was improper and subjected NOAA to risk of a bid protest or other complaint that NOAA's subsequent competition was a sham because OLE had already selected the specific vessel and vendor, and at the vendor's quoted price. Based on the apparent misconception by OLE managers that simply because the UC vessel was listed on the GSA Schedule, it could be directly purchased without competitive or other formal procurement procedures, we recommend that NOAA provide initial and recurrent acquisition training to all OLE managers.

4. We recommend that NOAA require OLE's Vessel Steering Committee to review all potential vessel acquisitions and provide written recommendations to the Director based on bona fide mission-critical criteria, to include operational necessity.

We note that on March 16, 2011, NOAA issued a final policy on authorized and prohibited uses of the AFF. Of particular relevance to the issues addressed herein, the policy prohibits the use of AFF funding for any vessel purchases or leases, including patrol vessels, undercover vessels, or associated equipment upgrades, modification, or maintenance of current vessels.

On May 31, 2011, the U.S. Attorney's Office for the District of Maryland declined criminal prosecution of a favor of administrative remedies. The cognizant Assistant U.S. Attorney specifically recommended administrative action be pursued against and that the Government be made whole for the cost of fuel and time attributable to misconduct involving the UC vessel.

The attached investigative report details our findings and implicated policy and regulation violations. Referenced and included therewith are our interviews and other pertinent documentation.

Please apprise us within 60 days of any actions taken or planned with respect to our findings and recommendations in this matter. If you have any questions, or if we can be of further assistance, please contact me at 202-482.

Attachment

OIG Report of Investigation #FOP-WF-10-0210-I



### OFFICE OF INSPECTOR GENERAL **OFFICE OF INVESTIGATIONS**

REPURI	OF INVESTIGA	MITON				
CASE TITLE:		FILE NUMBER:				
Improprieties in Northwest Enforcement	Division	FOP-WF-10-0210	I-0			
Office for Law Enforcement		TYPE OF REPORT				
National Marine Fisheries Service	inistration.	☐ Interim ☑ Fi	inal			
National Oceanic and Atmospheric Adn Seattle, WA	iinistration					
	TAKAN MATANAN PANGAN MATANAN M					
<u>Predication</u>						
Our investigation was initiated follow reporting that an OLE headquarters in suspected improprieties by use of NWED's undercover (UC) vestoat purchased that year via NOAA's concerning her handling. The confidential sources alleged that headquarters for investigation per OL draft inspection report, last revised in transmitted to the by metallic by metallic properties.	spection of NWED conductors, a 35-foot Boston What Asset Forfeiture Fund (Asset Forfeiture about apparently failed E policy. OLE headquarte	cted in fall 2009 ide involving his ler Model 345 Conq FF), and on the part use of to to report the allegaters provided us with	entified summer 2008 quest cabin of the vessel. ions to a copy of the			
Dackground						
NWED is one of OLE's six regions, of Organizationally, as of summer 2008, DSACs (GS-14 equivalent)—one over ASACs (GS-13 equivalent); and approximately and specific controls.	NWED was staffed with receing Administration an	a SAC (GS-15 equived the other for Operation	valent); two			
NWED has responsibility for conducting enforcement operations pursuant to statutes such as the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the Endangered Species Act (ESA), and the Marine Mammal Protection Act (MMPA). Its operations include actions to protect killer whales (known as orcas) from whale-watching vessels in Puget Sound that get too close to and thus endanger these mammals. Until very recently, ESA and MMPA provisions						
Distribution: OIG X Bureau/Organization/A	gency Management X_ DOJ:	Other (specify):				
Signature of Case Agent: Dat	e: Signature of Appr	oving Official:	Date:			
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Name/Title:	Name/Title:					
Rick Beitel, Special Agent (Principal Asst. IG for Inv	estigations) Scott S. Dahl, Dep	outy Inspector General				

were considered too broad for NOAA to enforce—absent clear injury or kill—without accompanying regulations. Prior to issuance of an enforceable Final Rule, effective May 16, 2011<sup>1</sup>, OLE used voluntary guidelines and outreach efforts to protect whales from harassment (e.g., guidelines recommended that vessels stay at least 100 yards from all whales). The Final Rule requires that vessels stay 200 yards from killer whales and prohibits vessel operators from intercepting the path of the whales.

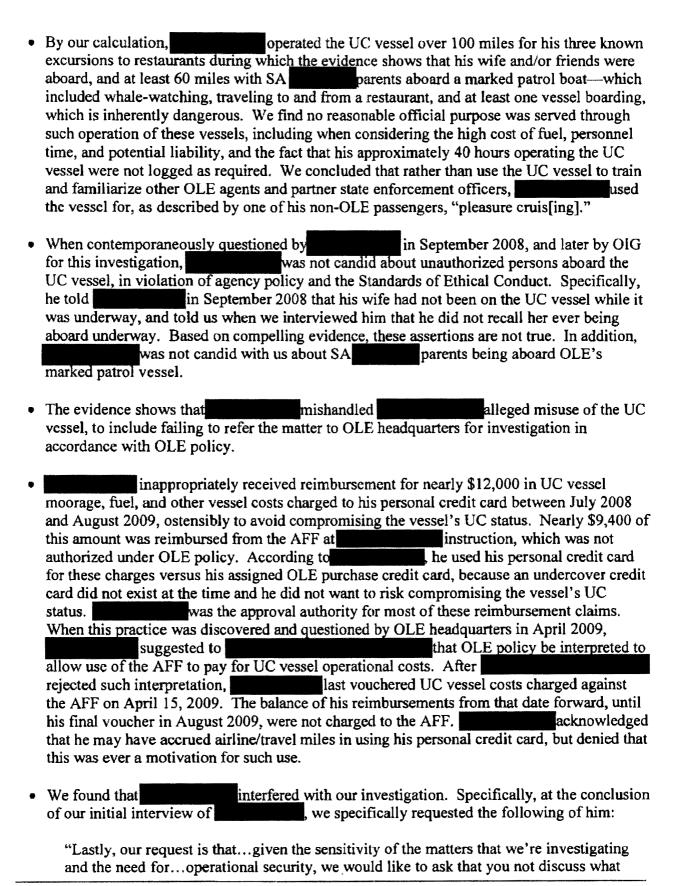
As addressed below, NWED's primary justification for acquiring the UC vessel in 2008 was that it was needed to function as an unmarked surveillance platform to blend-in with whale-watching vessels and inform a responding marked OLE patrol boat of observed violation of statutory provisions and the voluntary guidelines. NWED's rationale was that whale-watching vessels would become compliant when a marked patrol boat was in their vicinity, but then revert to non-compliance when the marked patrol boat departed the area.

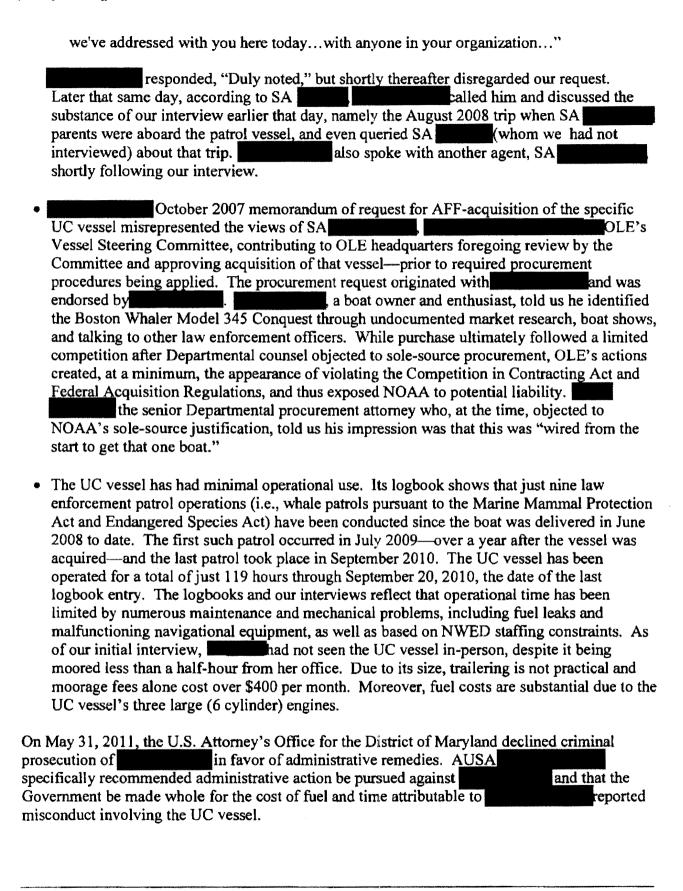
#### **Synopsis**

Our investigation substantiated, in large part, the allegations regarding misuse of the UC vessel, and we identified improprieties involving its acquisition. Our major findings are summarized as follows:

- violated agency policy and ethical standards by operating the UC vessel with his wife and/or friends aboard on at least three occasions in the summer 2008, each of which involved dockside restaurant destinations during the workweek. The first such occurrence was on the date of the vessel's initial launch. He further violated agency policy by failing to record his approximately 40 hours of UC vessel operations during that period. In addition, he allowed the parents of a subordinate agent, SA aboard another OLE boat while underway (i.e., moving) after the UC vessel experienced engine failure, in violation of policy and ethical standards. SA parents were present for at least one boarding of a whale-watching vessel and a trip across Puget Sound to a restaurant.
- expressed that he considered his use of the UC vessel in summer 2008 to be appropriate because he needed to log hours for vessel and engine break-in purposes, which he described as "sea trials." He considered restaurant destinations appropriate for the purpose of practicing docking, which he said was essential due to the large size of the UC vessel and because it was equipped with a sensitive bow thruster. While acknowledging that non-OLE persons aboard were personal acquaintances, he considered their presence to be appropriate and permissible under OLE's policy, although he acknowledged that may not have been aware as required. Further, he told us that he did not believe agency policy required him to make any record, including in the vessel logbook, of trips made for break-in purposes; that to his knowledge the policy only required logging actual patrol operations. Our investigation found these assertions to be rationalizations lacking validity and candor.

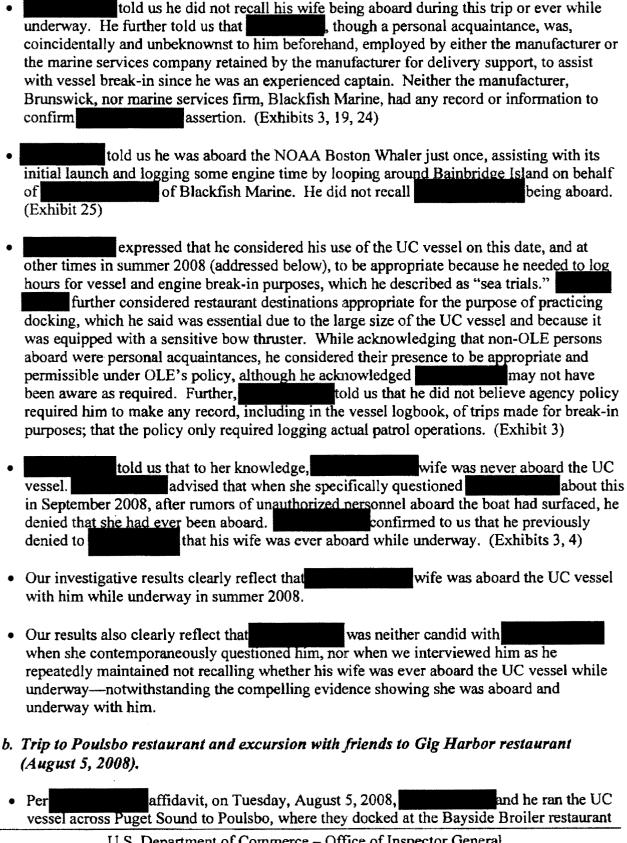
<sup>&</sup>lt;sup>1</sup> "Protective Regulations for Killer Whales in the Northwest Region Under the Endangered Species Act and Marine Mammal Protection Act," Federal Register, Vol. 76, No. 72, pp. 20870-20890, 4/14/2011.

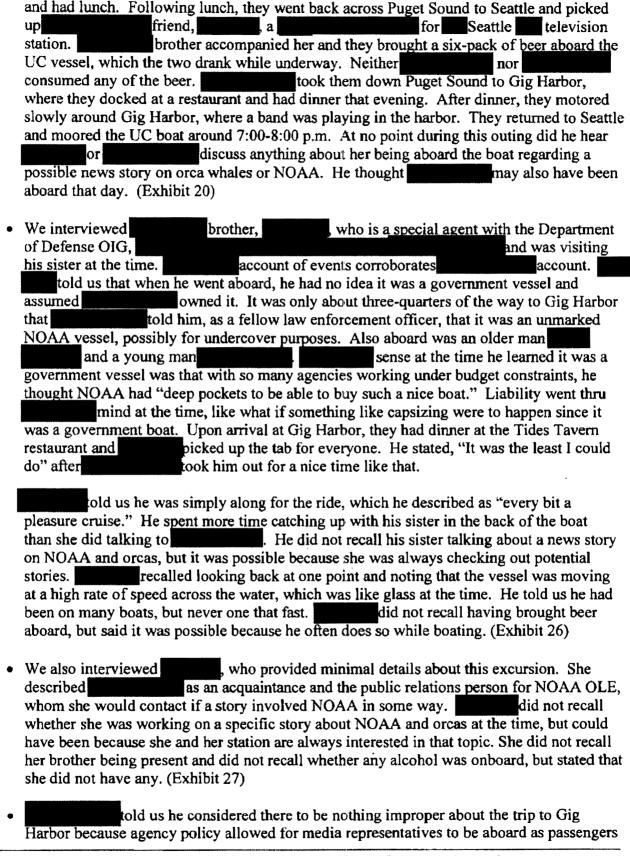




# Methodology

Our investigation included sworn, audio-recorded interviews of the and We also interviewed							
other current and former NWED managers and staff, the cognizant NOAA contracting officer, a senior Departmental procurement attorney, and other witnesses. Additionally, we obtained and examined numerous records pertaining to the acquisition and use of the UC vessel, including procurement file documentation, emails, memoranda, and other internal correspondence.							
Detailed Findings & Violations Implicated							
1. Executed violated agency policy and ethical standards by operating the UC vessel with his wife and/or friends aboard on three known occasions (workdays) in summer 2008. He further violated agency policy by failing to record his approximately 40 hours of UC vessel operations during that period. He also violated policy and ethical standards by allowing a subordinate agent's parents aboard another OLE vessel while underway.							
a. Wife and friend aboard for initial launch, running out of fuel in canal, and trip across Puget Sound to Bremerton restaurant (June 12, 2008).							
• According to a sworn affidavit from Enforcement Technician on Thursday, June 12, 2008, the date of the UC vessel's initial launch at Canal Boatvard in Seattle, operated the vessel with his wife, their friend, aboard while underway (i.e., moving in operation) through the Ballard Locks and across Puget Sound to the dockside Boat Shed restaurant in Bremerton, where they had an early dinner before returning to Seattle. (Exhibit 20)							
account is supported by the account of Seattle Harbor Patrol Officer, who towed the vessel back to Canal Boatyard when it ran out of fuel shortly after launching. Officer told us he observed a woman and two men aboard the vessel at that time. (Officer because observation of two men aboard is consistent with the fact that had not yet come aboard the vessel when it ran out of fuel that morning.) (Exhibits 21, 22)							
first-hand account of the trip across Puget Sound to Bremerton is also supported by a credit card receipt from the Boat Shed restaurant, which purports to bear the signature of maiden name of wife. The receipt contains information on meals served that is consistent with account of the number of persons aboard the undercover vessel and the time of day. When interviewed, stated that the signature appeared to be that of his wife, though he said he did not recognize the last four digits of the credit card number as corresponding to credit or debit cards in his or his wife's name. (Exhibits 3, 23)							



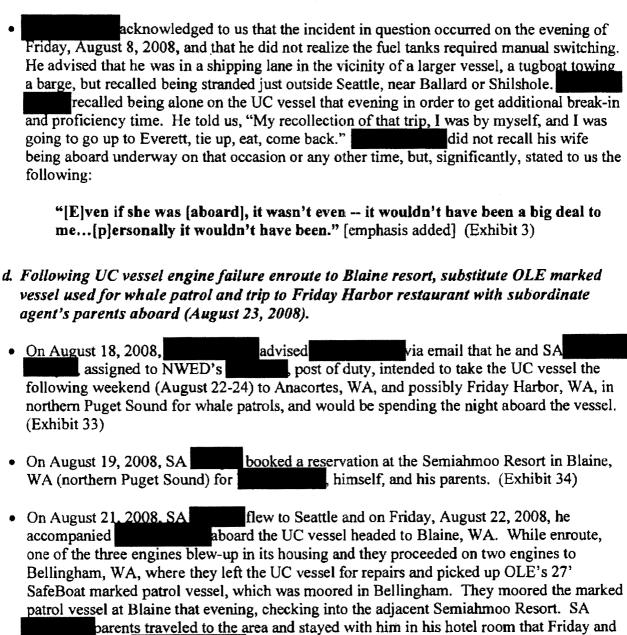


	and his understanding at the time was that and orca patrols. It told us he informed her of the vessel's covert status and insisted that it not be referenced in any news story. It also considered presence to be appropriate and in keeping with agency policy based on his status as a law enforcement officer. It additionally considered presence appropriate, because, according to this services were being provided as part of vessel break-in and he was very experienced. It is additionally considered beer aboard during this trip. (Exhibit 3)
•	reporter's family member aboard the UC vessel, and she did not recognize the name did not recall seeking her required approval and said she would have questioned the appropriateness of such use of the UC vessel given its sensitive status. However, advised that because it may have involved a possible media story on orca protection, that probably would have been something she thought was a good idea and indicated she may have authorized the reporter being aboard yet not recall it; in our view, this latter statement strains credibility. (Exhibit 4)
c.	Stranded with wife in Puget Sound enroute to restaurant (August 8, 2008).
•	According to by his (CPA with Pricewaterhouse Coopers), and his wife informed and over lunch at Elysian Fields restaurant in Seattle on August 9 or 10, 2008, that they had been stranded very recently one evening on the UC boat in a shipping lane of Puget Sound near Seattle. advised and that the engines had stalled because they did not realize the fuel tanks had to be manually switched and the tank in use had run out of fuel. They may have called the Coast Guard for help, but ended up calling area boat dealers, learned that the tanks needed to be switched, and was then able to restart them. were laughing about the situation, but mentioned that it became somewhat dire at one point because they were in the path of a larger vessel. vaguely recalled that may have been heading up that evening to the Everett area to meet SA whom he described as a good friend of (Exhibits 20, 28)
•	We interviewed SA who advised that called him on the evening the UC vessel was stranded and may have asked for his help, but resolved the issue before SA could get to his location. SA vaguely recalled being underway in the UC vessel at the time enroute to meet him, but said he was not certain. He further stated he did not know whether was aboard the UC boat that evening or any other time. SA calculated acknowledged that he and friends and advised that their wives socialize regularly. (Exhibit 29)
•	We found a 911 emergency call placed from OLE-issued cell phone on Friday, August 8, 2008, at 7:50 p.m. PDT for over 6 minutes duration, with a corresponding record from the Seattle Police Department (SPD), which transferred the call to the Edmonds, WA, PD, because the call originated from a location closer to Edmonds, which is north of

Saturday night.

