



NOAA's Office of Law Enforcement Workforce Analysis and Staffing Allocation Plan Addendum 1 - Partner Feedback July 2012

STATUS REPORT - 6/21/12-Office of Law Enforcement

Workforce Analysis and Staffing Allocation Plan - Partner Roll-Out

On May 10, 2012, NOAA's Office of Law Enforcement invited their federal and state enforcement partners to review the Workforce Analysis and Staffing Allocation Plan and provide any comments by June 1, 2012. Partners could email comments to OLE.staffing@noaa.gov; there were conference calls held with the Southeast, Northwest and Southwest partners (the participants were informed that these calls would be recorded so that the comments or questions could be accurately provided to OLE Director Bruce Buckson); and OLE's six Special Agents in Charge were encouraged by Director Buckson to note any comments they received from partners during the engagement process. While the names of partners are included in this addendum, OLE has redacted the names of specific commenters.

On May 10, 2012, following the appropriate leadership briefings and Hill outreach, the plan was distributed to the enforcement partners. There were follow up calls and meeting with the partners through June 1, 2012.

1. Who did we contact?

- Regional State and Territory JEA Partners
- U.S. Coast Guard - Headquarters and Regions
- U.S. Department of Justice - Environmental Crimes Section

2. How did we contact them?

- Email with link to plan and notification of future conference calls for input. 5/10/12

Dear enforcement partners,

NOAA's Office of Law Enforcement is undergoing a significant and positive transformation that requires adjustments to the composition of our workforce in the coming years. We have finalized a new Workforce Analysis and Staffing Allocation Plan that will help us identify the best balance and alignment of positions based on mission functions and priority needs going forward. These and other changes will improve our ability to ensure compliance with the law by combining focused and effective criminal enforcement with more extensive compliance assistance, monitoring, patrols, and inspections.

We are committed to following this reform process through to completion, in close collaboration with our federal and state enforcement partners. To that end, I am interested in your comments. You can see a copy of the plan here -- <http://www.nmfs.noaa.gov/ole/wasp.html> -- and you can share any feedback with us via email to OLE.Staffing@noaa.gov. We would like to receive any comments by June 1, 2012.

We will also be arranging Regional conference calls or meetings for discussion.

Your input is critical as we move forward in meeting our mutual mission to ensure compliance with the laws and regulations enacted to conserve and protect our nation's marine resources.

Looking to the future,

Bruce

- Conference calls with Power Point Presentations: 5/10/12 thru 5/25/12 (Scheduling conflicts postponed engagement with American Samoa until 6/16/12.)
 - Regional (local) engagement via conference calls and meetings
 - 18 JEA partners participated in calls or meetings
 - 4 U.S.C.G. offices participated in the calls or meeting
 - 7 U.S. Attorney offices participated in the calls or meetings
 - U.S.F.W.S. participated
- Specific partner engagement:
 - DOJ -- Environmental Crimes Section (6/1/12) - Director Buckson, Acting Deputy Director Dunn and GC Ben Friedman briefed Stacey Mitchell and Elinor Colburn.
 - U.S. Coast Guard - Director Buckson briefed U.S.C.G. Captain Doug Fears, Chief, Office of Law Enforcement, HQ, and Commander David Schaeffer.

3. What did we hear?

- General acceptance of the holistic approach of the plan; adaptive management throughout implementation; and encouraged by commitment to reassess.
- General concern for the potential loss of the investigative skill set and capacity associated with a criminal investigator (1811) that is necessary for criminal cases as well as complex civil cases.
- Concern regarding the disposition of a potential increased number of cases as well as increased number of Enforcement Officers.
- Other comments:
 - Recommendation to consider combined data sharing with USCG
 - Concern over reduction of New Bedford (NE) staff
 - Support for provision of the plan's inclusion of Enforcement Officer Supervisors
 - One State partner called for an increase in JEA finding
 - Questioned if there was budget support for the plan?
 - U.S.C.G. suggested embed Agents in the U.S.C.G. training program
 - Consider a whole government approach including coordination with all enforcement and legal partners



4. Any impacts to plan?

- The comments will better inform the implementation of the plan regarding personnel training and future case management.