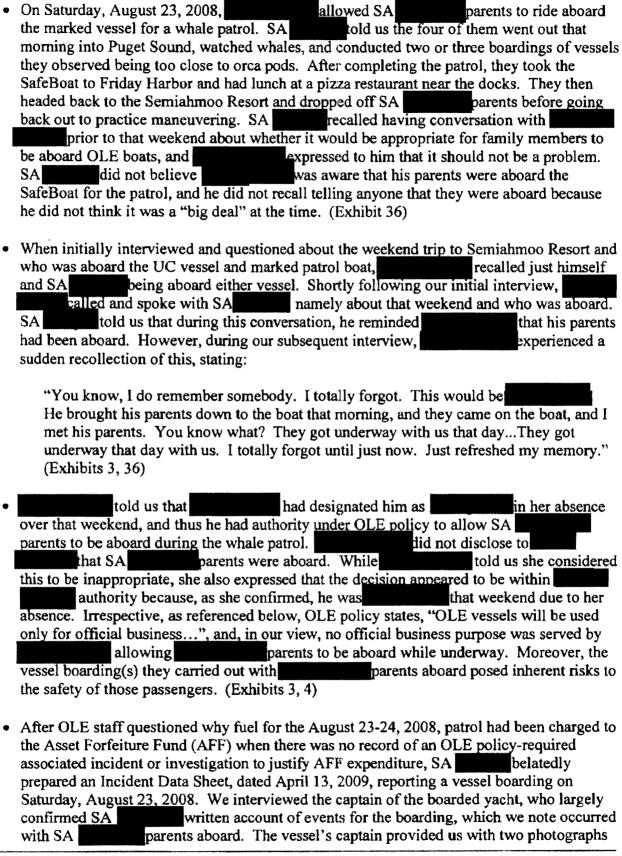
36)

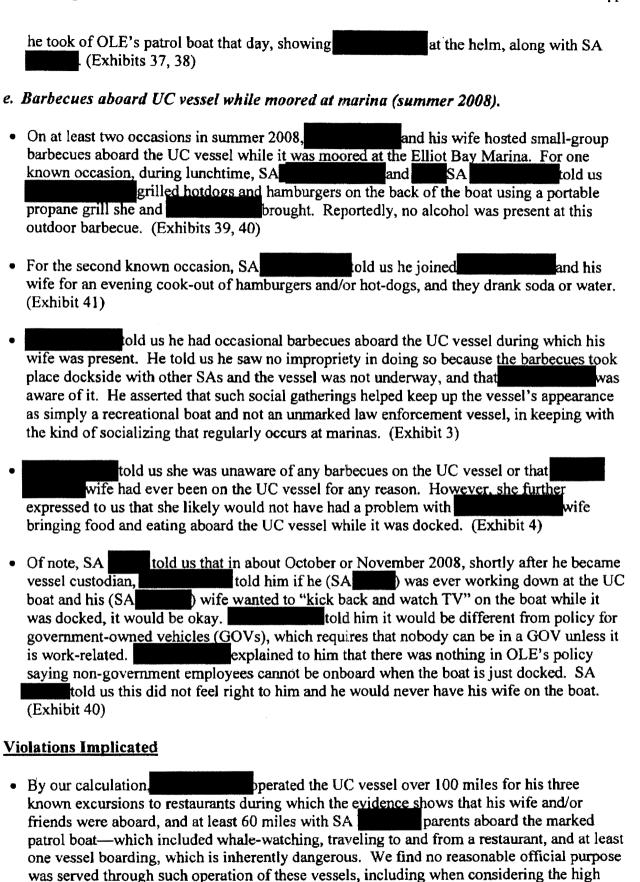
Seattle. We also found a Coast Guard record of a distress call reported at 7:48 p.m. PDT that evening from a 40' Boston Whaler saying it was in the vicinity of Jetty Island, which is near Everett, WA. The Coast Guard record states that the subject vessel "fixed the problem and returned u/w [underway] under it's own power." (Exhibits 30, 31, 32)

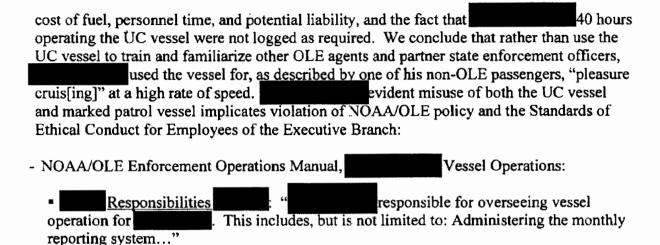


• Contrary to email to SA SA SA STATE told us that he and intended to stay at the Semiahmoo Resort for the patrol weekend—not berth overnight on the UC vessel. (Exhibit 36)

stayed at the Resort one or both nights. (Exhibits 3, 35,



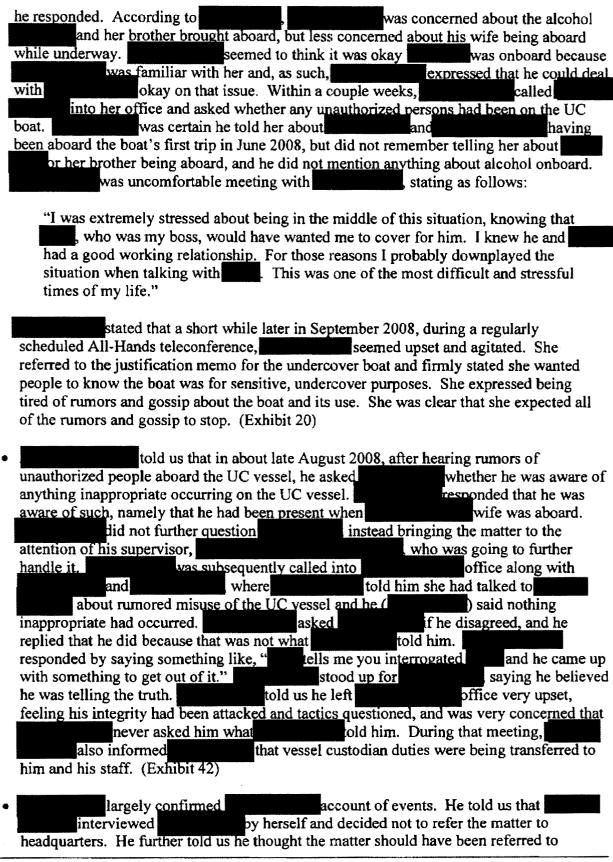


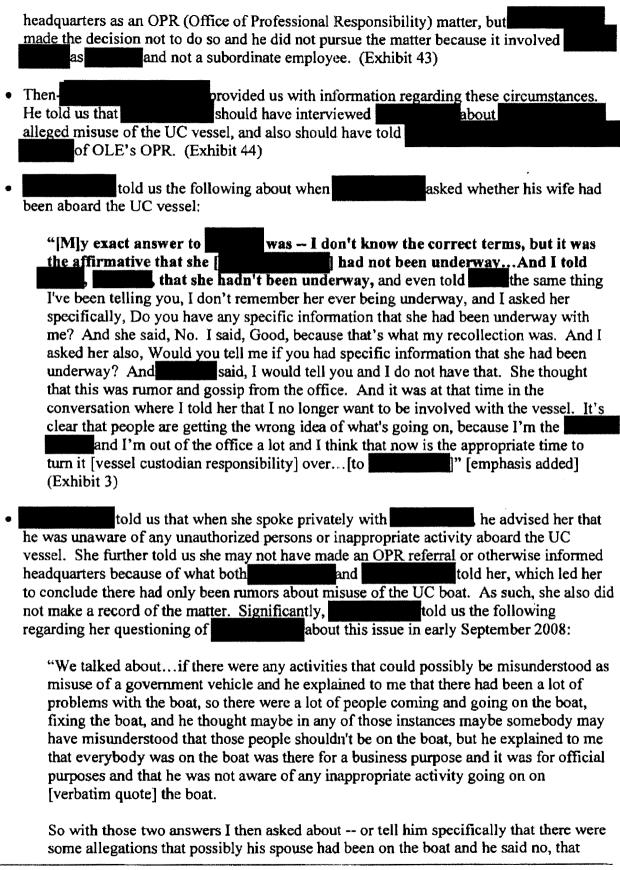


- 5.6.4.7 <u>Vessel Captain</u>: "It is the responsibility of each Vessel Captain to assure the agency vessel is operated in a safe and prudent manner...The Vessel Captain shall be responsible for the following: Filing a float plan with the area ASAC prior to departure, Recording entries in the vessel logbook..., recording entries in the vessel's service and maintenance logbook..."
- 5.6.6.1 Authorized Usage (1): "OLE vessels will be used only for official business..."
- 5.6.6.1 <u>Authorized Usage (3)</u>: "A float plan will be prepared by the vessel operator and submitted... for approval prior to departure... The float plan will contain the following information...: Operation Objective, Name of operator and crew members, Estimated time of departure, Estimated time of arrival, Destination and proposed routes, Weather information..., Communications plan (method of contacting vessel), Emergency contact information for all persons on board..."
- 5.6.6.2 <u>Limitations on Usage</u>: "Persons other than OLE employees are prohibited from operating or riding in division owned, leased or rented vessels unless the SAC authorizes an exception or they are: other government employees (state, local or federal)..."
- 5.6.12.1 <u>Vessel Logbook</u>: "A vessel logbook is required for all vessels except small boats without enclosed cabins...The vessel operator shall record the following information in the vessel's logbook for each trip: Operator name, Crew members names, Date and time underway, Date and time of arrival, Purpose or objective of the trip...brief synopsis of the activity..."
- 5.6.12.4 <u>Vessel Maintenance & Service Logbook</u>: "Each operator will record the following information in the Vessel Maintenance & Service Logbook: Fuel purchases, including: date, port & starboard [engine] hour meter readings, vendor, gallons purchased, price per gallon, total price... Maintenance performed including: date, person performing maintenance, work performed, hours of work, All service performed by outside sources including: vendor name..."

- NOAA/OLE Enforcement Operations Manual, Procedure 1.8, Disciplinary System, Appendix 1, including the following:
  - 6. "Unauthorized or Negligent Use of Government [Property]...Use of or allowing the use of Government...watercraft for other than official purposes."
- Department of Commerce Administrative Order (DAO) 202-751, Discipline, Appendix B, including the following:
  - 22b. Government Property: "Use of or allowing the use of Government...water craft for other than official purposes."
- The Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR § 2635 et. seq.):
  - 5 CFR § 2635.101(b)(9)
    - "Employees shall protect and conserve Federal property and shall not use it for other than authorized activities."
  - 5 CFR § 2635.101(b)(14)
    - "Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part..."
- Per OLE policy, bears ultimate responsibility for the evident misuse of the UC vessel, as does when he served as during August 23-24, 2008:
   NOAA/OLE Enforcement Operations Manual, Vessel Operations:
  - Responsibilities : "I is responsible for the assignment and proper use of all vessels within ..."
- 2. When contemporaneously questioned by was, and later by OIG, was not candid about unauthorized persons aboard the UC vessel, in violation of agency policy and the Standards of Ethical Conduct. He also was not candid with OIG about persons aboard OLE's marked patrol vessel. Additionally, mishandled alleged misuse of the UC vessel, to include failing to refer the matter to OLE headquarters for investigation per OLE policy.
  - In his sworn affidavit, stated that in about September 2008, asked him whether he knew of any misuse of the UC boat or any unauthorized people on it.

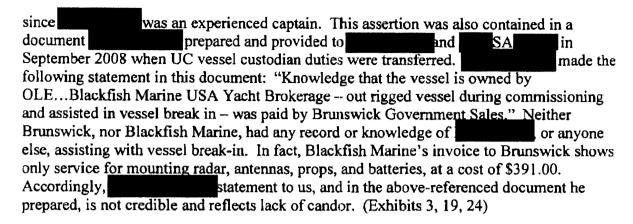
    told about wife being aboard, but did not think he mentioned the outing with her brother, or the alcohol they brought. Shortly thereafter, advised about what had asked and how





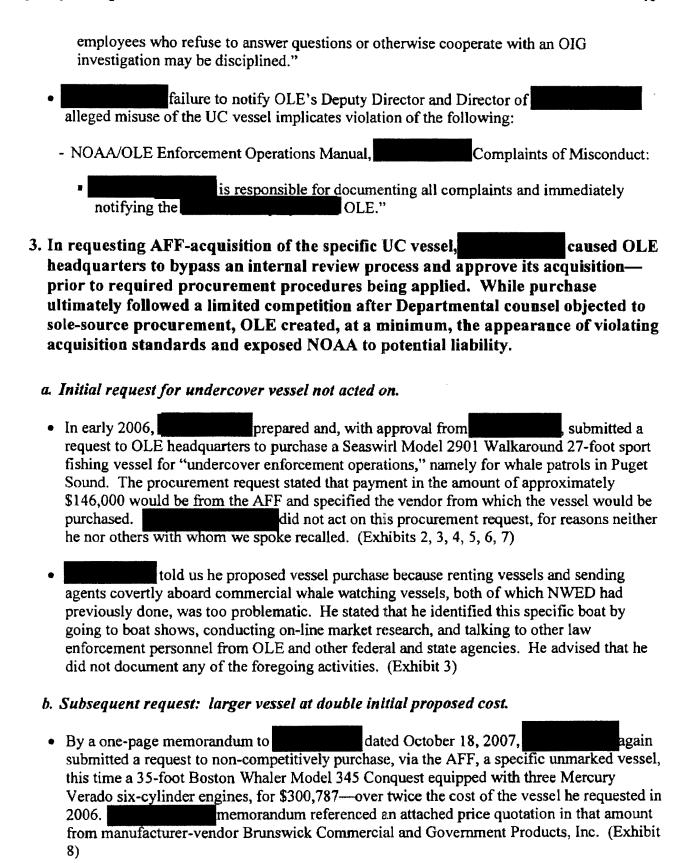
wasn't the case. I said well, is it possible that the boat was tied up to the dock and she was just standing on the boat tied up to the dock? I went through several different questions just to be sure that I wasn't being misunderstood, and he said no, absolutely not, his wife had never been on the boat, but that she had come down to the dock to see the boat, I think, on a couple of different occasions. I think one time he told me it was to bring him lunch and another time it was to pick him up when he docked the boat because he didn't have a vehicle to get a ride home, but he said that she had not been on the boat." [emphasis added] (Exhibit 4)

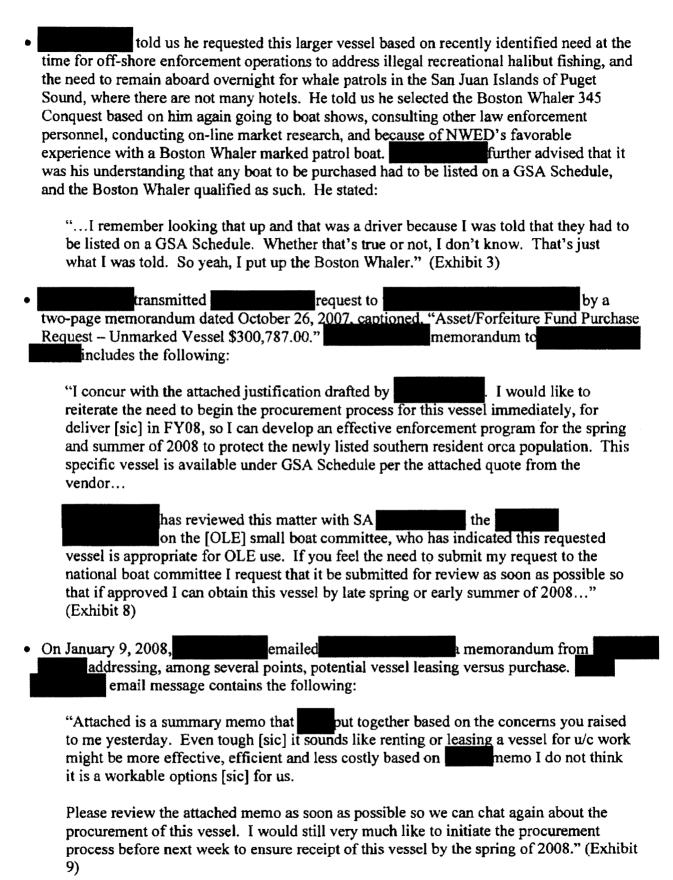
•	repeatedly told us that he did not recall his wife ever being aboard the UC
	vessel while underway, but did not make an outright denial as both he and stated he did to her in early September 2008. As such, his statements to us are incompatible. Significantly, he also told us the following:
	"[E]ven if she was [aboard], it wasn't even it wouldn't have been a big deal to me[p]ersonally it wouldn't have been." [emphasis added] (Exhibit 3)
•	OLE's OPR function, along with told us that they were unaware of alleged misuse of the UC vessel until raised during the OLE headquarters inspection in about late 2009.  advised that should have, at the time, referred the allegations to him and for OPR action.  told us he did not recall being informed of vessel prior to the inspection. (Exhibits 5, 6, 7)
	When initially interviewed and questioned about the weekend trip to Semiahmoo Resort and who was aboard the UC vessel and marked patrol boat, and SA being aboard either vessel. Shortly following our initial interview, called and spoke with SA conversation, he reminded that weekend and who was aboard. SA conversation, he reminded that his parents had been aboard. However, during our subsequent interview, experienced a sudden recollection of this, stating:
	"You know, I do remember somebody. I totally forgot. This would be He brought his parents down to the boat that morning, and they came on the boat, and I met his parents. You know what? They got underway with us that dayThey got underway that day with us. I totally forgot until just now. Just refreshed my memory." (Exhibits 3, 36)
	Given that and SA and spoken about this specific issue approximately two weeks before re-interviewing him about it, we consider foregoing statement to be disingenuous and not credible.
•	and unbeknownst to him beforehand, employed by either the manufacturer or the marine services firm retained by the manufacturer for delivery support, to assist with vessel break-in



#### **Violations Implicated**

- evident lack of candor with both and our office implicates violation of the following, along with potential *Giglio* issues concerning his credibility in representing the agency in enforcement matters:
  - NOAA/OLE Enforcement Operations Manual, Procedure 1.8, Disciplinary System, Appendix 1, including the following offenses:
    - 22. "Dishonest Conduct Prejudicial to the Government"
    - 49. "Conduct Demonstrating Untrustworthiness or Unreliability"
  - The Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR § 2635 et. seq.):
    - 5 CFR § 2635.101(b)(5)
      - "Employees shall put forth honest effort in the performance of their duties."
    - 5 CFR § 2635.101(b)(14)
      - "Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part..."
  - Department Administrative Order 207-10, Inspector General Investigations, Cooperation with OIG Investigations:
    - Section 6.02a: "Department officers and employees shall cooperate fully with any OIG investigation; shall not withhold information...from the OIG...and shall answer questions relating to their employment and to matters coming to their attention in their official capacity or by reason of their employment."
    - Section 6.03, Failure to cooperate with OIG investigation: "Department officers and





•	purposes was not practical, primarily due to logistical complications such as arranging for one on short-notice. Although OLE headquarters, namely the considered vessel leasing, OLE did not pursue acquisition of a vessel for covert operations through seized vessel programs of other law enforcement agencies. Interagency transfer of a seized vessel likely would have cost OLE only the cost of transportation and initial maintenance. (Exhibits 3, 4)
c.	Procurement request not reviewed by OLE's Vessel Steering Committee.
•	Although the requested vessel would have been OLE's most expensive operational boat, decided not to submit the request to OLE's Vessel Steering Committee, at least in part, as he recalled, because SA the committee, was referenced in the memorandum of request as being in favor of it. (Exhibits 7, 8)
•	SA told us he was not aware of the above-referenced memorandum of request until well after the memorandum had been submitted and was surprised that had identified him as supporting the purchase of this vessel. SA told us he had misgivings about the boat, including its high cost. SA told us he had suggested to that the request for the UC vessel be reviewed by OLE's Vessel Steering Committee, but recalled saying it was his ( call and that it did not need to go through the Committee. SA advised that since there was no official requirement at the time to obtain Committee approval, he did not press the matter. (Exhibit 10)
•	OLE's Vessel Steering Committee Chair, told us he was unaware of the UC vessel until after it had been procured and delivered. Although Committee approval for vessel procurements had not been instituted as a formal OLE policy requirement, other vessels had been vetted with the Committee, including a \$306,000 law enforcement-marked 33' SafeBoat acquired by the NWED in mid-2007 for training purposes at the Federal Law Enforcement Training Center. (Exhibits 5, 11, 12)
	Approval of procurement of specific UC vessel from specific vendor in absence of policy allowing use of AFF for vessel acquisition.
•	On January 14, 2008, approved the purchase of this vessel by his signature under a line on request memorandum stating, "Asset forfeiture use approval for this vessel purchase:" approved this \$300,000 acquisition in the absence of OLE policy authorizing AFF expenditures for vessel purchases. (Exhibits 8, 13)
•	On January 17, 2008, three days after approved acquiring the Boston Whaler Model 345 Conquest specified in and and approved acquiring the Boston and Approved acquiring the Bost

of request, the NWED submitted a procurement request for this specific vessel, at the quoted

cost of \$300,787, to NOAA's Western Regional Acquisition Division in Seattle. (Exhibit 14)

e.	NOAA acquisitions office concurrently prepared both sole-source procurement action and "Brand Name or Equal" limited solicitation using specifications from the Boston Whaler 345.
•	On January 29, 2008, Contracting Officer (CO) sent an email to the Brunswick sales representative identified in the one-page quotation included with and memoranda of request. CO email states the following:
	thank you for the quotation for Boston Whaler 345 Conquest with all standard equipment. I'm trying to put together a request for quotation to send out to other potential bidders on GSA schedule. Do you have a list of equipment that's available on the 345 Conquest that you quoted?"
	Handwritten atop the contracting office file copy of a second above email is the following:
	"PR [procurement request] suspended-no spec[ifications]" (Exhibit 8)
•	On January 30, 2008, sent an email to NWED, as well as including the following:
	"Please see attached requirements for the Boston Whaler Vessel. I have highlighted items that this vessel would be required to have for our operational use. Please note that I have performed a market survey and have not found any other vessel that meet these requirements[E]very day of delay will put our vessel delivery date back one week and further delays past the above date may cause and [sic] increase in quoted pricing.
	This purchase is a high priority for our agency, please work closely with to get this order finalized for Brunswick" (Exhibit 8)
•	On February 1, 2008, CO emailed emailed and and emailed stating the following:
	"I'm working as quickly as I can on this requestI received your email earlier with the specifications from Boston Whaler's brochure highlighted and that's what I'm sending out to a few potential GSA vendors." (Exhibit 8)

In addition to providing features and technical specifications, the referenced brochure for the Boston Whaler 345 Conquest included the following description of the vessel:

"The all-new 345 Conquest is the largest, most comfortable and capable Unibond® cabin boat in Whaler® history. Along with the unsinkable safety that only Whaler can assure, this spacious boat is configured for the maximum enjoyment of deepwater fish fighting, cruising and dockside socializing. Best-in-class features that set it apart from others include an integrated windshield and hardtop, a centerline helm and a luxurious interior. This boat provides a smooth, dry ride and exceptional performance. Like all Boston Whalers, this masterpiece is built to last and is backed by a limited 10-year transferable hull warranty." (Exhibit 8)

The brochure specifies the vessel as having a 14-person capacity. Standard features listed in the brochure include a refrigerator, island bed with fitted sheets and comforter, hardwood cabin flooring, a 20" flat screen HDTV, DVD player, stereo with premium speakers, wood table, cedar-lined hanging locker with light, Karadon® solid-surface galley and vanity countertops, electric flat cook-top with touch controls, and throw pillows.

- Shortly thereafter on February 1, 2008, CO issued a Request for Quotation (RFQ), sent electronically to eight GSA Schedule vendors, to "provide one Boston Whaler 345 Conquest or equal." This solicitation was only open for five calendar days. (Exhibits 8, 15)
- On that same date, February 1, 2008, per the contracting office file, submitted a Sole-Source Justification request to purchase the Boston Whaler 345 Conquest from Brunswick at cost of \$300,787. This request was approved by February 6, 2008. (Exhibit 8)
- On February 6, 2008, CO transmitted the Sole-Source Justification to senior attorney in the Departmental Office of General Counsel's (OGC) Contract Law Division, for required review and concurrence since the sole-source request exceeded \$100,000. (The RFQ, since it was a competitive process, did not require OGC review and concurrence.) (Exhibit 8)
- f. Departmental procurement attorney objected to proposed sole-source procurement.
  - Later that day, February 6, 2008, see the emailed CO as as follows:

"I have some problems with the sole source justification:

- I don't understand from the document exactly what NOAA is purchasing the boat for--there appears to be a law enforcement reason for it, but this is not expressly stated anywhere.
- 2. What are NOAA's minimum requirements for the vessel, and why is this exact model the only one that meets the minimum requirements?...The justification seems to praise certain features as desireable, but does not indicate why they are a minimum requirement.

- 3. The first paragraph of #6 is taken virtually a word-for-word from the manufacturer's website. This section does not explain why the allegedly unique characteristics of this boat are the only ones that can meet NOAA's minimum requirements.
- 4. #7 actually contradicts the sole source—it states that other manufacturers do provide features that NOAA requires, and that these are options, which could be priced in a competition.

Overall, the sole source justification needs to more clearly set out what the vessel is for, what NOAA's minimum requirements are, and why only the vessel designated meets those minimum requirements." (Exhibit 16)



"I had a teleconference yesterday [February 7, 2008] with the program official, about my concerns about the sole source for the brand name vessel. I explained that a brand name sole source must be justified by calling out the minimum specs/salient characteristics that the agency requires and then explaining, based on market research, why the brand name model is the only item that meets those specs. Apparently, NOAA's main requirement is that the boat be essentially unsinkable if it is rammed. Market research will have to show that no other similar vessel meets this and other NOAA requirements.

did indicate that other manufacturers may provide vessels that meet NOAA's minimum requirements...A competition is required to determine who ultimately offers the best price/best value among acceptable products." (Exhibit 8)

• On February 15, 2008, following revision to the sole-source justification, with the following:

"...The new version presented by the program office reads like NOAA found the vessel it wants and it is trying to sell it as the best vessel that NOAA could buy. However, this is not the same as justifying a brand name procurement on the basis that this specific vessel is the only one that meets NOAA's minimum requirements. For instance, the first part is titled "Required Unique Features Only Produced by Boston Whaler Manufacturer." Nowhere in this section is there a statement what NOAA's minimum requirement is—instead, this section just describes the hull configuration of the brand name vessel. The "Supplemental Required Vessel Features" section appears to be just a lengthy description of all of the desireable features of the vessel without much indication what NOAA's specifications are and why the Boston Whaler is the only vessel to meet them...

In general, I can't tell from the lengthy description if these are minimum specs. [sic] or if they are specific characteristics of the Boston Whaler and are stated to show that the vessel is the best that NOAA could purchase...

Overall, I would feel better about this if NOAA had drafted minimum specifications without reference to what the Boston Whaler vessel has. Why can't NOAA issue a limited set of minimum specs. and then use that to justify a sole source, or, if appropriate, go forward with a competition." (Exhibit 8)

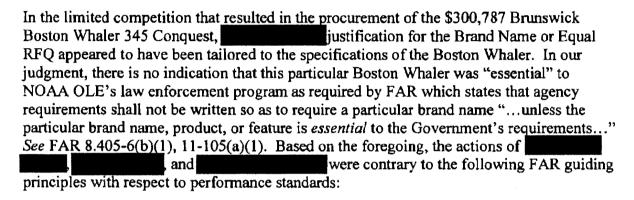
- g. Contracting officer dropped sole-source action when Departmental procurement attorney objected, selecting Brunswick's Boston Whaler 345 from "Brand Name or Equal" solicitation. did not reply to above email or further communicate with him. CO Rather, on February 22, 2008, CO awarded a purchase order for \$300,787.00 to Brunswick for a Boston Whaler 345 Conquest. Brunswick was selected over the bid of another manufacturer-vendor for a comparable vessel (at a cost of \$334,000) in response to previously issued to GSA Schedule vendors on February 1, 2008. the RFQ that CO (Exhibits 8, 17) told us he was unaware that NOAA had procured the Boston Whaler in question because he never heard back from CO following his February 15, 2008, email and was left to assume that vessel acquisition did not occur. He was also unaware that NOAA, at the same time he was communicating with CO and told us that his impression was this was solicited bids through an RFQ. "wired from the start to get that one boat." He further said he considered the originating request from OLE with the vendor's price quote, approving purchase of that specific vessel, along with NOAA's invalid sole-source justification, to violate the Competition in Contracting Act and the Federal Acquisition Regulation. He advised that even though Brunswick was a GSA Schedule vendor, the high dollar amount involved required competition or a valid, approved sole-source justification. said it was clear that NOAA improperly took the Boston Whaler specifications and simply made those their own. He stated that because of the "tailoring to that one boat," the Brand Name or Equal RFQ was "phony" and the award thus tainted. made a "big deal" about the Boston Whaler also stated that being "unsinkable," but, in his view, that was just "thrown in" to justify the vessel and the point was not made. Even had there been a valid sole-source justification, NOAA's Acquisitions office would still have needed to issue a formal solicitation to the vendor. He stated that the circumstances surrounding this acquisition would not have insulated NOAA against a bid protest or other complaint from a vendor. noted that he has encountered problems in the past with CO office and NOAA's
  - CO to told us that did not approve the sole-source justification, but he did not expect to do so, which is why he concurrently issued the "Brand Name or Equal" RFQ to potential GSA offerors and properly made the award on that basis. It was not a "Full and Open Competition," but still a competition in how it was advertised and given that quotes from two vendors were received and considered. As such, he did not need

looking to cut corners. (Exhibit 17)

	review and approval, but added that had approved the sole-source request, he would have canceled the solicitation to GSA Schedule vendors. He confirmed that although Brunswick was a GSA Schedule vendor, the high dollar amount involved required competition or an approved sole-source justification.
	Overreach with his views and authority. Nonetheless, CO told us the way in which OLE submitted the procurement request, with the memorandum approving purchase of the particular boat identified, "jumped the gun" and did not follow proper protocol. CO told us that the customer was anxious to get this boat, but he did not like to see it proceed that way because sole-source acquisitions have to be approved following proper procedures. (Exhibit 18)
•	oversight of the AFF for OLE and coordinated memorandum of request within OLE headquarters; and each indicated a level of mistaken understanding that because Brunswick's Boston Whaler 345 Conquest was listed on the GSA Schedule, it could simply be purchased outright off the Schedule, without competition or involved procedures. (Exhibits 3, 4, 6, 7)
•	stated the following about procuring vessels:
	"I've never seen a format for buying vessels in our agency. I'll tell you, I really wish there was so I could follow it because this isn't something that I was trained to doThere is no formal training process given to us as employees. The only one is learning how to drive a boat and navigate a boat. I've neverbeen in a position to where I've been someone who had to acquire any type of large items. I mean, yeah, maybe I bought a cell phone or something, but [not] anything like this. And I'm not aware of any process in the Office of Law Enforcement.
	My basic understanding, at the timeis that basically we make the suggestion and then it goes out of our hands to another office to actually procure it and make sure it's done in the appropriate manner. And I was never given the impression at any time that I was the deciding official at all, just that I was just someone who's going to give a suggestion." (Exhibit 3)
•	Upon NOAA's purchase, Brunswick delivered the vessel to Canal Boatyard in Seattle on June 3, 2008, for bottom painting and other preparations. who handled the sale for Brunswick, told us that to his knowledge, this was the only Boston Whaler 345 Conquest ever sold to a government agency, and that boats Brunswick sells to agencies typically range from 15'-27'. He also told us that "ram-rodded" the acquisition because the boat was important to him and his agency. (Exhibit 19)

#### **Violations Implicated**

• OLE's documented approval for the \$300,787 AFF-funded purchase of Brunswick's Boston Whaler 345 Conquest, creates, at a minimum, the appearance of violating the Competition in Contracting Act and Federal Acquisition Regulations (FAR) 1.102-2(c) and 11.105. The Act and FAR require that executive agencies use full and open competition unless circumstances permit limited competition or a sole source procurement. See 41 U.S.C. § 253(a)(1)(A)-(B); see also FAR 6.302, 8.405-6 (circumstances permitting other than full and open competition). But, to use sole-source procurement, the agency must have valid sole-source justification in place—in advance of any agency action indicating approval such as occurred in this case.



- FAR 1.102-2(c)(1):

"[Participants in Government acquisitions must] conduct business with integrity, fairness, and openness...An essential consideration in every aspect of the [Federal Acquisition Regulation System] is maintaining the public's trust...accordingly, each [participant in Government acquisitions] is responsible and accountable for the wise use of public resources as well as acting in a manner which maintains the public's trust..."

the subjected NOAA to risk of a bid protest or other complaint that NOAA's limited competition was a sham because OLE had already selected the vendor. Their actions implicate violation of the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR § 2635 et. seq.), including the following provisions:

- 5 CFR § 2635.101(b)(8)

"Employees shall act impartially and not give preferential treatment to any private organization or individual."

- 5 CFR § 2635.101(b)(14)

dated April 23, 2009:

"Employees shall endeavor to avoid any actions creating the appearance that they are violating the law [i.e., the Competition in Contracting Act and Federal Acquisition Regulation] or the ethical standards set forth in this part..."

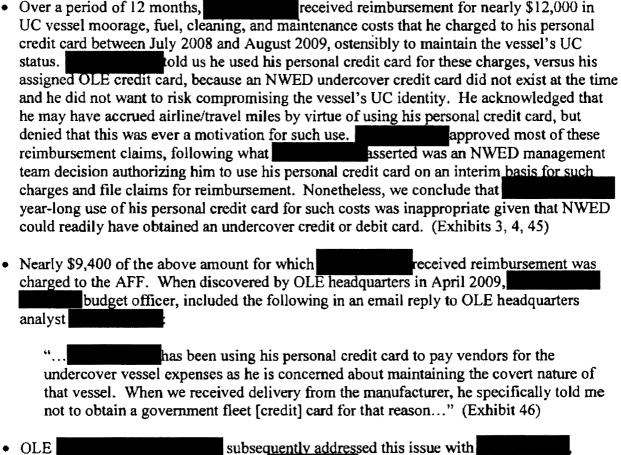
Moreover, OLE policy did not include authorization of AFF expenditures for vessel purchases:

- OLE National Directive No. 53, entitled "Asset Forfeiture Fund--Preapprovals," dated March 2, 1998, which lists 43 categories of items approved for AFF expenditure, does not include authorization for vessel purchase or other costs. (Exhibit 13)

#### 4. Other Relevant Findings:

including the following in an email to

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and

"...[OLE] National Directive 91 prohibits the use of the [Asset Forfeiture] Fund to pay for expenses associated with "routine patrols". Therefore, absent a specific target and sufficient information that results in the initiation of an investigation, [AF] fund can not be used to pay for the operating cost of the undercover vessel...

"I do not agree we should pay normal operating cost for the undercover vessel not specifically associated with an investigation from [AF] fund. Such a practice masks our costs of operations and, in my opinion, complicates and jeopardizes our ability to obtain sufficient funds to operate. In my opinion, routine maintenance, routine moorage, etc. should be funded through base [appropriated funds]..." (Exhibit 46)

In reply. suggested to that a constructive interpretation of OLE policy be considered to use the AFF to pay for UC vessel operational email reply on April 23, 2009, included the following: costs.

"...The [UC] vessel in of itself is inherently only for special operations use in the furtherance of an investigation and given the covert nature of the vessel concealment of ownership through a means of disguise is in furtherance of special operations whether planned or un-planned. It is not intended to ever be used for random patrol or boarding activity. Therefore could we use the [AF] fund in the same manner as if I were to be renting space for a store front in covert nature that was designed to further a covert investigation...And if we agree that the "covert rent" [i.e., moorage] is inherently part of a covert investigation could we not draft an internal directive specific to this operational need that would not necessarily be related to just one single case number but rather a blanket investigative mission description for audit purposes of the [AF] fund?

I truly do not know the answer to this but is [sic] seems comparable and I am willing to follow whatever we determine to be the most appropriate funding code for this vessel." (Exhibit 46)

•	last vouchered UC vessel costs charged against the AFF on April 15, 2009.
	The balance of his reimbursements from that date forward, until his final voucher in August
	2009, were not charged to the AFF. (Exhibit 45)

•	told us that	, his supervisor, directed that the AFF be charged for
	UC vessel moorage and other costs	did not believe that Directive 91
	prohibited such charges and felt the	at since the UC vessel was purchased using the AFF,
	associated operational costs should	similarly be charged to the AFF. (Exhibit 47)

#### **Violations Implicated**

- improperly charged routine UC vessel costs to the AFF, As reflected above. implicating violation of the following:
  - OLE National Directive No. 91, entitled "Asset Forfeiture Fund-Patrols":

- "...The [Magnuson-Stevens Act] language requires reimbursement for expenditures directly related to investigations. As a matter general policy, OLE does not consider routine patrols as "directly related to investigations" therefore, they are not [AF] fundable. Travel to respond to complaints, allegations, or intelligence reports MAY be charged to the [AF] Fund. If a routine patrol results in a specific violation which requires further travel expenditures these expenses are [AF] fundable..." (Exhibit 13)
- OLE National Directive No. 53, entitled "Asset Forfeiture Fund--Preapprovals," which lists 43 categories of items approved for AFF expenditure, does not include authorization for any vessel costs. (Exhibit 13)

#### b. Interference with OIG investigation.

•	At the conclusion of our initial interview of	we specifically	requested the
	following of him:		

"Lastly, our request is that...given the sensitivity of the matters that we're investigating and the need for...operational security, we would like to ask that you not discuss what we've addressed with you here today...with anyone in your organization..."

responded, "Duly noted." b	out shortly thereafter disregarded our request.
Later that same day, according to SA	, alled him and discussed the
substance of our interview earlier that day	, namely the August 2008 trip to the Semiahmoo
Resort, and even queried SA (who	o had not been interviewed) about that trip.
also spoke with SA	shortly following our interview. (Exhibits 3, 29,
36)	

#### Violations Implicated

- Based on our specific request and his position as a senior law enforcement manager and criminal investigator, with ability to recognize the importance of our request, actions implicate violation of the following:
  - Department Administrative Order 207-10, Inspector General Investigations, Cooperation with OIG Investigations:
    - Section 6.03, Failure to cooperate with OIG investigation: "Department officers and employees who refuse to...otherwise cooperate with an OIG investigation may be disciplined."
  - Department Organization Order 10-13, Departmental Policies:
    - Section 4.01: "The officers and employees of the Department shall cooperate fully with the officials and employees of the OIG and shall provide such information, assistance,

and support as is needed for the OIG to properly carry out the provisions of the [Inspector General] Act."

## c. Improper loan of marked putrol vessel to County Sheriff's Office.

•	By Memorandum of Agreement (MOA) dated June 2008
	Sheriff of Whatcom County, WA, entered into an arrangement whereby NWED indefinitely
	loaned its 27-foot Boston Whaler "Short Raker" marked patrol boat in Bellingham to the
	full-time custody of the Whatcom County Sheriff's Office (WCSO), for regular use by that
	locality. This vessel remains in WCSO's custody to date. This arrangement and MOA wer
	not vetted with, and approved by, OLE headquarters, nor reviewed by agency counsel
	relative to such critical considerations as operational responsibility and liability.
	told us proposed the agreement and it seemed like a good idea.
	(Exhibits 3, 4, 48)

#### Violation Implicated

- vessel loan arrangement with the Whatcom County Sheriff implicates violation of the following:
  - Department of Commerce Personal Property Management Manual, Section 2.202, Loan Arrangements with Non-Federal Agencies: "...Loans can be made to local non-federal institutions only in emergencies involving threat to human life or prevention of suffering, until institutions have a reasonable opportunity for the institutions to obtain replacement property."

## d. Minimal operational use of UC vessel to date.

- The UC vessel's operations logbook shows that just nine law enforcement patrol operations (i.e., whale patrols pursuant to the Marine Mammal Protection Act and Endangered Species Act) have been conducted since the boat was delivered in June 2008 to date. The first such patrol occurred in July 2009—over a year after the vessel was acquired—and the last patrol took place in September 2010.
- The UC vessel was operated for a total of just 119 hours through September 20, 2010, the date of the last logbook entry. At the time of its transfer from to in September 2008, the vessel had been operated for approximately 40 hours, which failed to log. The logbooks and our interviews reflect that operational time has been limited by numerous maintenance and mechanical problems, including fuel leaks and malfunctioning navigational equipment, as well as based on NWED staffing constraints. As of our initial interview, had not seen the UC vessel in-person, despite it being moored less than a half-hour from her office. (Exhibits 4, 49, 50)

## e. Engine failure (explosion) attributable to operator error.

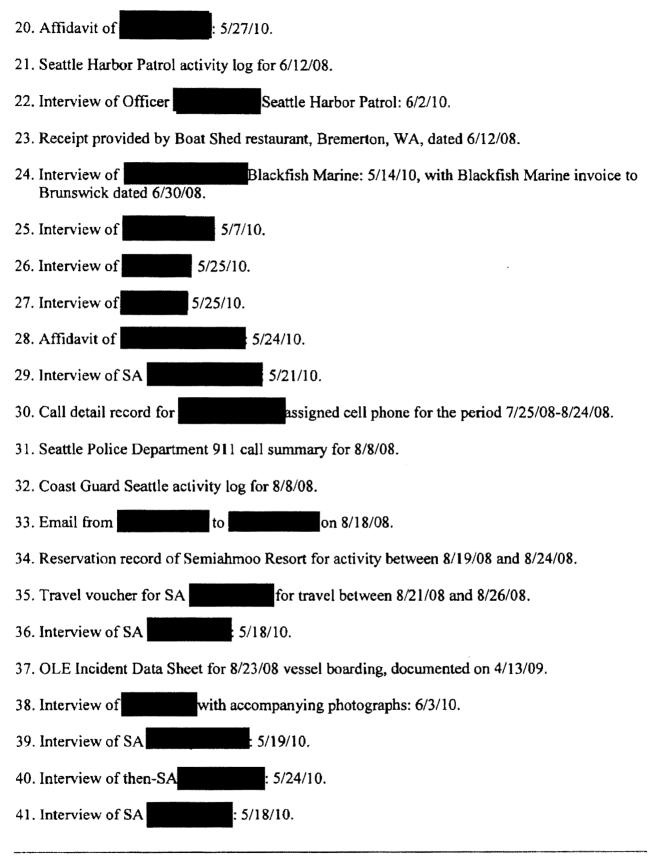
•	On Friday, August 22, 2008, while enroute to the Semiahmoo Resort in Blaine, WA
	(addressed in 2d above), the UC vessel experienced catastrophic failure (explosion) of its
	port engine, necessitating replacement. This failure was found to be consequent to operator
	error; specifically, an incident that occurred on the UC vessel's last operation on about
	August 14, 2008, during which, as the vessel abruptly slowed coming off of plane,
	inadvertently shifted the throttle into reverse, causing water ingestion in the port
	engine. Although Clearwater Marine of Bellingham pumped out the water and the engine
	was restarted, Clearwater Marine concluded that this incident precipitated the catastrophic
	failure during the vessel's next operation. Of Clearwater Marine, who interacted
	solely with on this matter, advised us that was candid about how
	the water ingestion occurred. Despite the finding of operator error. Mercury replaced the
	engine, costing approximately \$10,000, under warranty, which
	in the interest of good customer relations. (Exhibit 51)

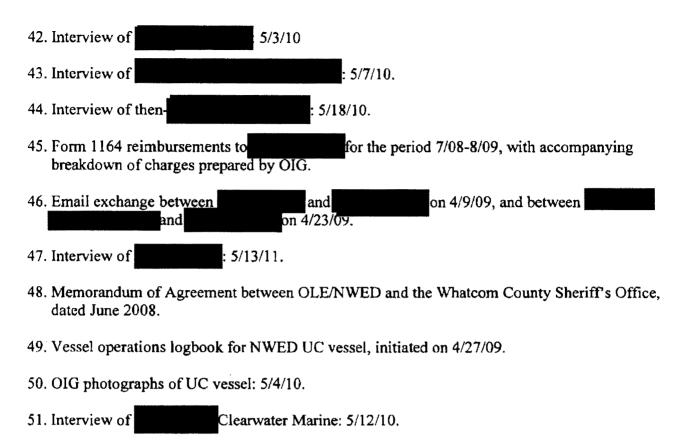
## **Prosecutorial Determination**

On May 31, 20 <u>11, th</u>	<u>e U.S. A</u> ttorney's Office for the District of Maryla	nd declined criminal
prosecution of	in favor of administrative remedies. AUS	SA
specifically recomme	ended administrative action be pursued against	and that the
Government be made	whole for the cost of fuel and time attributable to	reported
misconduct involving	g the UC vessel. (Exhibit 52)	

#### Index of Exhibits

- 1. Draft OLE headquarters report of NWED inspection, last revised in 12/09, with accompanying 2/5/10 transmittal memorandum from
- 2. NWED Procurement Request for 27' Seaswirl Model 2901 to be purchased from Camano Marine, with accompanying memoranda dated 2/21/06, 2/16/06, and 1/4/06.
- 3. Interview of : 5/6/10, 5/21/10, 5/25/10.
- 4. Interview of 5/6/10, 5/7/10, 5/26/10.
- 5. Interview of : 6/8/10.
- 6. Interview of : 8/4/10
- 7. Interview of 4/13/11.
- 8. Procurement file (ref. Boston Whaler 345 Conquest) of NOAA with accompanying NWED memoranda dated 10/18/07 and 10/26/07.
- 9. Email from to to to the second on 1/9/08, with accompanying memorandum dated 1/9/08.
- 10. Interview of SA : 6/4/10.
- 11. Interview of : 6/3/10
- 12. Procurement file (Re: SafeBoat procured for FLETC).
- 13. OLE policy directives 53 and 91, Re: Asset Forfeiture Fund.
- 14. NWED procurement request for Boston Whaler 345 Conquest, dated 1/17/08.
- 15. Request for Quotations for "One Boston Whaler 345 Conquest or Equal," dated 2/1/08.
- 16. File of DOC Senior Procurement Attorney, Re: Boston Whaler 345 Conquest.
- 17. Interview of \$\frac{6}{9}\frac{10}{10}, \frac{7}{14}\frac{10}{10}.
- 18. Interview of Contracting Officer, 4/22/11.
- 19. Interview of and the products, Brunswick Commercial and Government Products, Inc.: 5/12-13/10.