SUMMARY:

The telecon comments from these engagements were recorded, transcribed and summarized for assimilation along with the written comments received by mail or email. The engagement with the partners through telephone and personal meetings provided an opportunity to reveal the details of the plan and explain the plan concept in detail. The resulting input will better position the Office of Law Enforcement as we move forward with implementation of the plan and build stronger partnerships.

RECOMMENDATION:

Accept the plan as final without revision. Include this status report and comments as an addendum to the plan. Continue engagement with partners throughout implementation of the plan and revise the plan as necessary.

OFFICE OF LAW ENFORCEMENT UPDATE CALL - JUNE 21, 2012: Director Buckson briefed NOAA leadership on the Staffing Plan status related to the Partner roll-out. Dr. Lubchenco approved recommendation to accept the plan as final without revision and include the status report and comments as addendum.

Engagement with partners re: OLE Workforce Analysis and Staffing Allocation Plan

HEADQUARTERS:

Date: Wednesday, May 23

Format: Conference call

Partners briefed: U.S. Coast Guard Capt. Doug Fears, chief of Office of Law Enforcement, and CDR Daniel Schaeffer, chief of Living Marine Resources

Summary of call/mtg:

- Bruce briefed partners on how we got to this plan, what the plan includes (less special agents, more enforcement officers, more enforcement support positions to help our sworn personnel focus on their cases) and asked for any feedback they have, especially if they see gaps in accomplishing our mission.
- ██████████ asked whether the efforts of our JEA partners and the Coast Guard were looked at when preparing the plan; was there a “whole government approach” to our enforcement efforts?
- He also offered that in the past, special agents were embedded in the Coast Guard for training, and that could be a way to work closely together in the future.
- Both said they would consolidate Coast Guard’s feedback and email comments to OLE.staffing@noaa.gov

HEADQUARTERS:

Date: Friday, June 1

Format: In-person meeting

Partners briefed: NOAA Deputy General Counsel Ben Friedman; Elinor Colbourn and Stacey Mitchell, Environmental Crimes Section, Department of Justice

Summary of call/mtg:

NORTHEAST:

Date: 5/10/12 & 5/15/12

Format: Email

Partners briefed: USCG D1 & D5 and JEA Partners

Summary of call/mtg: Set-up conf call for informal Q&A for May 22, inquiring for interest.

NORTHEAST:

Date: 5/22/12

Format: Conference Call

Partners briefed: USCG and State Partners

Summary of call/mtg:

Attendees[1]

USCG D5 - LCDR Kevin Saunders

MD - Jack Bailey for Lloyd Ingerson

NY - Peter Fanelli

CT - Kyle Overturf

RI - Kurt Blanchard

NH - Jeff Marston

ME - Joe Fessenden

Concepts and Ideas Raised

1. Coordinated scheduling of at-sea patrols with State boat patrol schedules

- a. Can also be applied to USCG
2. Coordinated and cooperative training with USCG, possibly supplying officer billet to USCG training centers.
 - a. NED EOs currently attend NERFTC
3. Coordinated and Combined data sharing, CG MISLE and OLE LEADS and other databases.
 - a. Requires high level initiative and funding to create a combined data sharing DB.

Concerns Raised

1. Loss of agent positions with replacement of EO and other sworn positions could be detrimental to states as a loss of investigative effort.
 - a. Change in flow of information as officers and/or civil investigators in offices where there are no 1811 work directly with States and CG sharing information and info that rises to criminal or more complex level would be relayed to agents that cover that area, but not necessarily housed in that area.
2. Loss of overall numbers in New Bedford area based on current effort. Need to look at a larger history in New Bedford may need to shift additional resources to cover New Bedford and Rhode Island workload.
 - a. This is being looked at, still awaiting data from NMFS fisheries stats data and large subset of cases.
3. More officers may produce increase number of lower level cases, how will those cases get handled via prosecution with no increase in GCES to handle.
 - a. Currently USCG attorneys are helping our GCES and maybe that could continue?
 - b. Possibility of handling MMPA and ESA petty offense cases through Central Violation Bureau Citation Process thru DOJ. Need to do more research and engage discussion with NOAA-GC and OLE-HQ.