52. Prosecutorial declination, U.S. Attorney's Office for the District of Maryland: 5/31/11.

## All Redactions Pursuant to b(7) (c)



## UNITED STATES DEPARTMENT OF COMMERCE Office of Inspector General

Washington, D.C. 20230

MEMORANDUM FOR:

Ann Eilers

Principal Assistant Inspector General for Audits & Evaluations

FROM:

Rick Beite!

Principal Assistant Inspector General for Investigations

DATE:

February 22, 2012

REF:

**ACTION MEMORANDUM - REFERRAL** 

RE: DOC Procurement Integrity OI Case FOP-WF-12-0333-P

On January 9, 2012, the Office of Investigations (OI) received information from

alleging a variety of complaints concerning potential contract irregularities and mismanagement within OAM. We subsequently received corroborating accounts of many of these issues through interviews with current and former OAM employees, including managers, who provided specific information on contracts where the irregularities have occurred.

Our investigation has not identified any criminal activity, but has identified potential systemic management and procurement problems within OAM. Accordingly, this matter is being referred to OAE for a review of the specific issues identified during the course of this investigation. They include the following:

- 1. <u>Ambit Contract:</u> Anti-Deficiency issue; conflict of interest and improper practices on technical review aspect of award; and directing contracts/anti-competition practices.
- 2. Accenture Contract: Directing contracts/anti-competitive practices (sham competition); ill-defined deliverables; circumventing small business contracting goals.
- 3. MSI Contract: Directing contracts/anti-competitive practices (sham competition); circumventing small business contracting goals.
- 4. <u>Metrica Contract</u>: Use of Non-Personal services contracts for what were really personal services contracts, which are not an authorized form of contracting at DOC; government personnel directing contractor hiring and practices; potential double billing by individuals under contract with OGC's Commercial Law Litigation Program (CLDP), but would also obtain payment from MSI under the logistics contract; improper use of

contract funds to purchase furniture, computers and other office equipment; improper donation of government owned equipment to foreign nationals.

- 5. **EDMS Contract**: Improper exercise of options in a contract.
- 6. Repetitive Unauthorized Commitments: The OGC flaunted policy and direction repeatedly, causing first a misuse of the purchase card, then when that was cut off, engaging in anti-deficient actions requiring after-the-fact purchase orders to ratify the unauthorized acts.
- 7. Poor Procurement Practices: A generalized allegation across the board of sloppiness; poorly written statements of work, often with no evaluation criteria; failure to adequately compete work; willful blindness to the FAR in the name of customer service (i.e., yielding to client pressure); and an OGC procurement office that is complicit, which not only allows the poor practices to persist, but actually covers them up by unreasonable legal arguments to attempt to justify OAM practices.

Attached to this referral are the interview reports relevant to this matter, and which should help with an understanding of the issues. If you have any questions, or need further investigative assistance, please feel free to call Acting Special Agent in Charge (202) 482.

Attachments: Ol Case File 12-0333

cc: Todd J. Zinser, Inspector General
Wade Green, Counsel to the Inspector General

## All Redactions Pursuant to b(7) (c)



#### UNITED STATES DEPARTMENT OF COMMERCE Office of Inspector General

Washington, D.C. 20230

MEMORANDUM FOR:

File

FROM:

Acting SAC

DATE:

February 22, 2012

REF:

**ACTION MEMORANDUM - CLOSURE** 

RE: DOC Procurement Integrity OI Case FOP-WF-12-0333-P

On January 9, 2012, the Office of Investigations (OI) received information from

alleging a variety of complaints concerning potential contract irregularities and mismanagement within OAM. We subsequently received corroborating accounts of many of these issues through interviews with current and former OAM employees, including managers, who provided specific information on contracts where the irregularities have occurred. They include potential anti-deficiency act violations and routine disregard for the Federal Acquisition Regulations (FAR). (Serials 1-6)

Our investigation has not identified any criminal activity, but has identified potential systemic management problems within OAM. Per a discussion with IG Zinser on February 7, 2012, this preliminary matter is being closed in favor of a referral to the Office of Audits & Evaluations (OAE) to initiate a review of the specific issues identified during the course of this investigation.

Approved: Rick Beitel, PAIG

2/22/2012



## REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER: FOP-WF-10-0126-1
	TYPE OF REPORT  Interim

#### **BASIS FOR INVESTIGATION**

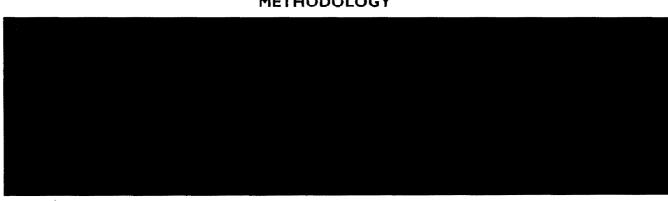
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Distribution: OIG X Bureau/Organization	on/Agency Manageme	ent DOJ: Other (specify):	
Signature of Case Agent:	Date:	Signature of Approving Official	Date:
	3/21/12		3/21/11
Name/Title:		Name/Title:	
Special Agent		Acting Special (Agent in Cha	rge

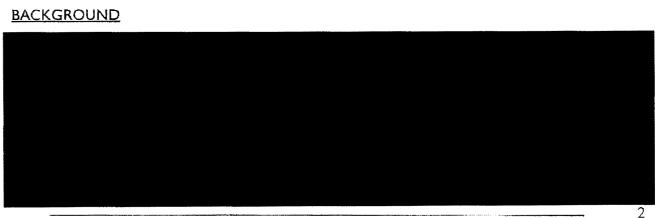
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# OFFICE OF INSPECTOR GENERAL **RESULTS/SUMMARY OF INVESTIGATION**

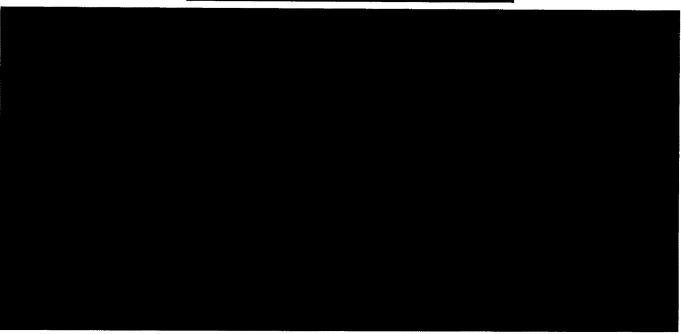




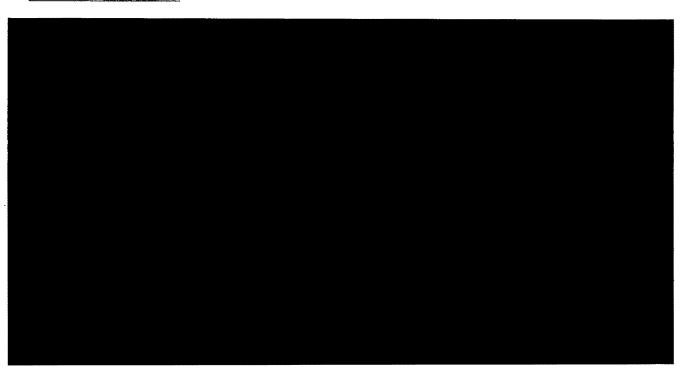
#### **DETAILS OF INVESTIGATION**



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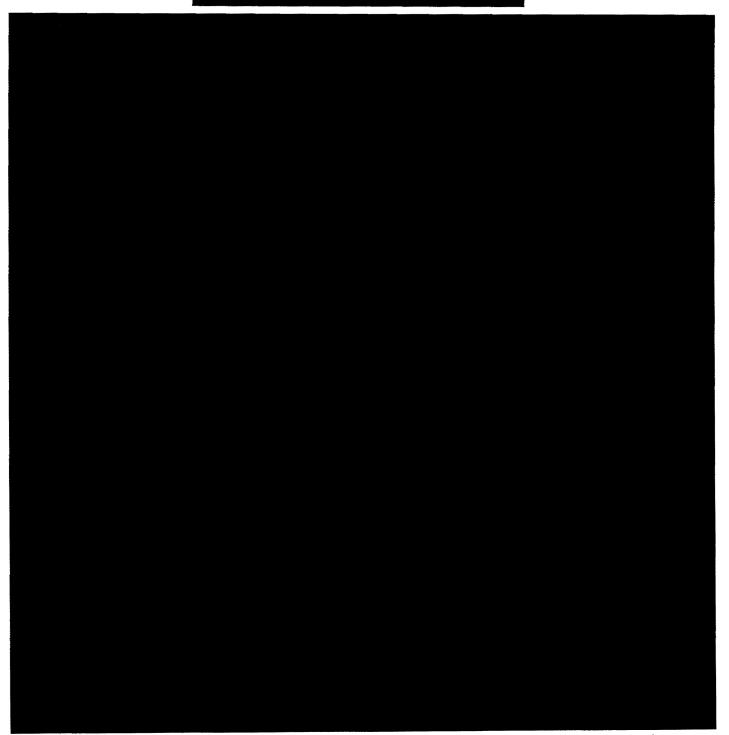


## Process and Procedures



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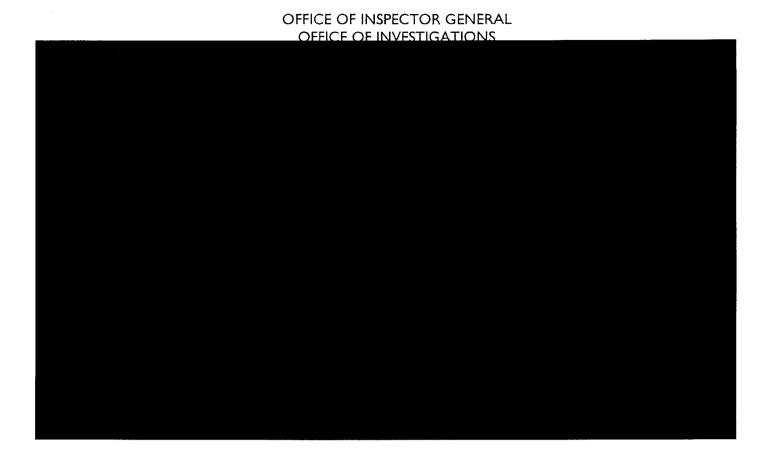


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FILE NUMBER:



CASE TITLE:

# OFFICE OF INSPECTOR GENERAL OFFICE OF INVESTIGATIONS

## REPORT OF INVESTIGATION

		FOP-AF-11-0441-1
International Trade Administration (former)		TYPE OF REPORT  Interim Final
В	ASIS FOR IN	NVESTIGATION
General (OIG). The forwarded from TA e-mail account the e-mail, stated he was pursue non-government employs stated, "I started my own congovernments and companies, and investment issues." Expense of prequirements; including their atternal expenses.	a copy of an accept of an accept of an accept of accept	ivate consultant effective 2011.  cany and landed several contracts with foreign anies to help them with international trade and w company would be assisting and representing anies' international trade expansion and licensing the U.S. market.  also noted, "I would be ies require assistance on international trade and
Distribution: OIG _x Bureau/Organization/Agency Management _X DOJ: Other (specify):		
Signature of Case Agent:	Date:	Signature of Approving Official: Date:
Name/Title: / Special Agent		Name/Title:  Acting Special Agent in Charge

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# OFFICE OF INSPECTOR GENERAL OFFICE OF INVESTIGATIONS

raised the following concerns in his DOC OIG hotline complaint:
(I) violated post-employment regulations by receiving free office space from one of primary clients;
(2) may have made copies of the database, the ITA's Client Tracking System (CTS), for personal use;
(3) is representing the Government of Queensland, Australia and may be acting as a Foreign Agent without proper registration;
(4) solicited business for his new company, from subordinate employees while still employed at the and
on 2011, while was still allegedly employed with the ITA.
complaint contained both criminal and administrative allegations against Due to the fact that is no longer employed by the Department of Commerce and therefore not subject to administrative sanction; the investigation focused only on resolving the three criminal allegations as denoted below:
Allegation #1) 18 USC §201(c), Bribery of Public Officials and Witnesses
- Did receive a gratuity from in the form of free office space for or because of an official act?
This criminal statute contains five elements that need to be substantiated in order to prove a violation. A (I) public official must (2) directly or indirectly demand, seek, receive or accept, agree to receive or accept, (3) anything of value for (4) himself/herself (5) for or because of an official act performed or to be performed by said official. Intent is not required to prove that the public official received a gratuity.
Allegation #2) 18 USC §641, Theft and Embezzlement of Public Money, Property or Records
<ul> <li>Did to the steal proprietary ITA information from the ITA's CTS for his private financial benefit?</li> </ul>
This criminal statute contains three elements that need to be substantiated in order
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to prove a violation. The alleged violator (1) voluntarily, intentionally, and knowingly (2) stole property belonging to the United States or any department thereof (3) with the intent to deprive the United States of the use or benefit of the property so taken.

Allegation #3) 22 USC §612-618, Pertinent Sections of the Foreign Agent Registration Act

knowingly and willfully fail to register PIC as a Foreign Agent while under contract as a private consultant to the Government of Queensland?

This is not a criminal statute but it does contain criminal provisions if individuals who fall under its authority do not follow the requirements of the Act. The statute states, "No personal shall act as an agent of a foreign principal unless he has filed with the Attorney General a true and complete registration statement and supplements thereto as required by subsections (a) and (b) of this section or unless he is exempt from registration under the provisions of this subchapter. The single element of proof is whether an entity registered as a Foreign Agent, if required to, under the Act.

#### RESULTS/SUMMARY OF INVESTIGATION

All three criminal allegations were not substantiated. was a public official when he agreed to receive (and Allegation #1: provide) free office space valued at approximately \$6,000 per month. We were not able to identify an official act related to the receipt of the space and thus the burden of proof for a violation of this statute was not met. Allegation #2: claimed he manually entered all of the e-mail addresses in his 2011, e-mail from business cards he had collected during his tenure with the The CTS does not track when individuals export information, such as e-mail addresses, from the system and thus there was no evidence to refute statement. No witnesses saw export and abscond with information from the CTS. Therefore, the burden of proof for a violation of this statute was not met. is a private business consultant with the Government of Queensland Allegation #3: assists GOQ in garnering foreign investment in, and exporting, Queensland's coal seam gas (CSG) and liquefied natural gas (LNG) resources. does not participate in any political activities related to GOQ. As such, from registering as a Foreign Agent under this statute and is not in violation of the Foreign Agent Registration Act. 3 FOR OFFICIAL USE ONLY

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#### **METHODOLOGY**

This case was conducted through a witness interviews and reviews of documentation including electronic mail, public domain documentation, and internal correspondence and/or documents from the ITA,

#### **DETAILS OF INVESTIGATION**

On 2011, International Trade Administration (ITA) submitted a complaint to the DOC OIG Hotline. received, indirectly, a forwarded copy of an e-mail sent by a copy of
On 2011, we interviewed who stated his complaint centered on the five previously mentioned allegations.
Allegation #1: In the same e-mail dated 2011, stated, "Through the generosity of I will office with them. That address is stated misspelled the company's name which is actually stated was one of former ITA clients. believes violated conflict of interest statutes in that it appears had arranged to receive free office space from prior to leaving the ITA. (Attachments I and 2)
Allegation #2: stated he believed made a copy of the Client Tracking System (CTS) database and is using the database for personal gain. tated the CTS has an export function in which into another format such as Microsoft Excel. did not have any definitive evidence has a personal copy of the CTS database or is using the database for personal gain estimated the CTS tracks approximately 3,600 ITA clients. (Attachment 2)
Allegation #3: In his 2011, e-mail, stated, "My initial contract is with the Government of Queensland (GOQ), Australia, where I will help attract foreign investment to the \$80 billion in LNG facilities they plan to build over the next several years." alleged this statement leads the reader to believe was under contract with the GOQ prior to terminating his employment with the ITA.
While complaint also included allegations concerning administrative violations, they were not addressed in

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# OFFICE OF INSPECTOR GENERAL OFFICE OF INVESTIGATIONS

foreign governments are required to be registered with the Department of Justice.  stated he does not believe the state of
Over the period July 5-6, 2011, OIG received several e-mails and documentation from identifying nearly the exact same concerns (i.e. allegations) as (Attachment 3)
(1) Did receive a gratuity from in the form of free office space for or because of an official act?
NOAA Workforce Management Office (WMO) Human Resources Specialist verified inclusive dates of employment with the ITA were formed inclusive dates of employment with the ITA were 2011, while he was still officially employed with the provided an e-mail letter of resignation to National Field Director on stated required he take annual leave from the time he submitted his letter of resignation until his last official day of employment, 2011. (Attachments 4-6)
According toinkedln² social media webpage,
Articles of Incorporation on file with the Secretary of State denote that is a professional corporation organized for the practice of certified public accounting. The Registered Agent was
As managed the "financial services" clients which included verified as one of his most active clients, characterizing is a "top 10" client. former position as the
<sup>2</sup> Accessed from http://www.linkedin.com/pub
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position as (Attachment 8)	proximately once a week as required by his
admitted to discussing possible employment both verified had contacted never made an offer of employment to attachments 8 and 11)	s early as 2007. and and on inquire about working at ever been employed by
In or around 2011, informed starting his own consulting company.  using office space for	that he was leaving the and was began discussing the possibility of brovided three e-mail strings in which engaged in office
access business once he physically arrives. I am OK of expect to be able to accommodate him for the initial we need the space - I don't expect either to be a proban e-mail to the space on the space of	wrote to tating, "I think we offer dit otherwise. We can figure out his internet on the timeline and will let him know that we term, unless we can't (ie) he misbehaves or blem. You OK with that?" atter sent e stated, "I will probably start working out of eement for to occupy office space square foot office, free parking and a garage he did not have to pay a pro-rata portion of be \$40 per square foot or \$6,000 (which
<sup>3</sup> The following information was obtained from	

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utilized the office from 2011 until December 2011, when he learned of this investigation. The total value of the free office space over the six-month period was \$24,000. (Attachment 8)
There was no evidence or witness testimony identifying interactions with was outside of his official duties as admitted to providing export assistance to clients and admitted to requesting export assistance for clients from Providing export assistance is the mandate of the was performing his official duty when providing export assistance to Attachments 8 and 11)
2) Did steal proprietary ITA information from the ITA's CTS for his private financial benefit?
During interview, he admitted that he did not have any verification that government information for his personal benefit. See believed, but did not have any proof, that used the CTS to generate the distribution list for 2011, e-mail.
employee pined the distribution list on 2011 e-mail looked as if it was derived from CTS. ppined was not very adept at or savvy with CTS. personal e-mail and his PIC e-mail in the "Cc" block, thereby sending the entire list of several hundred e-mail addresses in the "To" block to both of his private e-mail accounts. (Attachments 2 and 16-18)
When questioned by the OIG, stated he manually typed in every e-mail address in the "To" block on his career with the laimed to maintain albums of business cards.  adamantly denied using the C15 to generate the e-mail addresses contained in his mail.
We spoke with CTS. Stated CTS does not have the functionality to track when a user has exported information from a client file. Therefore there was no way for us to verify if not export client contact information from the CTS. Composed the CTS in the claim that he manually entered information from business cards in his possession. (Attachment 19)
We spoke with DOC Office of General Counsel, who stated the ethics rules for ITA are located at http://www.commerce.gov/os/ogc/ethics-law-and-programs-division. We obtained a copy of the 2011 Summary of Ethics Rules, U.S. and Foreign Commercial Service International Trade Administration <sup>4</sup> . On Page 3, under the Misuse of Government Position and
www.commerce.gov//2011//ita-fcs_summary_of_ethics_rules_2011

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7

# OFFICE OF INSPECTOR GENERAL All Redactions Pursuant to b(7) (c) OFFICE OF INVESTIGATIONS

Resources section, the document states, "You cannot use your U.S. Government authority, including business contacts obtained through employment, for personal activities." e-mail was sent one day prior to his final day of employment with the USCS. Stated he has not used any of the contact information contained within his would do so "if the situation presented itself." It would not deprive the possible of the business contact information as client contact information is maintained within the CTS. The burden of proof demonstrating a violation of 18 USC §641 has not been met. In addition, is no longer employed by the state and is therefore no longer bound by 5 CFR §2635.101 Basic Obligation of Public Service (i.e. misuse of his government position) from which policy guiding the Misuse of Government Position and Resources was derived. (Attachments 8 and 20)
private consultant to the Government of Queensland?
does not represent GOQ before any federal or state entities nor does he engage in political activities for or on the behalf of GOQ. entered into a contract with the GOQ on 2011, for \$90,000 per year for two years to perform the following services (Attachments 21 and 22):
A) Identify and provide at least three qualified leads of LNG-Gas supply chain companies within North America interested in investing in Australia per month for two years. Must identify and provide senior level appropriate contacts within these companies.
B) Successfully set up at least 10 meetings based from companies on this list with the appropriate senior level of executives within these companies.
C) Submit monthly report including list of companies met, detail of discussions, outcomes and market intelligence.
D) Assist with various relevant Ministerial and Senior Officer enquiries (sic) (up to 20 for the period) and Ministerial and Senior Officer visit preparations (up to six for the period).
E) Assist with other Trade and Investment Queensland-related tasks in special circumstances on request from the Commissioner – the Americas.
22 USC §613 provides an exemption to the Foreign Agent Registration Act if the entity in question agrees to engage "in private and nonpolitical activities in furtherance of the bona fide trade or commerce of such foreign principal." Priestley's contract with GOQ to find investors and investment opportunities in the CSG to LNG supply chain exempts om having to register as a Foreign Agent.
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#### **FINDINGS**

(1) Did receive a gratuity from the form of free office space for or because of an official act?
a U.S. government official, directly and personally received \$24,000 worth of free office space from began negotiating with in or around 2011, for the use of the free office space while he was employed with the but after he had tendered his resignation on 2011. When he was no longer employed with the We were unable to identify any official act performed by which was not within the scope of his employment with the graph or which provided a benefit or preference to not afforded to other clients. Therefore, there is no evidence to support the alleged violation of 18 USC §201(c) and it will not be referred for prosecution.
(2) Did teal proprietary ITA information from the ITA's CTS for his private financial benefit?
There was no evidence showing made copies of or exported information from the CTS for his personal use. Stated he manually entered all of the e-mail addresses in the "To" block of his career with the Although voluntarily, intentionally, and knowingly sent contact information from the business cards to his personal account for future private business use; he did not deprive the United States of the use or benefit of the information as the information is also contained within the CTS. Therefore, there is no evidence to support the alleged violation of 18 USC §641 and the alleged violation will not be referred for prosecution.
(3) representing the Government of Queensland, Australia and may be acting as a foreign agent without being properly registered.
s exempted from having to register as a Foreign Agent under the Foreign Agent Registration Act. Therefore, there is no evidence to support the alleged violation of 22 USC §612-618 and the alleged violation will not be referred for prosecution.
9

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#### **TABLE OF ATTACHMENTS**

Attachment	Description	Serial
1_	2011 E-mail	13
. 2	RF, 2011	
3	DOC OIG Hotline Complaint, July 5, 2011	
4	August 30, 2011	
5	Certificate of Formation, 2011	27
6	Resignation E-mail, 2011	41
7	LinkedIn Profile, January 27, 2011	49
8	RF, January 19, 2011	40
9	Articles of Incorporation, December 1992	
10	ranchise Tax Public Information Report, 2010	
II	IRF, January 20, 2012	
12	E-mails Provided by	
13	E-mails Provided by	
14	Office Space Agreement, 2011	
15	RF, January 20, 2012	
16	F, December 6, 2011	
17	RF, December 6, 2011	
18	RF, December 6, 2011	
19	E-mail, January 27, 2011	
20	Summary of Ethics Rules, 2011	
21	Contract with the Government of Queensland, 2011	3
22	Signed Contract Between nd GOQ, 2011	4

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## REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER: HQ-HQ-12-0162-1	
PTO Procurement Process Questioned U.S. Patent and Trademark Office Alexandria, VA	TYPE OF REPORT  Interim   Final	

#### **BASIS FOR INVESTIGATION**

On November 15, 2011, our office received allegations that the U.S. Patent and Trademark Office (USPTO), had improperly sole-sourced a contract for transit vouchers, and that USPTO officials had made false statements in support of that sole-source award.

#### **RESULTS/SUMMARY OF INVESTIGATION**

Our investigation found that although USPTO failed to post the sole-source award notification to the Federal Business Opportunities website, as required in the Federal Acquisitions Regulations (FAR) §6.305, this was a clerical error, and there was otherwise no evidence to substantiate the allegation that USPTO sole-sourced this contract in violation of the FAR.

#### **METHODOLOGY**

This investigation was conducted through interviews and document review, including electronic mail and public domain documentation.

Distribution: OIG x B	ureau/Organization/Agency Managem	ent X DOJ: Other (specify):	
Signature of Case Agent:	Date: 5/29/12	Ciamona of Assessing Officials	Date: 5/29 /12
Name/Title:		Name/Title:	
Special Agent		Acting SAC	

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4

2

#### **DETAILS OF INVESTIGATION**

On November 15, 2011, our office received a complaint from Edenred USA, a transit fare media provider, alleging that USPTO had improperly sole-sourced a contract in the amount of \$2,077,800 for transit fare media to be used in the Washington, D.C. and Detroit, Michigan metro areas. It was alleged that USPTO's use of the "only one responsible source" justification for sole-sourcing the award was improper, as Edenred USA stated they were also capable of providing this service, and there had not been a request for quotes placed on the Federal Business Opportunities website, as required by the FAR. (Attachment 1)

Upon receiving the complaint, we obtained and analyzed the sole-source award to Tranben LTD, Contract #DOC50PAPT1200012. The contract was for the provision of paper transit fare vouchers, which USPTO provides to its employees as a transit benefit;<sup>2</sup> the contract terms provided an initial term of one year, with an option to renew on November 1 of each year in the following four years, for a full performance amount of \$2,077,800. We reviewed the contract with regard to relevant portions of the FAR, and found the contract to be substantially in compliance; the only deficiency being that USPTO failed to post the notification of the solesource award to Tranben on the Federal Business Opportunities website, as required by FAR Supervisory Contracting Specialist, USPTO, explained that USPTO maintains its own website for acquisitions,3 and that Contract Specialist, USPTO, had misunderstood an instruction from a meeting, and incorrectly thought that posting to USPTO's site was a substitute for posting to Federal Business Opportunities. The posting of the sole-source award on the Federal Business Opportunities website is for a 30 day period to allow other companies to challenge the sole-source award if the company does not feel the sole-source award is justified. There is no retroactive remedy for this oversight. (Attachments 2 - 4)

We subsequently interviewed each of the USPTO officials involved in this requisition process. The original requisition request came from Stated that he learned on May 10, 2011, that effective December 31, 2011, the Washington Metropolitan Area Transit Authority (WMATA) would discontinue acceptance of paper transit vouchers. This discontinuation had the potential to create a disruption in the provision of transit benefits to USPTO's new employees, as paper vouchers were the only option for providing transit benefits to a new employee on their first day (employees may have to wait up to two months before employees are enrolled in and able

<sup>2</sup> Paper transit vouchers are paper tickets issued by USPTO to its employees, which may be exchanged for tickets to use the various D.C.-area transit services, including the Washington Metropolitan Area Transit Authority (WMATA), Virginia Railway Express (VRE), and MARC (which serves to connect the Maryland region with D.C.).

<sup>3</sup> www.uspto.gov/about/vendor info/current acquisitions/index.jsp.

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<sup>1</sup> www.fbo.gov.

to use USPTO's electronic transit benefit system). explained that although WMATA would continue to accept vouchers through December 31, 2011, after November 30, 2011, WMATA would not refund the value of any previously purchased transit vouchers, meaning USPTO needed a replacement voucher in place by November 1, 2011 explained that because the replacement company's vouchers would need to be integrated into USPTO's electronic transit system, a few weeks of reprogramming time would be required, thus moving the deadline up further, to October 2011. (Attachment 5)
WMATA, he was also beginning the process of obtaining transit vouchers for use in Detroit, Michigan, where USPTO was preparing to open a satellite office. Determined it would be most efficient to find a company providing paper transit vouchers accepted by transit authorities in both the D.C. and Detroit-metro areas. The market research, which was conducted by visiting the websites of each relevant transit authority to determine which paper transit fare vouchers were accepted in both markets, showed that only one company, Tranben LTD, produced vouchers that were currently accepted in both did not research the process that a company would pursue to establish a relationship to enable their vouchers to be accepted because, in his experience, working with transit authorities was a time-consuming effort, and he presumed that getting vouchers accepted would be a lengthy process. Further, given that he had only approximately five months to put a replacement into place, found it unlikely that a company could establish a relationship with each transit authority in the time remaining. (Attachment 5)
Email correspondence provided by USPTO contracting officials show that was aware of and preparing for the discontinuation of WMATA's vouchers as early as March 2011. contacted about the requisition on April 15, 2011. Further, email correspondence showed that the beautiful had been conducting market research as early as September 2010, having been in contact with a Tranben, LTD representative about the markets in which their vouchers were accepted. (Attachment 6)
the contract specialist assigned to this requisition, was contacted in April 2011 by and told that the request was to sole-source the contract award to Tranben, LTD, as they were the only company capable of fulfilling the request. Following this request, took steps to verify the accuracy of request, which she did by visiting the websites of, and calling officials at, the same transit authorities that ounce research to be accurate and determined that Tranben, LTD was the only company currently providing a paper transit fare voucher accepted in both the D.C.
tated that he visited the websites for Commuter Direct, the main voucher exchange service for the D.C. area, and the three Detroit-area authorities: the Detroit People Mover, Suburban Mobility Authority for Regional Transportation (SMART), and Detroit Department of Transportation (DDOT).

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and Detroit areas. did not research the process of a company establishing a relationship with the various transit authorities for acceptance of their paper vouchers, nor was there a discussion of having the contract be subject to full and open competition. (Attachment 7)
manner that had, and found it sufficient and accurate. Explained that as part of their standard process, she and review the market research provided by the USPTO official(s) requesting a requisition, but that they rely in large part on those submitting the request to be the subject matter experts in, and to provide an accurate picture of, the market involved. It is greed with that given the time constraints, there was no time to subject the contract to full and open competition. (Attachment 4)
Following the sole-source award to Tranben, LTD, USPTO was contacted by the complainants in this case, and began a dialogue regarding the award of this contract. Once contacted, USPTO reviewed the award of this contract and determined that even if they were to re-open this contract to full and open competition, they would still select Tranben, LTD based on the small-business justification. Further, they determined that Edenred, USA would not have been capable of fulfilling this contract because Edenred, USA vouchers were not being accepted at any of the Detroit-area transit authorities. (Attachments 4 and 8)
Contact with the various transit authorities verified that Tranben, LTD, at the time of requisition, was the only company with paper transit fare vouchers accepted by transit authorities in both the D.C. and Detroit-metro area. (Attachment 9)

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4

#### **TABLE OF ATTACHMENTS/INDEXES**

Attachment		Description	IG-CIRTS Serial Index
	Initial Complaint		2
2	IRF-Review Tranben Contract		8
3	Tranben Contract		7
4	IRF-Interview	January 5, 2012	16
5	IRF-Interview	nuary 4, 2012	15
6	Market Research/Procurement Emails		19
7	IRF-Interview	iary 18, 2012	19
8	IRF-Interview	January 5, 2012	17
9	IRF-Interview Trans	it Authorities, March 2, 2012	21

5

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## REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER:	
REVIEW OF NOAA FISHERIES ENFORCEMENT	PPC-SP-10-0247-V	
PROGRAMS AND OPERATIONS  National Oceanic and Atmospheric Administration (NOAA)  Washington, DC	TYPE OF REPORT  Interim   Final	

#### **BASIS FOR INVESTIGATION**

On June 2, 2009, Jane Lubchenco, Under Secretary of Commerce for Oceans and Atmosphere and NOAA Administrator, requested DOC/OIG conduct a nationwide review of the policies and practices of NOAA's Office of Law Enforcement (OLE) and General Counsel for Enforcement and Litigation (GCEL) in response to a Congressional inquiry that had been submitted to her office. On May 1, 2009, Lubchenco received a request from the following members of Congress to investigate allegations of excessive penalties and retaliatory actions by OLE in the Northeast Region of the National Marine Fisheries Service: U.S. Senator Edward Kennedy (D-MA), U.S. Senator John Kerry (D-MA), U.S. Representative John Tierney (D-MA), U.S. Representative Barney Frank (D-MA), and U.S. Representative William Delahunt (D-MA). On June 19, 2009, DOC/OIG established a team to analyze and address the issues of the complaint.

#### **RESULTS / SUMMARY OF INVESTIGATION**

We issued four reports during 2010 based upon our review of NOAA Fisheries Enforcement programs and operations, resulting in a total of twenty-nine (29) administrative actions, including revised rules and regulations and new policies and procedures. In addition, DOC IG Todd J. Zinser has testified (to date) before four Congressional Hearings regarding our findings and recommendations as well as NOAA's corrective actions. There have been several significant spin-off cases which DOC/OIG/OI has conducted: two completed investigations have resulted in various personnel actions (i.e., suspensions and downgrades, reassignments and transfers, reprimands and a

Distribution: OIG X Bureau/Organiza	tion/Agency Man	agement DOJ: Other (specify):	
Signature of Case Agent:	Date:	Cia-ture of Assertion Officials	Date:
			5/24/12
Name/Title:  pecial Agent, HQ Operations		Name/Title: Acting Special Agent in Charge	

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retirement); one investigation is currently pending a formal response from NOAA regarding our recommendation for appropriate administrative action; and two other active investigations, both of which were referenced by DOC IG Zinser during his most recent Congressional testimony. Finally, DOC IG Zinser also briefed a panel of United States Attorneys, who also served as members of the Attorney General's Advisory Committee (AGAC) Environmental Issues Working Group, regarding the results of our review and the corrective actions that have been undertaken by NOAA.

#### METHODOLOGY

Our review was conducted by a multi-disciplinary team of OIG staff with varied areas of expertise, including criminal investigation, forensic audit, risk analysis and program evaluation. Our review of NOAA Fisheries Enforcement Programs and Operations was conducted to determine the following: I) Evaluate how OLE and GCEL conduct enforcement operations in a regulatory environment; 2) Evaluate the process used by NOAA's OLE and GCEL offices to establish priorities with respect to enforcement actions and penalty assessments, and whether enforcement actions and penalties are carried out and/or levied within parameters established by guideline, regulation, and penalty schedules; and 3) Evaluate the resources applied by NOAA to the enforcement function, including the overall accounting, management, and use of funds it obtained through penalties assessed and received. As we noted at the outset of the review, it was anticipated that the work would be conducted in phases and the findings reported incrementally, as appropriate.

This inquiry was completed via (1) interviews with fisherman, boat captains, boat owners, fish dealers, association members, management council officials, and defense attorneys; (2) interviews with DOC employees, particularly OLE, GCEL, NMFS and NOAA; (3) meetings with government officials from other federal regulatory enforcement agencies, such as the Environmental Protection Agency; the Department of Interior – Fish and Wildlife Service; and the DOC – Bureau of Industry and Security, and the review of their policies and procedures; (4) review of Department of Justice guidelines regarding certain enforcement techniques; (5) review of records obtained from the fishing industry and NOAA involving OLE/GCEL cases and investigations; (6) a commissioned examination of the administration and utilization of NOAA's Asset Forfeiture Fund, i.e., a forensic review of the collection of fines and penalties into and expenditures from the AFF that was conducted by KPMG, a major public accounting and auditing firm; (7) an OIG forensic review of the OLE SOF; and (8) case file reviews and interviews of OLE and GCEL officials associated with and/or involved in the cases, complaints or incidents that were specifically selected for further OIG examination and analysis.

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2

#### BACKGROUND

NOAA, specifically OLE and GCEL, plays a pivotal role in the enforcement of fishing regulations. OLE enforces laws that protect and regulate the nation's living marine resources and their natural habitats. GCEL processes civil penalty cases, permit sanctions and administrative forfeitures.

OLE was formed in 1970 and has criminal investigators/special agents (1811 series) and enforcement officers (1801 series) employed in six divisional offices with 52 field offices throughout the United States and U.S. territories. They have the authority to enforce over 35 statutes and numerous treaties related to the conservation and protection of marine resources. The primary laws enforced by OLE include the following: Magnuson-Stevens Fishery Conservation and Management Act (MSA); Endangered Species Act; Marine Mammal Protection Act; Lacey Act; and National Marine Sanctuaries Act. The primary geographic jurisdiction is the waters within the U.S. Exclusive Economic Zone (EEZ) - ocean waters between 3 and 200 miles off shore and adjacent to all U.S. states and territories - and it is also extended to all protected marine species and national marine sanctuaries within the U.S.

GCEL coordinates and implements the NOAA General Counsel's delegated authority as NOAA's civil prosecutor. They also establish national law enforcement policy in conjunction with OLE and NOAA program offices, provide legal support to OLE and other NOAA offices, including the Sustainable Fisheries Division and Protected Resources Division; and advise NOAA officials on specific enforcement cases and general enforcement trends and issues. GCEL can consider a variety of options with cases referred to it by OLE, including declining administrative action; downgrading or upgrading an initial enforcement action; issuing a written warning; issuing a summary settlement; issuing a Notice of Violation and Assessment (NOVA) or Notice of Permit Sanction (NOPS) — an action against a regulated party's permit to fish. GCEL may also settle cases using compromises or a combination of any of the foregoing remedies.

#### **DETAILS OF INVESTIGATION**

In response to a Congressional inquiry in May 2009 concerning allegations of excessive penalties and retaliatory actions by OLE in the NMFS Northeast Region, NOAA requested DOC/OIG to conduct a nationwide review of the policies and practices of OLE and GCEL We initiated a review of NOAA Fisheries Enforcement Programs and Operations. (Exhibits I and 2)

Our review resulted in four reports being issued during 2010. The OIG Reports and NOAA Responses are detailed as follows:

Review of NOAA Fisheries Enforcement Programs and Operations - issued January 21, 2010

The first report focused on the management of the programs and operations related to fisheries enforcement. Despite expectations that we would investigate individual cases or complaints

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brought to our attention in which fisherman believed they were treated unfairly or subjected to overzealous enforcement, our initial focus remained on the management issues we had identified in order to carry out this review in a timely manner. We noted that additional follow-up and examination of these complaints would be conducted to determine whether any further action by either NOAA or OIG was necessary or recommended. (Exhibit 3)

We also experienced two additional limitations. First, inadequate management information systems were a significant detriment, which was one of our overarching findings. Second, we were constrained in our ability to address concerns raised about the AFF. Although one of our objectives was to examine the fund, we found that despite a balance of \$8.4 million as of December 21, 2009, OLE officials were not aware if the AFF had ever been audited. We found that while the fund's balance was included in the Department's overall financial statements, internal controls over the AFF were not tested as part of the annual financial statement audit due to the relatively small size of the fund. As a result, we subsequently commissioned a forensic review of the AFF. (Exhibit 3)

Most of the complaints we received from the fishing industry, and particularly in the Northeast Region, fell into three categories:

- (I) Fishing regulations are unduly complicated, unclear and confusing broad fishing regulations have become increasingly complex and onerous. Regulations impose an excessive administrative burden on regulated parties, regulations change with little or no advance notice and increase in complexity, and Federal regulations in some instances conflict with state regulations;
- (2) NOAA's regulatory enforcement processes are arbitrary and lack transparency penalties are disproportionate to the gravity of the offense(s) charged. It is unclear how GCEL attorneys determine the assessments for fines and penalties, the administrative enforcement process (including cases adjudicated through the administrative law judge system with appeals filed to the NOAA Administrator is biased in favor of NOAA, the system encourages respondents to settle cases (regardless of culpability) due to the high costs associated with contesting the charges and thus making it difficult for respondents to defend themselves, GCEL attorneys possess and exercise too much authority and discretion, and OLE and GCEL do not take into consideration any unintentional errors or mistakes; and
- (3) NOAA's broad and powerful enforcement authorities have led to a fisheries enforcement posture that is overly aggressive and intrusive OLE employs overly aggressive and inappropriate techniques for regulatory enforcement, the perception exists that NOAA is intentionally putting small fisherman out of business in favor of corporate fishing entities, and OLE and GCEL have a motive to fine fisherman because the proceeds go into an account (AFF) that funds their operations. (Exhibit 3)

The first report disclosed systemic, nationwide issues adversely affecting NOAA's ability to effectively carry out its mission of regulating the fishing industry. Significantly, we found that (I) NOAA senior leadership and headquarters elements needed to exercise substantially greater

4

management and oversight of the agency's regional enforcement operations, (2) NOAA needed to strengthen policy guidance, procedures, and Internal controls in its enforcement operations to address a common industry perception that its civil penalty assessment process is arbitrary and unfair; and (3) NOAA needed to reassess its OLE workforce composition to determine if this criminal-enforcement-oriented structure is the most effective for accomplishing its primarily regulatory mission. (Exhibit 3)

In response to our findings and recommendations, NOAA issued an internal memorandum on December 1, 2009, and a subsequent internal memorandum for NOAA General Counsel Lois Schiffer and Acting Assistant Administrator for Fisheries from Administrator Lubchenco on February 3, 2010. The steps and measures outlined in these documents were then incorporated into the formal response from NOAA to OIG on March 18, 2010, which detailed a total of eleven administrative actions taken by NOAA. In summary, these included two revisions of rules and regulations, eight new policies and procedures being instituted and one management inquiry. (Exhibits 4 - 6)

#### Review of NOAA Fisheries Enforcement Asset Forfeiture Fund - issued July 1, 2010

Our second report concerned the Asset Forfeiture Fund (AFF). In attempting to understand how the AFF had functioned, KPMG was unable to discern the current balance of the AFF because it found that NOAA did not have a consistent definition of the AFF and that the AFF was more of an abstract concept than a tangible entity within NOAA. Based on the information and details obtained by KPMG, no unit or individual within NOAA had a clear understanding of the AFF or how it functioned. As a result, KPMG was unable to verify the \$8.4 million balance that we cited in our January 2010 Report, which was provided by OLE and NOAA/Office of Finance. KPMG's analysis suggested that the AFF's balance likely fell within a broader range. (Exhibit 7)

Based on complicated definitional, data analysis, and reconciliation efforts, KPMG found that from January 1, 2005, through June 30, 2009, (the period of its forensic review) the AFF received approximately \$96 million, which included interest on prior balances, and expended about \$49 million through 82,778 "outflow" transactions. This analysis suggested that the balance of the AFF could be higher than \$8.4 million.