Other Comments

1. Glad to see EO Supervisor positions. Feel there is a difference there and that is a needed position for an officer group to be supervised by supervisor with patrol and general investigative focus.
 2. Adaptive Management and holistic approach seen as positive. Change over time with constant re-assessment is better than a knee-jerk reaction.
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[1] VA, DE, NJ, MA and USCG D1 were unable to make the call.

NORTHEAST:

Date: 5/24/12

Format: Email

Partners Briefed: John Kacavas, U.S. Attorney, District of New Hampshire

Summary: Invite to discuss on phone and sent copy of the plan and email address for comments. Further discussion to take place via phone.

NORTHEAST:

Date: 5/24/12

Format: Email

Partners Briefed: Nadine Pellegrini, Chief, Major Crimes Division, USAO District of Massachusetts

Summary: Invite to discuss and sent copy of the plan and email address for comments. Further discussion to take place via phone or in person.

SOUTHEAST:

Date: Wednesday, May 16

Format: conference call

Partners briefed: 25 participants including representatives from NOAA's Office of General Counsel's Enforcement Section, U.S. Attorney's Office, U.S. Fish and Wildlife Service, FLEOA and JEA partners from Florida, Alabama, Mississippi, Louisiana and Texas.

Summary of call/mtg: Six participants had questions or comments regarding:

- The Florida Keys National Marine Sanctuary is a priority for OLE, but is "being written off criminally" by covering it in the future with three agents out of the Miami field office instead of stationing agents in the Keys, as we do currently.
- Need more agents in the Northern Gulf of Mexico, especially in light of the problems we've had lately with turtles.
- If you are going to add more EOs, will there be any increase in staffing for GC Enforcement to do civil prosecutions?
- Reduction of criminal investigators will have a large impact on the resource in Florida; we should be adding criminal investigators, not reducing the number of them.
- We need to increase the number of inspections we are doing of imports/exports.
- JEA funding has not increased. That funding should be increased to put more boots on the ground to help OLE.
- Criminal enforcement is a necessary deterrent; OLE and their JEA partners are not concentrating on people who accidentally break the law. Closing out criminal investigations is declaring open season on all resources.
- The staffing plan is wrong where it says it is hard to take cases criminally. That is not the case anymore. All U.S. Attorneys now have been trained on environmental crime.
- Criminal investigators can do it all because they have the training necessary to cover any priority need.
- How would the changes proposed in this plan affect a possible merger with U.S. Fish and Wildlife?

ALASKA:

Date: Monday, May 21

Format: Conference call

Partners briefed: US Attorney for Alaska

Summary of call/mtg: From ██████████ (paraphrased): "NOAA will be allowing the world's best fisheries to be destroyed because we won't have enough enforcement. A few low-level tickets on the docks are not the answer. The big guys who pose the greatest threat to the resources are going to get away with it because we won't have the resources to investigate the cases. As someone who lives here and values the resources, I am very concerned." USA ██████████ will provide written comments through DOJ.

ALASKA:

Date: Offered but no date confirmed yet. Major Bear declined-believed he understood plan well enough. Still waiting for response from Col. Folger.

Format: Conference call

Partners briefed: Alaska Wildlife Troopers
Summary of call/mtg:

ALASKA:

Date: Scheduled for 5/25/12
Format: In person
Partners briefed: USCG D17
Summary of call/mtg:

ALASKA:

Date: May 18, 2012, 0930
Format: In person
Partners briefed: GCES Susan Auer & Garland Walker
Summary of call/mtg: GCES will submit comments online.