KPMG found that the AFF had not functioned as a coherent program, despite being a substantial source of agency operational funding—outside and supplemental to annual appropriations—drawn solely from the proceeds of NOAA enforcement actions against industry parties. Rather, the AFF had operated through poorly defined, disjointed, and inconsistent processes that lacked effective internal controls, and one which no single NOAA office appeared to be in charge or accountable because it was so decentralized. The results of KPMG's review disclosed a history of inattention within NOAA to a substantial and highly sensitive monetary function of the agency. KPMG's findings show that NOAA had administered the AFF in a manner that was neither transparent nor conducive to accountability, thus rendering it susceptible to both error and abuse. We noted that

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5

KPMG applied considerable time and effort attempting to define the AFF and its parameters, and thus limited its performance of comprehensive, detailed testing of individual transactions to identify irregularities. KPMG could have carried out substantially deeper testing of AFF expenditure transactions to identify irregularities had it not run out of time under its contract. (Exhibit 7)

In addition to the information and findings detailed above, KPMG also reported the following: (1) Between collection and disbursement, there were a significant number of "hand-offs" from one NOAA organization to another, without a consistent method of tracking the funds; (2) Revenues comprising the AFF were co-mingled with other funds in various NOAA finance funds, making it nearly impossible to delineate, track, and oversee the receipt and expenditure of only those funds; (3) OLE did not have a formal budget for its use of the AFF and instead, OLE charged expenses to the AFF under broad internal guidelines for authorized use, as it deemed appropriate; (4) Further, GCEL received a minimal appropriated budget (usually less than \$1,000) for its total annual operating costs, and assumed that virtually all of its operating costs were reimbursable from the AFF; (5) Neither OLE's nor GCEL's budgeting process fully accounted for the use of AFF monies; (6) OLE's processes for disbursing AFF monies did not ensure that they were legally authorized or centrally managed or monitored and disbursement processes were different in each division (region); and (7) OLE's regions and headquarters, along with GCEL headquarters, had different requirements for AFF-related document retention and preservation. (Exhibit 7)

Based upon the results our independent review of the SOF, we did not identify any instances of improper use of funds. However, we did identify some areas for improvement, such as: (I) clear and concise policies and procedures should be communicated and enforced, particularly since they were not utilized, reviewed or revised on a regular basis and were inconsistent amongst the regions; (2) the establishment of consistent documentation practices between regions as each one had a different method of tracking expenditures and deposits from and into the AFF; (3) automated record keeping for all regions on the same platform and/or format; and (4) specific training on the use of SOF monies on a consistent and/or regular basis for all agents. (Exhibit 8)

In response to our findings and recommendations, NOAA issued a formal response on July 29, 2010, which detailed fourteen administrative actions. In summary, these included ten new policies and procedures, one restatement of policy, two management inquiries, and one revision of a regulation/rule. (Exhibits 9 and 10)

Final Report - Review of NOAA Fisheries Enforcement - issued September 23, 2010

The third report focused on the results of our examination of some specific complaints raised by members of the fishing industry at the outset of our review concerning allegations of unfair treatment and overzealous enforcement by OLE and GCEL. Of the 27 complaints we examined, 26 were from the Northeast, and all 27 combined complaints pertained to matters that fell under the MSA. We reviewed the 11 specific complaints listed in our January 2010 report and then also identified 16 additional complaints for further review from the 131 complainants we received

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# OFFICE OF INSPECTOR GENERAL OFFICE OF INVESTIGATIONS

during the initial complaint intake period, which was conducted from June 2009 to December 2009. (Exhibit 11)

As provided in this report we classified the complaints as confirmed, not substantiated, or inconclusive; denoted them into one of the three types of complaint categories (unduly complicated fishing regulations, NOAA's regulatory enforcement processes were arbitrary and lacked transparency, and NOAA's broad enforcement authorities led to an overly aggressive and intrusive posture); and indicated whether or not the issue was appropriate for further review. We also listed a detailed synopsis of the issue based upon our investigative findings and conclusions. In addition, we described the methodology used for the examination of selected NOAA Fisheries Enforcement complaints for further review in Appendix B. (Exhibit 11)

In summary, we confirmed nine complaints, found five to be unsubstantiated, and the remaining 13 complaints inconclusive. We also determined that many of the individual complaints we examined were credible and had merit and, as a result, considered them to be appropriate for further review. (Exhibit 11)

In response to our third report NOAA issued a formal response on November 22, 2010, and detailed four administrative actions taken in response. Specifically: (1) DOC Secretary Locke appointed a Special Master to review the complaints identified in our report and make recommendations as to whether any penalties should be modified or remitted; (2) There were various personnel changes in leadership positions at NOAA, in particular the senior GCEL was reassigned to NOAA GC

(3) The development of a Compliance Assistance Program — an independent office empowered to advocate and/or advise the industry on violation avoidance, compliance assistance and defense and settlement advocacy — along with a Compliance Liaison position in the Northeast Region; and (4) NOAA put in place the Enforcement Complaint e-Hotline to report unfair or overzealous enforcement actions or other breaches of conduct by NOAA enforcement employees. (Exhibit 12)

Most significantly, DOC Secretary Locke announced in September 2010 the appointment of a Special Master to review the enforcement cases identified in our report, along with other complaints that were not discussed in the report (but had been previously made to the OIG during the initial complaint in-take period) to determine if review of those complaints was also warranted. The Special Master was directed to make recommendations to Secretary Locke on whether to take action to modify or remit any of the penalties in these cases. In March 2011, Secretary Locke then announced that he would also allow any fisherman and/or businesses until May 6, 2011, to submit complaints about potentially excessive enforcement penalties directly to the Special Master for his review and examination. (Exhibits 12 - 15)

Subsequently, during May 2011, Secretary Locke announced that \$649,527 in fisheries enforcement penalties would be returned to 11 individuals or businesses after the independent review of their

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## OFFICE OF INSPECTOR GENERAL OFFICE OF INVESTIGATIONS

cases by the Special Master concluded the NOAA enforcement program had in some instances "overstepped the bounds of propriety and fairness." Secretary Locke noted that the Special Master was also reviewing approximately 80 additional applications received during the application period. Accordingly, those applications that met the standards set forth in Secretary Locke's March 2011 Decision Memorandum would receive further review. (Exhibits 16 and 17)

The various personnel changes, in particular the selection of key NOAA leadership and management positions during the course of our review, included the following: appointments of NOAA General Counsel (Lois Schiffer),

reassignment of the senior GCEL to NOAA/GC and the reassignment of the two remaining (GS-13) GCEL attorneys in the Northeast Region (DAA/GC. (Exhibits 12 - 17)

NOAA developed a Compliance Assistance Program to enhance their enforcement program. This was described as an independent office empowered to advocate and/or advise the industry on violation avoidance, compliance assistance and defense and settlement advocacy. In addition, a Compliance Liaison position was established in the Northeast Region to improve compliance assistance to the fishing industry, and other stakeholders, to further assist with adherence to the regulations. NOAA also enacted a complaint e-hotline to report unfair or overzealous enforcement actions or other breaches of conduct by NOAA enforcement agents or attorneys. The Enforcement Complaint e-Hotline allows stakeholders to report any issues directly to NOAA management through a specific email address that goes directly to NOAA Headquarters. They advised that any complaints received will be reviewed and, as necessary, investigated further. (Exhibits 12 - 15)

GCEL Performance Management and Other Issues Report - issued December 14, 2010

The fourth report focused on the GCEL performance management process and appraisal system; the questionable timing of an award to the (then) senior GCEL enforcement attorney in the Northeast Region which included a "problematic statement" we viewed reinforced the adversarial perception in the Northeast regarding NOAA's approach to regulatory enforcement; and a specific safety-related concern raised by another GCEL attorney in the Northeast Region. (Exhibit 18)

We reviewed a total of 64 GCEL attorney appraisals NOAA provided for a five year period of Fiscal Years (FY) 2005-2009. We found GCEL's process for evaluating the performance of its attorneys to be essentially pro forma (e.g., only one appraisal had written comments of any sort from rating officials, none contained an employee self-assessment, and the appraisal form offered only two rating choices: pass/fail). We also found inattention by GCEL management to the basic

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requirements for completing appraisals (e.g., missing employee and supervisor signatures), which reflected a lack of proper care and regard for this important performance management function. (Exhibit 18)

In response to our fourth report, NOAA issued a formal response on February 17, 2011, and indicated that no administrative action(s) would be taken. However, Administrator Lubchenco reported that she shared our concerns about the GCEL rating system and noted they had been working for several years to replace the pass-fail system with a five-tiered performance appraisal system for bargaining unit employees. She reported that in 2007 NOAA undertook an effort to negotiate collectively with those specific bargaining units to replace the pass/fail system which resulted in litigation before the FLRA that was not resolved until June 2009. Rather than resume collective negotiations following the FLRA decision, NOAA decided to end those discussions and planned to notify the bargaining units accordingly. Once that step was taken, the NOAA GC would provide notice to initiate individual negotiations to implement the new performance appraisal system. Until those negotiations are complete, NOAA/GC must continue to use the pass/fail system currently in place for attorneys in the bargaining unit. (Exhibit 19)

# Congressional Testimony regarding NOAA Fisheries Enforcement Programs and Operations:

In response to our Review of NOAA Fisheries Enforcement, DOC/IG Zinser has testified (to date) before four Congressional hearings regarding our findings and recommendations and the responses and corrective actions planned and/or taken by NOAA. Specifically:

- U.S. House of Representatives Subcommittee on Domestic Policy, Committee on Oversight and Government Reform on March 2, 2010, in Gloucester, Massachusetts (Exhibit 20)
- U.S. Senate Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard, Committee on Commerce, Science and Transportation on March 3, 2010, in Washington, DC (Exhibit 21)
- U.S. House of Representatives Subcommittee on Insular Affairs, Oceans and Wildlife, Committee on Natural Resources on March 3, 2010, in Washington, DC (Exhibit 22)
- U.S. Senate Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security on June 20, 2011, in Boston, MA (Exhibit 23)

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	9
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Spin-off cases from Review of NOAA Fisheries Enforcement Programs and Operations:

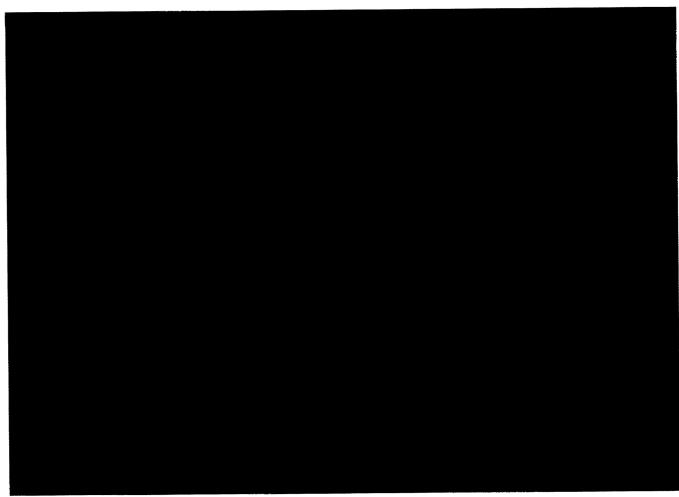
There have been several significant spin-off cases from our Review of NOAA Fisheries Enforcement which have been conducted, some of which have resulted in various personnel actions and others which have some Congressional interest. Specifically:

An allegation that OLE officials shredded documents during the course of our Review was substantiated and based upon the results of our investigation. OLE was and transferred to another position within NOAA; OLE was transferred to another position with National Institute of Standards and Technology: OLE received a and received a
Allegations of unethical conduct and unprofessional behavior concerning then OLE Northeast Division, were substantiated and, based upon the results of this investigation, was initially transferred to position at OLE Headquarters and from his position.
FOP-WF-10-0210-I: Improprieties in OLE/NWD Allegations of improprieties and misuse of government equipment involving were substantiated and a report of our findings has been submitted to NOAA with a recommendation for appropriate administrative action. To date, a formal response from NOAA is pending.
PPC-SP-I0-I 195-I: NOAA/AFF Foreign Travel — Trondheim, Norway (and Malaysia)  During the course of completing Phase II (AFF) of our Review information was developed that some NMFS/OLE and NOAA/GCEL employees may have claimed questionable expenses while on foreign travel. Specifically, we identified fourteen employees (twelve with OLE and two with GCEL) who had traveled to Trondheim, Norway, in August 2008 for the Second Global Fisheries Enforcement Training Workshop (GFETW) and had arrived early and/or stayed late, and in some instances took annual leave at one point either before or after the conference, and then also claimed and/or received reimbursement for per diem expenses during these particular periods of time.
Our investigation determined that two OLE/NED employees - obtained reimbursement for per diem (M&IE) expenses, \$864.50 and \$651.00 respectively, that they were not entitled to receive. In addition, rate for the hotel expenses she claimed for the conference and was reimbursed a total excess amount of \$313.50 that she was not entitled to receive. (Note: Her
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accompanied her on the trip). A Draft Transmittal Memorandum is being completed for internal OIG review/approval prior to being submitted to NOAA for appropriate administrative action.

It should be noted that this is one of the active investigations recently referenced by DOC IG Zinser during his most recent Congressional testimony in June 2011.



#### Presentation to the AGAC Environmental Issues Working Group:

In reply to correspondence that was provided from the Chair of the Attorney General's Advisory Committee (AGAC) Environmental Issues Working Group (EIWG) to NOAA Administrator Lubchenco, which NOAA then included in their response to the Final Report of our Review, IG Zinser also briefed a panel of United States Attorneys who served on the AGAC/EIWG regarding our Review and recommendations as well as the corrective actions that have been undertaken by NOAA. (Exhibits 12 and 24 - 30)

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#### **TABLE OF EXHIBITS**

Exhibit		Serial
1	Memo to DOC IG from NOAA Administrator with attachments	1
2	Memo to NOAA Administrator from DOC IG	2
3	OIG Report – Review of NOAA Fisheries Enforcement (Phase I)	7
4	Internal NOAA Memo from AGCEL to NOAA Deputy GC	- 5
5	Internal NOAA Memo to NOAA GC and Acting AA for Fisheries	8
	from NOAA Administrator	
6	NOAA Response and Action Plan to First OIG Report	10
7	OIG Report – Review of AFF (Phase II)	12
8	IRF - Review of Special Operations Fund	42
9	NOAA Internal Memo – Response to AFF Report with Corrective	13
	Action Plan	
10	NOAA Response to AFF Report	14
11	NOAA Fisheries Enforcement Report (Phase III) — Case Reviews	16
12	NOAA Response to Case Reviews Report	19
13	DOC Secretary Press Release re Additional Reforms to NOAA	23
	Fisheries Enforcement	
14	DOC Secretarial Decision Memorandum (dated January 25, 2011)	24
15	DOC Secretarial Decision Memorandum (dated March 6, 2011)	26
16	Special Master Report (April 2011)	35
17	DOC Secretarial Decision Memorandum (dated May 17, 2011)	36
18	GCEL Performance Management Report to NOAA – December 2010	38
19	NOAA Response to GCEL Performance Management Report	40
20	IG Testimony – House Subcommittee – 03/02/10 – Gloucester, MA	43
21	IG Testimony – Senate Subcommittee – 03/03/10 – Washington, DC	44
22	IG Testimony – House Subcommittee – 03/03/10 – Washington, DC	45
23	IG Testimony – Senate Subcommittee – 06/20/10 – Boston, MA	46
24	DOC/IG Letter to AGAC/EIWG - dated 01/28/11	28
25	AGAC/EIWG Letter to DOC/IG - dated 02/11/11	29
26	AGAC/EIWG Letter to DOC/IG - dated 03/15/11	30
27	IG Letter to AGAC/EIWG - dated 03/21/11	31
28	AGAC Briefing Package	32
29	AGAC/EIWG Letter to DOC/IG dated 04/04/11	33
30	IG Letter to AGAC/EIWG – dated 04/07/11	34

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12



### REPORT OF INVESTIGATION

CASE TITLE:	FOP-WF-10-0496-M
	TYPE OF REPORT  ☐ Interim

#### **BASIS FOR INVESTIGATION**


#### **RESULTS/SUMMARY OF INVESTIGATION**


Distribution: OIG x	Bureau/Organization/Agency Manage	ment DOJ: Other (specify):	
Signature of Care Agency	Date:	Ciarretura Agentuine Official	Date:
	5/3/12		5/30/12
Name/Title:/		Name/ Fitle:	
Special	Agent / HQ Operations	Acting Special Agent in	n Charge

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### UNITED STATES DEPARTMENT OF COMMERCE Office of Inspector General

Washington, D.C. 20230

MEMORANDUM FOR:

File

FROM:

Acting Special Agent in Charge

DATE:

June 1, 2012

REF:

**ACTION MEMORANDUM - CLOSURE** 

RE: Alleged Leak of Draft Rule (NOAA) PPC-SP-10-0497-1

On August 25, 2008, the Office of Investigations (OI) received a request from Sen. James Inhofe (R-OK), that an investigation be initiated into the alleged premature and unauthorized release of a draft rule revising regulations under the Endangered Species Act to the National Wildlife Federation (NWF). Between August 2008 and January 2011 extensive investigative activity occurred on this matter. The matter received extensive media attention in 2009. An IG subpoena was issued in November 2010 upon the National Wildlife Federation, who failed to comply. Enforcement action was never pursued. All other investigative leads were followed, without identifying any individual responsible for the alleged release.

No investigative activity has occurred on this case since January 2011, when the case was initially closed. It is unknown if Sen. Inhofe was ever advised of the status of this investigation. There is no documentation indicating Sen. Inhofe has made any further inquiries regarding this matter.

Due to the absence of any further investigative leads and the lack of identifiable recommendations to make regarding this matter, it has been determined that this matter be closed again based upon the January 2011 Action Memorandum.

<u>Approved</u>: 4/1/12



### REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER:
	FOP-WF-12-0498-I
NOAA OLE Personnel	
Northeast Enforcement Division	TYPE OF REPORT
	☐ Interim

#### **BASIS FOR INVESTIGATION**

On February 24, 2012, our office was tasked with determining whether various officials of
National Oceanic and Atmospheric Administration's (NOAA) Office of Law Enforcement
(OLF) had improperly used government funds to travel to
or OLE's Northeast Enforcement Division, in
violation of 41 CFR § 301-10.1. (Attachments 1 – 2)

#### RESULTS/SUMMARY OF INVESTIGATION

Our investigation did not find evidence demonstrating use of government funds by NOAA OLE employees to travel to the retirement party.

#### **METHODOLOGY**

This investigation was conducted through document review, including electronic mail, purchase card records, government owned vehicle logs and time and attendance records.

Distribution:	OIG x	Bureau/Organization/Agency Manageme	nt Other (specify):	
Carolina of Ca	on Manne	Date:	Signature of Approving Official:	Date:
		6/11/12		Le/11/12
Name/Title:			Name/Title:	
	Special Agent		Supervisory Investigator	

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### All Redactions Pursuant to b(7) (c)

#### **DETAILS OF INVESTIGATION**

On February 24, 2012, our office was tasked to determine whether any government funds were used by employees of OLE, NOAA, to travel to the
OLE's Northeast Enforcement Division. Use of government funds for any travel other than that for official business would be a violation of 41 CFR § 301-10.1.
We received, from a confidential source, the party flier announcing held on Saturday, at the as well as a list of fifty-three potential attendees, not all of whom were NOAA employees, based on both a "thank you" email from to the attendees, and the confidential source's own information gathering. (Attachments $3-5$ )
We obtained and reviewed travel records and purchase card transactions for identified party attendees and found nothing related to the party. (Attachments $6-7$ )
We obtained the time and attendance records for all OLE employees employed as of for the pay period before, including, and following and determined that of those OLE officers listed on the party attendee list, five had claimed Law Enforcement Availability Pay (LEAP) for those five, one had been listed by the confidential source as "noticeably absent" from the party. Of the other four employees, three claimed one hour each, and one claimed three hours. None of those four individuals had travel history with AdTrav reflecting travel to or near or purchase card transactions reflecting travel charges during the same period. (Attachments 5 – 8)
We then requested records for any government-owned vehicle (GOV) assigned to any of the thirty-eight NOAA employees we identified as assigned to the Northeast Division during the month of and learned that of those thirty-eight, twenty were OLE employees assigned to the Northeast Division. Of the twenty individuals, twelve were assigned GOVS; of those twelve, ten had records — one was on sick leave that month, and another was retired that month. We reviewed the records and found no indication any GOVs were used to travel from outside the area to attend the party. (Attachment 9)
Criminal investigators, such as OLE officers, as defined in 5 CFR § 550.103, are entitled to LEAP pay under 5 CFR § 550.181(f)(1), where, as defined under 5 USC § 5545(a), they are "generally and reasonably accessible by the agency employing such investigator to perform unscheduled duty based on the needs of an agency"  POR OFFICIAL USE ONLY
TON OFFICIAL OSE ONE!

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# All Redactions Pursuant to b(7) (c)

#### TABLE OF ATTACHMENTS/INDEXES

		IG-CIRTS
Attachment	Description	Serial
ı	Initial Complaint	1
2	Credentials Case Initiation	13
3 _	Party Flier	2
4	Thank You" Email	15
5	CS-WFO-001 Email of Attendees	14
6	IRF Review OLE Travel History	9
7	IRF Review OLE Purchase Card History	20
8	IRF Review LEAP Pay Claims	22
9	Review OLE GOV Records	27

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3

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# All Redactions Pursuant to b(7) (c)



### UNITED STATES DEPARTMENT OF COMMERCE Office of Inspector General Washington, D.C. 20230

MEMORANDUM FOR:	File
FROM:	Special Agent
DATE:	June 19, 2012
REF:	ACTION MEMORANDUM - CLOSURE
	RE: OI Case FOP-WF-12-0838-P
caller alleging a bench warr	ospheric Administration (NOAA), National Weather Service, for
(JNET) through the Middle (MAGLOCLEN) and found MD, and contact outstanding warrants for	Atlantic Great Lakes Organized Crime Law Enforcement Network no outstanding warrants. We identified resides in ted the Police Department PD). PD identified no at the city, state or local level. We reviewed the public land Judiciary (www.courts.state.md.us) and found that on May 24, by the Circuit Court for (Serials 2 and
	rant was found to actually be a civil writ in connection with losed this case with no further action.
Approved:	Acting Special Agent in Charge



### REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER: FOP-WF-11-0197-V
PROACTIVE REVIEW OF CENSUS COMPLAINTS Nationwide	TYPE OF REPORT  Interim

#### **BASIS FOR INVESTIGATION**

On January 24, 2011, the Office of Investigations (OI) initiated a proactive review of incident reports concerning assaults experienced by Census employees during the 2010 Decennial Census. The purpose of the review was to identify instances where an assault occurred, but was either not reported to local police or not presented for prosecution after being reported. (Attachment I)

#### **RESULTS/ SUMMARY OF INVESTIGATION**

Our investigation identified over 700 acts of violence, but focused on 95 of the most egregious examples. In the process, we discovered and assisted in the investigation and prosecution of three criminal matters. Our investigation disclosed few instances of assaults on Census employees that were not already prosecuted at the state or local level where the facts warranted prosecution. In many cases, inadequate reporting by Census employees or supervisors prevented further prosecutive action.

#### **METHODOLOGY**

This investigation was conducted through interviews and document review, including electronic mail, public domain documentation, internet sources, and documents from Census and their Office of Security. This issue also became known to us through the Department of Commerce (DOC), Office of Inspector General (OIG), Office of Audit and Evaluation (OAE), which in the

Distribution: OIG x Bureau/Organiza	tion/Agency Manage	ement DOJ: Other (specify):	
	Date: 6/22/2012	Signature of Approving Official:	Date: 7/17/12
Name/Title: Acting Special Agent in Charge		Name/Title:	

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last quarter of calendar 2010 had addressed Census operations, including risk management activities and enumerator safety. Census uses incident reports (Form BC-1206) to investigate and report occupational injuries, illnesses, accidents and fatalities, and major damage to federal property. Census also uses these reports to collect information on any incident where a Census employee was threatened or assaulted. We worked with Census Office of Security personnel to obtain these reports and summarize the incidents into tabular form for analysis. We analyzed the data and determined the incidents which merited further review. This was done based on the degree or egregiousness of the offense. We ranked instances thus:

- (1) assaults involving the actual use of a firearm (i.e., shots fired, firearm brandished or pointed at the employee, etc.);
- (2) assaults involving the actual use of a knife or other dangerous weapon;
- (3) assaults involving physical force (i.e., assault and battery), whether or not the employee was injured;
- (4) any other assault, which could include verbal confrontations or threats, ripping Census forms from the hands of enumerators, and other actions which could cause the enumerator to fear for their safety.

We divided these incidents geographically and assigned multiple agents to follow-up on each incident to determine the facts surrounding each incident. In total, nine different agents participated in various aspects of this review, with the objective of determining whether cases were appropriately presented for prosecution where the evidence supported prosecution, and where no prosecution was pursued, determine if Federal prosecutors would pursue the matter. We obtained copies of local police or sheriff reports, court documents, and Census records to attempt to pinpoint whether reporting was accomplished, and if so, in what jurisdiction the reported incident occurred. We interviewed Census employees and managers, as well as local law enforcement officials to attempt to determine the facts and disposition of each incident.

#### **DETAILS OF INVESTIGATION**

On or about January 24, 2011, our office received and analyzed a listing from the Census Office of Security (OSY) detailing 848 instances of potentially violent incidents reported by employees conducting 2010 Decennial operations. Of those 848 instances, slightly more than 700 were initially determined to report bona fide acts of violence. We established a methodology to identify incidents in order to focus investigative efforts given limited resources; 95 incidents that represented the most egregious assaults were culled out and assigned to agents across the country. The goal was to further review these cases to serve as an internal quality control review to validate incidents reported by employees, obtain law enforcement reports on the reported incident, follow up with further investigative activity if necessary, and move forward with presentation to cognizant prosecution offices if the facts warranted. (Attachment 1)

2

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We contacted the Health and Safety Branch for Census, finding 73 workers compensation cases where the injuries were related to an assault during the Decennial Census. The total cost for both compensation and medical claims related to these is \$310,184.93 as of May 2012. Said his best estimate is the four cases that remain open will result in \$50,000 to \$60,000 per year in continuing costs, plus another \$20,000 for medical costs. Pointed out this captures only those assault victims who filed OWCP claims – there is no requirement to file such a claim. He said he knows of one female employee who was sexually assaulted but to maintain her privacy she did not file OWCP claims. (Attachment 2)

We discovered acts of violence that included the discharge of firearms at and physical assaults of Census takers, as well as robberies, carjackings, and a kidnapping. Our investigation found few instances where local law enforcement did not appropriately handle the complaint. In most cases, Census reporting to the police was done more as a matter of formality, as the records often show the Census employee did not want to pursue charges, but only needed a police report for their supervisor. In some cases, reports made through Census Office of Security did not have an accompanying police report, and upon further inspection, it appears no police report was ever made. As a result of this project, we identified cases that resulted in our office assisting local prosecutors pursue cases. In one publicized case, the death of a Census employee in rural Kentucky initially appeared to be a murder based on the person being a Census employee, however, it was later determined the employee committed suicide and tried to make it appear as though it was homicide. In another case, a Census enumerator was kidnapped, held hostage for over an hour, and threatened with a blowtorch. The suspect pled guilty in this case (11-0282). In still another case, we testified before a state Grand Jury to obtain an indictment for assault and destruction of property where the suspect beat and stabbed the employee with a knife and slashed the employee's tires (11-0389). (Attachment 3)

In an attempt to educate local law enforcement about the results of this project and the danger to Census workers, our office, together with the Director of the Census Bureau, Robert Groves, sent a letter to local law enforcement authorities across the country. (Attachment 4)

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This attachment uses cases in the Denver area of responsibility, showing the nature of the offenses and dispositions. It is provided as an example of the work that was done across the country.

All Redactions Pursuant to b(7) (c)

#### TABLE OF ATTACHMENTS/INDEXES

Attachment	Description	IG-CIRTS Serial Index
	Review and Plan for Census Assault Case Initiative	
2	IRF,	83
3	Spreadsheet of Denver assault cases	9-19
4	Letter to Law Enforcement authorities	81

.

June 1, 2012

All Redactions Pursuant to b(7) (c)

**MEMORANDUM FOR:** 

Bill Fleming

Director, Office of Human Resources Management

FROM:

Rick Beitel

Principal Assistant Inspector General

for Investigations and Whistleblower Protection

SUBJECT:

OIG Investigation, Re:

(OIG Case # 12-0513-1)

Attached is our Report of Investigation (ROI) in the above-captioned matter. Our investigation substantiated the allegations and the findings are provided for your review and appropriate action. Based on the seriousness of their misconduct, involving Department letterhead forged for purposes of personal gain, we recommend that you take appropriate disciplinary action against

In accordance with DAO 207-10, Section 5, paragraph 4, your written response of any action proposed or taken is requested within 60 days of receipt of this referral.

In your official capacity, you have responsibilities concerning this matter, the individuals identified in this memorandum, and the attached documents. Accordingly, you are an officer of the Department with an official need to know the information provided herein in the performance of your duties. These documents are being provided to you in accordance with 5 U.S.C. §552a(b)(1) of the Privacy Act and as an intra-agency transfer outside of the provisions of the Freedom of Information Act.

Please be advised that these documents remain in a Privacy Act system of records and that the use, dissemination or reproduction of these documents or their contents beyond the purposes necessary for official duties is unlawful. The OIG requests that your office safeguard the information contained in the documents and refrain from releasing them without the express written consent of the Counsel to the Inspector General.

If you have any questions please do not hesitate to contact me at (202) 482

or

at (202) **482** 

Attachment ROI (with exhibits)

cc: OIG case file



Name/Title:

Investigator

# OFFICE OF INSPECTOR GENERAL OFFICE OF INVESTIGATIONS

# REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER: HQ-HQ-12-0513-1
Washington, DC	TYPE OF REPORT  Interim Final
BASIS FOR INV	ESTIGATION
On February 28, 2012, our office received a Department of Commerce Human Resources Commerce of Execution Management (OHRM), had misused U.S. Department of the law firm of Weinstock, Friedresigned from Commerce, in order to avoid a stated that may have assisted in the RESULTS/SUMMARY Commerce.	Operations Center (DOCHROC), alleging that utive Resources, Office of Human Resources ment of Commerce letterhead when he sent a edman & Friedman (WFF), stating that he had wage garnishment action. The complaint also the fraud.
Our investigation substantiated the allegations.  after receiving the wage garnishment action not Office of Compensation and Be providing the notification to processing.  METHOD	nefits, DOCHROC. admitted admitted of providing it to the appropriate official for
This investigation was conducted through interview	ews and reviewing documents.
Distribution: OIG x Bureau/Organization/Agency Management	
Date:	Date:

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Name/ litle:

Director, Special Investigations

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#### **DETAILS OF INVESTIGATION**

On February 28, 2012, our office received a complaint from who provided documents that indicated somebody falsified a letter on Department of Commerce letterhead. The documents included a wage garnishment action against as well as a letter purporting to be from Department of Commerce's "Payroll Office," stating that was no longer employed by Commerce. (Attachment 1)	1
We interviewed Human Resources Specialist, Office of Compensation and Benefits, DOCHROC, who stated that on February 27, 2012, she received a phone call from WFF, inquiring why wage garnishment had not been processed. Stated she had not received any such garnishment, and requested a copy. Was provided a copy of the wage garnishment, filed July 10, 2009, in D.C. Superior Court – Small Claims Branch, against in the amount of \$2,542.25, along with a letter, dated February 26, 2010, on Commerce letterhead stationery, purporting to be from Commerce's "Payroll Office," stating that was no longer employed by Commerce as of October 16, 2009.	
advised that the letter was obviously a forgery because it was (I) addressed directly to the attorney; (2) there was no signatory information; and (3) the sender's address block was repetitive given that it was formatted on letterhead.  The provided information that may have been involved in the garnishment not being processed since (Attachment 2)	
We then reviewed the affidavits of service on file with D.C. Superior Court – Small Claims Branch, for the wage garnishment case, and learned that the notice of wage garnishment was served at HCHB on July 17, 2009. We then reviewed the correspondence on file with WFF in this matter, and found that subsequent to this 2009 garnishment notification to HCHB sent three letters to Attorney, WFF, each of which proffered a different pay plan option that he wished to begin. Neither D.C. Superior Court nor the law firm provided any record indicating this garnishment notification had been sent to directly. (Attachments 3 – 4)	
During his voluntary interview on May 4, 2012, stated that provided him the garnishment notice when she received it on July 17, 2009. admitted that he had forged the letter on Commerce letterhead in an effort to stall the wage garnishment action. (Attachment 5)	
When asked to explain the two-and-half year gap between the original filing date and the law firm's phone call, stated that it is typical of debt collection servicers to do routine reconciliation attempts of their open cases, and that it was not irregular for there to be such a time gap. stated that the law firm had received the February 26, 2010 letter and closed the matter at that time.	

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During her voluntary interview on May 7, 2012 with the wage garnishment notice on July 17, 20	1	at she was served
wanted to "help him out."	itted that she called	
the wage garnishment, and then gave him the no	tice. (Attachment 6)	
On May 8, 2012, we obtained a declination fo		
Assistan	t United States Attorn <b>e</b> y fo	r the District of
Columbia. (Attachment 7)		

3

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#### TABLE OF ATTACHMENTS/INDEXES

Attachment	Descri	ption	IG-CIRTS Serial Index
	Complaint Documents		2
2	IRF April 9, 201	2 Interview	6
3	IRF Records Review Affidavits of	Service	14
4	IRF Records Review WFF Files		17
5	Transcript of May 4, 2012	view	20
6	Transcript of May 7, 2012	nterview	21
7	Declination, May 8, 2012		22

4

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### All Redactions Pursuant to b(7) (c)



### UNITED STATES DEPARTMENT OF COMMERCE Office of Inspector General

within a certain time frame;

Washington, DC 20230

August 24, 2012 MEMORANDUM FOR: FROM: Director, Special Investigations **ACTION MEMORANDUM - CLOSURE** SUBJECT: RE: Alleged Improper Hiring in the Office of the Secretary (OI Case No. FOP-WF-12-0862-P) On May 31, 2012, the Office of Investigations (O1) received an anonymous hotline complaint improperly hired that as her parttime special assistant. The complaint stated that The complaint asserted that the hiring violated a Department of Commerce (DOC) policy prohibiting employees from returning to the Department Our investigation determined that the Department's rehiring within 30 days of their did not violate DOC policy or other applicable legal requirements. On June 29, 2012, we interviewed Human Resources Management, Office of the Chief Financial Officer and Assistant Secretary for Administration, DOC. stated that told he wanted to hire on a temporary basis a office. explained to would be able to provide assistance to the Secretary's office with complicated NOAA management matters. stated he then initiated the process to rehire advised the OIG that as a career Senior Executive Service (SES) employee and was reinstated, after certification that she met the stated that the position qualifications as a SES for the position, on would not have had to be competed because it was not a promotion for May 4, 2012 memorandum issued by was granted a waiver in order to perform "duties critical to the mission of the Department of Commerce." Under provisions of the National Defense Authorization Act for Fiscal Year 2010 (NDAA), and as detailed in DOC Human Resources Bulletin #116, FY10 (DOCHRB), would continue to receive her along with her salary. stated that there was no DOC policy

however, he stated that because was hired within six months of her she is limited to working 520 hours for the first six months under the provisions of the dual compensation waiver as outlined in the NDAA and DOCHRB.

that prevented the Department from

We have reviewed the provisions of the National Defense Authorization Act for Fiscal Year
2010 and DOC Human Resources Bulletin #116, FY10 and have determined that the rehiring of
did not violate the applicable legal requirements. We also reviewed the hiring
documents for and found the documentation to be consistent with
statements.

APPROVED BY: Rick Beite

Principal Assistant Inspector General

for Investigations & Whistleblower Protection



# UNITED STATES DEPARTMENT OF COMMERCE Office of Inspector General

Washington, D.C. 20230

September 27, 2012

All Redactions Pursuant to b(7) (c)

MEMORANDUM FO	R: File
THRU:	
FROM:	Director, Special Investigations
SUBJECT:	Closing Action Memorandum Elimination of information technology (IT) positions at the , HQ-HQ-12-1147-P
Inspector General (OIG Management (OFM), De eliminate six information initiated like. The complainant all new IT position because	epartment of Commerce (DOC), initiated a reduction in force (RIF) to technology (IT) positions in the The confidential complainant alleged the RIF to eliminate the IT positions of those employees she did not so alleged one employee slated for a RIF notice was selected to fill a
DOC state Department of Transportuting measure to meet	Human Resources the Chief Financial Officer and Assistant Secretary for Administration, dethe RIF was necessary due to business systems being transferred to a portation Enterprise Service Center advised the workload of the have ever the past several years due to the completed implementation of the
handled the mechanics of were all IT positions  Commerce Alternative tated	Department of ources Operation Center (DOCHROC). Stated her office of the RIF process. Stated the six positions being eliminated and the six employees received RIF notifications pursuant to the Personnel System (CAPS) and the CAPS Operating Procedures Manual, had a need for one IT Security Specialist and a subpanel was appointed the affected employees qualified for the position.

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On September 17, 2012, we interviewed
On September 17, 2012, we interviewed to the stated the six employees stated the six employees.
were informed of the RIF action and given the opportunity to meet with Human Resource
specialists in group meetings and one-on-one sessions to inform them of the RIF process and
answer any questions. State once the employees are notified of the RIF action and
given the opportunity to update their official personnel file (OPF), the employees are groupe
by their career path and grade. In this case, all were in the same career <u>path, IT Speci</u> alist, serie
2210 and all except one were grade 4. The remaining was grade 3.
employees' OPFs were reviewed to determine their tenure status, veteran preference, service
computation date, and the results of their last three performance appraisals. The information i
compiled to determine the employees' adjusted service computation date and rank ordered
stated the listing is used to determine the order the employees would be released
however, in this instance; all six positions were being eliminated.
have a IT Security Specialist position available so a panel was convened to determine if any o
the six employees would qualify for the position. Each of the employees were informed of the
position and given the opportunity to update their resume which the panel would evaluated to
determine if any qualified for the IT Security Specialist position.  employees submitted updated resumes for consideration and the six did not
employees submitted updated resumes for consideration and they could enroll in the
Reemployment Priority List (RPL), which is a listing of individuals who have priority hiring
preference for any DOC vacancy and hiring managers are required to clear the RPL before the
can consider other applicants for employment vacancies.
affected employees, three were currently enrolled in the RPL, one was selected for the IT
Security Specialist position, one employee decided to retire and one, discussed did no
enroll.

On September 17, 2012, we interviewed	Office of Staffing, Recruitment and
Classification, DOCHROC.	ted she was the advisor for the RIF subpanel Review.
stated the objective of the sub	panel was to review the resumes of the employees to
determine if any qualified for the vacant l	T Security Specialist position with minimal disruption.
described minimal disruption a	as being able to adjust to the new position within 90
days. stated that the skill sets	within the job series 2210, IT Specialist was so varied
that not all IT Specialist would qualify for	r the IT Security Specialist position.
the panel consisted of two subject mat	ter experts who have the technical knowledge and
experience to evaluate the skill sets of t	he employees being considered for the vacancy. The
two panel members were	Supervisory IT Specialist and
Supervisory IT Specialist.	ted the panel members reviewed the resumes and
identified two employees	qu <u>alified for the IT Security</u>
Specialist position. stated the p	osition had to be offered to irst because he
ranked higher on the listing based on the	adjusted service computation date.

Attachments:

Investigative Record Form (IRF) for the interview of the lated September 24, 2012

IRF for the coordination with DOCHROC, dated September 21, 2012.

### All Redactions Pursuant to b(7) (c)



# UNITED STATES DEPARTMENT OF COMMERCE Office of Inspector General Washington, D.C. 20230

MEMORANDUM FOR:	The File
FROM:	Special Agent Office of Investigations / HQ Operations
DATE:	October 1, 2012
SUBJECT:	Action Memorandum for Closure FOP-WF-12-1148-P
allegations of a cost charging National Oceanic and Atmost Operational Environmental Scourtesy) he planned to contab on August 22-24, 2012, for NOAA GOES-R Flight Project Divis MD), was provided to On September 11, 2012, a point of the Contact of the contact of the CU Atmospheric From the CU A	National inistration (NASA), OIG, and informed that they were investigating a scheme involving four contracts, one of which was a joint NASA-spheric Administration (NOAA) contract for the Geostationary Satellite-R series (GOES-R) program.  Advised (as a duct interviews at the Colorado University Atmospheric Research and they did not require any assistance from DOC/OIG. NFC data the joint NASA/NOAA venture (NESDIS ion, Instrument Manager, Goddard Space Flight Center, Greenbelt, Serials 1-3)  Areliminary investigation was initiated. (Serial 4)  Advised the allegations under review involved "dumping ASA contracts" and the NOAA GOES-R contract was initially racts possibly associated with the alleged scheme.  Investigative findings to date, which included information obtained Research Lab personnel, they have determined that there was no onable activity associated with the NOAA GOES-R contract. The allocations of maintenance costs for this particular contract are were no issues or concerns identified. (Serial 6)

Action Memorandum for Closure

FOP-WF-12-1148-P

of the policies and procedures for charging IT maintenance costs, for the work they completed on August 23-24, 2012, in Boulder, CO. reported that when they specifically asked the CU Atmospheric Research Lab personnel about the allegations, i.e., if maintenance costs were purposefully charged to the four NASA programs for monetary gain, expediency and/or convenience, each of them denied charging unwarranted costs to select NASA programs. Iso explained they intend to check with some other individuals in NASA program offices to determine what they know about IT maintenance costs and charges at the CU Atmospheric Research Lab. (Serial 7)
noted the GOES-R program content at the CU Atmospheric Research Lab consists of the Extreme Ultraviolet and X-ray Irradiance Sensors (EXIS) Instrument. Although
the contracting officer (CO) for EXIS is a NASA employee
for EXIS. To date, NASA/OIG has not interviewed they intend to first speak with the CO for EXIS first and then determine if it will be necessary to interview (Serial 7)

No further investigative activity is planned or contemplated for DOC/OIG at this time. Based upon the above information, it is recommended that this preliminary investigation be closed.





### UNITED STATES DEPARTMENT OF COMMERCE Office of Inspector General Washington, D.C. 20230

MEMORANDUM FOR:

File

FROM:

DATE:

February 13, 2013

REF:

FOP-WF-12-1298-P

UPDATED Action Memorandum for Closure RE:





Approved by: Date: February 13, 2013

i

### All Redactions Pursuant to b(7) (c)



### UNITED STATES DEPARTMENT OF COMMERCE Office of Inspector General Washington, D.C. 20230

March 10, 2011

MEMORANDUM FOR:	Human Capital Officer National Institute of Standards and Technology
FROM:	Scott Berenberg/ Assistant htspector General for Investigations
SUBJECT:	Office of Corporate Human Capital Strategy and Accountability, Office of the Secretary (OS), Office of Human Resources Management (OHRM)  DOC OIG/OI Case # FOP-WF-10-0466-I
misconduct made against Human Capital Strategy a disseminate the informati	and Accountability (hereafter "Human Capital"). Please do not on contained in this report outside of those within the Department who out the expressed permission of the Department of Commerce (DOC),
In April 2010, OIG received transferred from and the	effective en lett DOC ir to take a position at the U.S. Department of after having several personal disagreements
	This allegation was OHRM, Human Resources Specialist who processed and rejected ary Promotion Form, explained that had already been granted a hin the last twelve months and was therefore, ineligible for another approved the SF-52 which rejected (Attachment 3, 010).
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### All Redactions Pursuant to b(7) (c)

### **Additional Allegations**

While assessing the above allegation, and others associated with DOC OHRM made additional allegations of misconduct on the part of These allegations include:
1.) provided inaccurate information during a Departmental investigation concerning a Personally Identifiable Information incident that affected over 30,000 DOC employees; 2.) made monetary loans to a subordinate.
We also investigated several management related allegations involving which were reported to us. Given their entirety, these management matters raise questions regarding her judgment, proper adherence to DOC policy and her ability to manage employees and programs. As such, we are bringing these matters to your attention. These management related allegations include:
a.) did not follow proper policy when granting student loan repayment benefits; b.) did not adequately manage the Post-Secondary Degree Intern Program; c.) asked a subordinate to do graduate coursework on her behalf.
Methodology
In the course of this investigation, we interviewed over thirty witnesses, obtained and reviewed documents and records within DOC, as well as documents from multiple requests voluntarily provided by the course through counsel. Additionally, our Computer Forensic Unit analyzed data obtained from DOC computers and information systems by the DOC Computer Incident Response Team.
EXECUTIVE SUMMARY
1.) We substantiated that provided the DOC Computer Incident Response Team with inaccurate information with regard to a Personally Identifiable Information incident in December 2009 that disclosed the Social Security Numbers of over 30,000 DOC employees.
2.) We were not able to substantiate, based on inconclusive evidence, that such a loaned money to substantiate in 2008 and 2009. However, and the did acknowledge she gave small amounts of cash totaling \$200 over a period spanning several years. Additionally, it appears to approve a cash award for the substantial configuration of the substantial configuration and the substantial configuration and the substantial configuration of the substantial configuration and the substantial configuration and the substantial configuration of the substantial configuration and the substantial configuration and the substantial configuration of the substantial configuration and the substantial configuration of the substantial configura
Although we were not able to substantiate the allegation concerning leading money to neither could we authenticate a potentially exculpatory piece of evidence

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provided. provided OIG with a receipt for handyman services which she indicated explained a \$3,000 cash bank withdrawal she made in 2008 around the same date claimed to have accompanied to her bank. This withdrawal was alleged to be the proceeds of a loan to the west of the local withdrawal was alleged to be the proceeds of a loan to the west of the local withdrawal was allegedly issued her a receipt back in 2008 and in 2010, took possession of his receipt book before the receipt book was provided to OIG.
Management Issues
a.) did not prepare required written justifications when approving student loan repayment benefits for three members of her staff.
b.)  DOC's Post-Secondary Intern Program (PIP). Witnesses and participants corroborated that PIP interns worked off-site and did not work the forty hours a week for which they were paid through the grant.
c.) A member of staff complained to the DOC Employee Assistance Program about having to do Ph.D. coursework on behalf.
DETAILS OF INVESTIGATION
1. Inaccurate Information Provided Regarding Personally Identifiable Information Incident
According to DOC OHRM. Human Capital, on the evening of Friday, December 4, 2009, she sent a series of emails with excel spreadsheet attachments containing identifying information of DOC employees for the purposes of administrating the 2010 Employee Viewpoint Survey. These spreadsheets were resident on a networked hard drive shared by Human Capital employees. These spreadsheets were resident on a could send them to respective DOC Bureaus, as a said she was emailing the ninth of twelve Bureau specific spreadsheet attachments to when realized the attachments contained Personally Identifiable Information (PII) in the form of the Social Security Numbers (SSNs) of DOC employees. Said she immediately went to affice to tell and to send the emails out, but the emails had already been
sent. The attempted to recall the emails, but the recall was unsuccessful (Attachment 4,

At approximately 8:30 pm on Friday, December 4, 2009.

Sent an email to her immediate supervisors

OHRM.

Email stated, "a couple of hours ago, I sent some emails with files attached with employees' SSNs to some bureaus as part of the collaboration with OPM to obtain the e-mail addresses to administer the 2010 Employee Viewpoint Survey. Once we realized the files

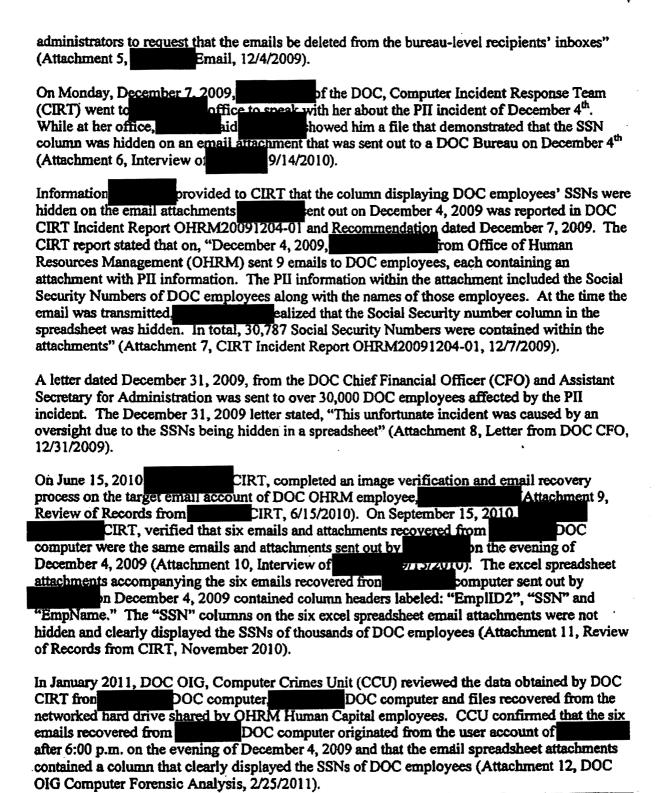
/28/2010).

Interview of

contained SSNs, we contacted Contained SSNs, we contact the Contained SSNs, we contact

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DOC CIRT incident report OHRM20091204-01dated December 7, 2009, and the December 31, 2009 letter from the DOC CFO and Assistant Secretary for Administration both described email spreadsheet attachments with columns containing the SSNs of DOC employees as "hidden". Therefore, information provided CIRT, specifically the information characterizing the SSN columns in the email attachments sent out December 4, 2009 as "hidden", was factually incorrect (Attachment 13, Interview of CIRT, 11/17/2010).

#### 2. Loans to a Subordinate

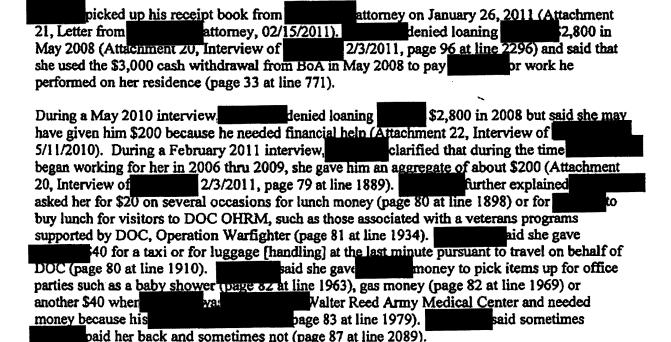
#### Alleged Loan 2008

and

ormer DOC OHRM Human Capital, alleged that in May 2008, he borrowed about \$2,800 in cash from o pay-off debts he accumulated pursuant to a divorce and a failed business venture (Attachment 14, Interview of said that between May 10th and May 26th, 2008, he drove with 1/11/2011). in her personal vehicle from the DOC Hebert C. Hoover Building to a Bank of America (BoA) branch located on Pennsylvania Avenue NW, between 10th and 11th Streets in Washington, DC. vithdrew \$3,000 from her BoA account and gave him about \$2,800 in cash (Attachments 15 and 16, Interviews of 1/29/2010 and 5/5/2010). mrough counsel, provided OIG In lieu of an issued and withdrawn OIG subpoena, with a BoA statement that verified she cashed a check against her own account on May 13, 2008 made out to "cash" in the amount of \$3,000 at the BoA branch located at 1001 Pennsylvania Avenue, NW, Washington, DC 20004 (Attachment 17, Bank Statements, May 2008). Subsequently, on her own initiative. provided OIG with a hand-written receipt for \$3,000 dated "5-14-2008" from for, "Prepwork Exterior and Paint wood repair" (Attachment 18. Check #5520, 05/13/2008 and receipt. 05/14/2008). The OIG tracked down and interviewed him in January 2011. said he performed work on esidence back in April and May of 2008. said that in May 2008 paid him \$3,000 in cash for work he performed on house and that he hand wrote a receipt for the cash he received from nd then gave her the receipt. According to has been in possession of the receipt since May 2008. However, according to contacted him in 2010 sometime before Thanksgiving and asked him for his receipt book. aid he turn<u>ed his rece</u>ipt book over to he gave the receipt, dated 2008, to back in 2008 and that his receipt book was not modified when it was in possession in 2010 (Attachment 19, Interview o 1/27/2011). eceipt book In a February 2011 interview. confirmed she took possession of in 2010. eceipt book over to her attorney. aid she then turne did not modify receipt book while it was in her possession (Attachment 20, Interview 2/3/2011. page 46 at line 1098). According to a February 15, 2011 letter from of obtained the receipt book from bn December 6, 2010, attorney

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elivered the book to her attorney on December 7, 2010. According to the letter,



#### Alleged Loan 2009

<del>-</del>	
certificate and as a result, his pay-period 4, Februar than he expected.	y 2009, bi-weekly paycheck was \$890 less
to discuss it with	f Compensation and Benefits.
lvised him that the funds could not be rec	
	e through a cash award. was a said that he
and presented this idea to	DHRM who gave approval to
write the award.	
to type the justification for the	Porm CD-326. According to
the CD-326 was routed to	who then routed it to
OHRM According to	refused to sign the award saying it was
a back-door method for to get reimbursed for	
	equently resubmitted the award directly to
who signed it, an ecceived \$1,00	
the award for a month or more after his tax loss to p	revent the award from looking like a
reimbursement (Attachment 24, Interview of	6/2/2010).
In May 2009, approved a Cash-In-Your-A	count performance award for
the period November 1, 2008 through April 28, 200	
Recommendation for Recognition, on behalf of	
OHRM on May 1, 2009, and by	On the state of th
May 5, 2009. The narrative justification on the CD-	326 stated, "has demonstrated

exemplary performance as the Department of Commerce
assignments throughout the Department of Commerce" (Attachment 23, 5/5/2009).
eged that in February 2009, the coaned him the \$890 that he was short in his pay-period 4, February 2009 paycheck (Attachment 24, Interview of 2/2/2010).  d the \$1,000 proceeds from his cash award were deposited in his bank account on May 18, 2009.  May 18, 2009.  Bank records provided by the confirmed that the comment of the \$890 she loaned him back in February 2009. Bank records provided by the confirmed that the confirmed th
voluntarily provided OIG with her BoA statements encompassing April thru August 2009. Statements show she made a \$1,000 cash deposit on June 8, 2009 at a branch located at 5911 Blair Road NW, Washington, DC 20011 (Attachment 32, Bank Statements, June 2009 and Attachment 21, Letter from attorney, 02/15/2011). Inied loaning 890 in February 2009 and said that no part of the \$1,000 cash deposit she made on June 8, 2009 was given to her by ttachment 22, Interview of 2/3/201, page 66 at line 1573 and page 96 at line 2302).
DOC OHRM, Office of Compensation and Benefits, provided OIG with an email statement that read, "At no time did I ever tell his
hat he could 'recoup the monies' via a cash award or any other mechanism" (Attachment 25 tatement, 2/18/2011). Said the matter was referred to Attachment 26, Interview of 1/25/2011). Said that as a meeting in warch 2009, she told in presence of her supervisor at the time, and while soined the meeting by conference call, that a performance award could not be used to offset an employee payroll issue (Attachment 27, Interview of 2/2/2011).
According to OHRM around April of 2009, she brought a CD- 326 cash award for to OHRM around April of 2009, she brought a CD- said she told he knew accently lost about \$900 as a result of not properly updating a W-4
and that she suspected the award was being used to reimburse for taxes and was not being done because of complishments. According to sign the award and potified OHRM for taxes and was not refused to pi the matter.
said later signed the CD-326 (Attachment 28, Interview of the polyherman 9/14/2010).

3,

DOC OHRM, Human Capital said she recalled typing the justification for award and that the award was actually due to the fact that financial issues because his pay was decreased as the result of a tax issue (Attachment 29, Interview of 6/2/2010). When DOC OHRM. was interviewed on June 1, 2010, he confirmed that around April 2009 brought to his attention a along with her suspicions that the award was meant to reimburse id.he for not updating a W-4 tax withholding form designating a zero exemption. refused to sign the CD-326 and brought the situation to the attention of OHRM According to agreed that it was an improper use of the award system and that she would counse n the matter (Attachment 30, Interview of 6/1/2010). During a follow-up interview on June 2, 2010. was informed that

OHRM approved the referenced cash award. said he was not aware approved the award since she had previously informed him otherwise (Attachment 31, Interview of Section 2010).

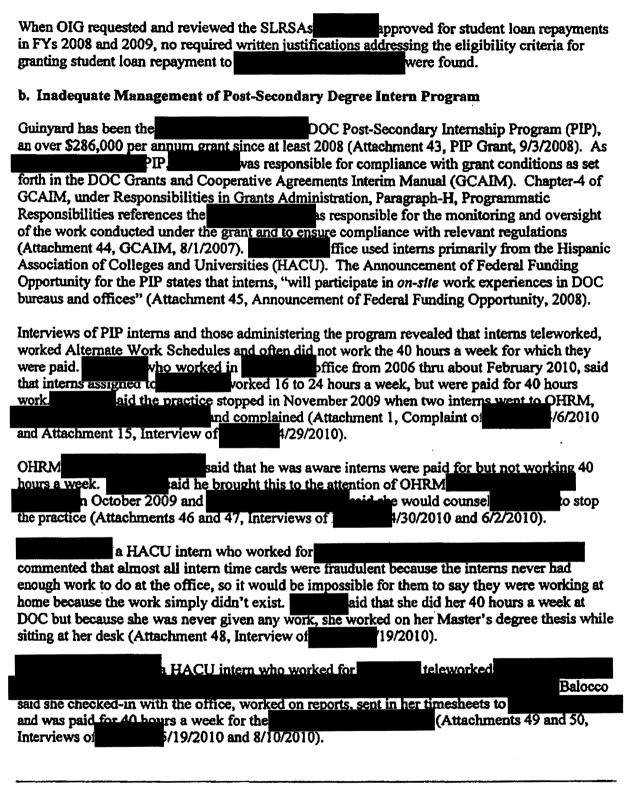
Interview of 5/2/2010).

#### Management Issues

#### a. DOC Employee Student Loan Repayment Program Policy Not Followed

DOC Departmental Administrative Order (DAO) 202-957, Repayment of Student Loan Policy, authorizes the repayment of up to \$60,000 of personal student loans to recruit or retain highly qualified personnel. Section-6 of DAO 202-957 states that one of the criteria authorizing repayments of student loans is that, "the candidate would not accept the position without receiving the student loan repayment incentive." Section-7 states that in determining the amount of loan reimbursement, "special skills the individual brings to the operating unit" must be considered. Further, Section-9 states, "requests for approval of a student loan repayment incentive must include a written justification addressing each of the criteria for eligibility" (Attachment 33, DAO 202-957 Sections 6 thru 9, 6/3/2005).

pproved student loan repayments in Fiscal Years (FYs) 2008 and 2009 for her direct report DOC OHRM, Human Capital employees: n the amount of \$19.217; for \$26,513; and to for \$60,000 (Attachment 34, DOC Student Loan Repayment Service Agreement (SLRSA) 9/11/2009; Attachment 35, 1/22/2008; Attachment 37. Y09; Attachment 36, SLRSA Compensation Compensation Y 09; Attachment 38, SLRSA 12/18/2008; Attachment 39, Compensation Y09; and Attachments 40 and 41, DOC OHRM Student Loan Incentive Computations FY08-10). In addition. pproved \$7,902 in FY 2009 and \$8,440 in FY 2010 in reimbursements towards Master's Degree (Attachment 42, Record from OHRM Budget Officer, 6/1/2010).



DOC OHRM, Human Capital, as week and was supposed to accomplish the rest of their work at home. It is mented that this probably did not happen since intern hours were not tracked as aid to be cold her that OHRM would not get any money back no matter what hours the interns worked, so we might as well just give them 40 hours a week pay (Attachment 4, Interview of \$6/28/2010).
said she informed she was taking five classes and would not be able to work 40 hours a week. Said said instructed her to do as many hours as possible at DOC and that she could do the rest in her dorm room. Said between her five classes and part-time campus job, she at times may have worked 40 hours [at DOC], but other times she did not (Attachment 51, Interview of 6/2/2010).
At the end of each week, the Interns submitted timesheets to approved and forwarded the timesheets via email to the grantee organization for payment. The grantee paid the interns for the amount of hours worked as indicated on the time sheet from monies they received from the DOC PIP grant. The the timekeeper in office, said there was no accountability of the interns or of their hours. Said that the interns were paid for many more hours than they actually worked. The phone and did not perform actual DOC OHRM work (Attachment 52, Interview of S/6/2010).
c. Subordinate Tasked with Graduate Coursework
Prom approximately  on-line Doctoral degree program through  participation in the ph.D. program. DOC OHRM, Human Capital.  said that she completed coursework on behalf of the ph.D. program. DOC of the participation in the ph.D. program. DOC of the participation in the ph.D. program. DOC of the participation in the ph.D. program. DOC of the ph.D.D. program. DOC of the ph.D. program. Ph.D. program. DOC of the ph.D. program. DOC of the ph.D. program. DOC of t
The alleged misconduct and management issues outlined in this report are of a serious administrative nature. As such, it is provided to assist you in considering administrative action you deem necessary. If you have any questions regarding the information contained in this memorandum, please feel free to contact me at (202) 482-

### **Index of Attachments**

Attachment		CIRTS Index
No.	Description	No.
1	Memorandum to File	1
2	Supporting Documents Received from Complainant	2
3	Interview of	8
4	Interview of 6/28/2010	57
5	PII Email to 12/4/2009	103
	Interview of 12/7/2009),	
6	9/14/2010	80
7	CIRT Incident Report; OHRM20091204-01, 12/7/2009	102
8	DOC OHRM PII Letter, 12/31/2009	52
9	PII Incident Records Response CIRT, 6/15/2010 Interview of CIRT, C	. 40
10	9/15/2010	81
11	DOC CIRT Recovered Emails 12/4/2009 with SSNs, provided Nov 2010	104
	IRF DOC OIG CCU Computer Forensic Analysis:	
12	OHRM shared "G" drive	139
13	Interview o CIRT, 11/17/2010	100
14	IRF - 77, Loan/Banking Information, 1/11/2011 Bank Records, Nov, Dec 2008 & May/June	116
14	2009	116
15	Interview of 1, 4/29/2010	9
16	Interview of 4, 5/5/2010	12
17	BoA statements 3/11 - 6/9/2008, produced	110
17	7/30/2010	118
18	BoA Check 5520, produced 1/7/2011 Interview of 1/25/2011 receipt	124
19	5-14-2008)	129
20	Interview Transcript, 2/3/2011	132
21	eponse via attorney, 2/15/2011	137
22	Interview of	45
23	Cash in Account Award Form CD-326	23
24	Interview of 6, 6/2/2010	23
·	Email with Statment DOC OHRM	
25	2/18/2011	138
26	Interview of OHRM Compensation, 1/25/2011 Interview of DOC OHRM HROC,	128
27	01/31/2011	131
	Interview of OHRM	]
28	9/14/2010	78
29	Interview of 6/2/2010	37
30	Interview of	20
31	Interview of 2/2010	21

### Index of Attachments

Attachment		CIRTS Index
No.	Description	No.
	BoA Deposits: Dec 2008 and May thru Aug 2009,	
32	produced 1/21/2011	126
33	DOA 202-957, DOC Repayment of Student Loan Policy	105
34	Student Loan Repayment Policy	106
35	DOC Compensation, 1009	88 .
36	Student Loan Repayment Policy	107
37	DOC Compensation, 009	87
38	Student Loan Repayment Policy	108
39	DOC Compensation, 2009	86
40	DOC Student Loan Incentive Computations-1	89
41	DOC Student Loan Incentive Computations-2	90
42	OT CT Review	38
42	Educational Expenses for	69
43	HACU Grant Award to DOC, 9/3/2008	113
44	DOC CGAIM (Grants), Chap4, ParaH, 8/1/2007	114
45	DOC PIP, Federal Funding Opportunity	115
46	Interview of 4/30/2010	13
47	Interview of 6/2/2010	34
48	Interview of	47
49	Interview of 5/19/2010	25
50	Interview of 2, 8/10/2010	82
51	Interview of 5/2/2010	24
52	Interview of <u>5/6/</u> 2010	16
53	Interview of 4/29/2010	5
54	Interview of 5/3/2010	6
55	Interview of 6/14/2010	49
56	Interview of 6/24/2010	50
57	Interview of	136