NORTHWEST and SOUTHWEST (WEST COAST):

Date: 5/18/12 @ 11:30 PST
Format: conference call
Partners briefed: GCES Ortiz & Niel, CDFG Nancy Foley, Tony Warrington, Oregon Eric Olson and Jeff Samuels, US Attorney
Summary of call/mtg:

Follow up meeting with AUSA Section Chief Environmental Crimes in the Los Angeles area TBA. Received an email from the Section Chief stating he has received and read our staffing plans and our National/Regional Priorities. He has requested a meeting to discuss a current case he has [REDACTED] and how they fit well within our National Priority of protection of Coastal (Pelagic) Species. He stated he believes we could make a number of solid cases if we could allocate more agent resources to this series of cases.

[REDACTED] asked if OLE has a specific time line set as to when we can expect to have additional personnel added to the Southwest division and understood that the main driving force is our budget. I stated we have no defined time line.

[REDACTED] asked questions about the significant increase of non-sworn personnel versus sworn personnel in the SWD. I explained how the non-sworn personnel positions provides direct administrative and operational support to sworn personnel. It was also articulated that SWD is currently down a couple of ET positions and that the current admin. staff are carrying several responsibilities outside of their current performance plan (e.g. JEA Coordinator is currently being handled by admin. assistant)

[REDACTED] asked about a rumor concerning NWD & SWD merging into one Region and I stated there are discussions at the NMFS Regional level about a possible merge, but the merge did not include OLE.

PACIFIC ISLANDS:

Date: 5/14/12, On the Island of Guam
Format: In person
Partners briefed: MITF (JEA partners) Ofcrs. Anthony Doyle & Arriel Hautea

Summary of call/mtg: Plan and PowerPoint was presented & explained. No questions/comments at this time. If future questions/comments will submit, via internet link.

PACIFIC ISLANDS:

Date: 5/15/12, on the Island of Guam

Format: In person

Partners briefed: USA Office; AUSAs Clyde Lemons & Karon Johnson

Summary of call/mtg: Plan and PowerPoint was presented & explained. [REDACTED] will submit comments, via internet link.

PACIFIC ISLANDS:

Date: 5/15/12

Format: On telephone (U.S. Attorney at conference in D.C.)

Partners briefed: The U.S. Attorney of Hawaii, Florence Nakakuni

Summary of call/mtg: Plan explained, meeting set by USA with her First Assistant for 5/16/12. No questions/comments at this time. If future questions/comments will submit, via internet link.

PACIFIC ISLANDS:

Date: 5/16/12, on Island of Oahu, HI

Format: In person

Partners briefed: First Asst. for U.S. Attorney of Hawaii, Elliot Enoki

Summary of call/mtg: Plan was presented & explained. No questions/comments at this time. If future questions/comments will submit, via internet link.

PACIFIC ISLANDS:

Date: 5/16/12, on Island of Oahu, HI

Format: In person

Partners briefed: USCG d-14; Lt. Cmdr. Charter Tschirgi & Intel. Rep Eric Roberts

Summary of call/mtg: Plan was presented & explained. USCG will submit questions/comments, via internet link.

PACIFIC ISLANDS:

Date: 5/16/12, on Island of Oahu, HI

Format: Conference call

Partners briefed: DOCARE (JEA partners) Acting Chief Randy Awo & Acting Enforcement Supervisor Jason Redulla

Summary of call/mtg: Plan and PowerPoint present and was then presented & explained. DOCARE comments during meeting will be sent to Leslie, via email.

PACIFIC ISLANDS:

Date: 5/16/12, Island of Oahu, HI

Format: Conference Call

Partners briefed: USFW Res Agent in Charge George Phocas

Summary of call/mtg: Plan and PowerPoint present and was then presented & explained. No questions/comments at this time. If future questions/comments will submit, via internet link.

PACIFIC ISLANDS:

Date: 5/16/12, Island of Oahu, HI

Format: Conference Call

Partners briefed: USMC at MCBH Environmental Dept., LEO Ofcr. Gordon Olayvar
Summary of call/mtg: Plan was PowerPoint present and was then presented & explained. [REDACTED]
[REDACTED] comments that OLE should increase sworn personnel to 6 SAs and 6 EOs in Hawaii
because the area is so large and other Islands to need permanent personnel stationed there.

PACIFIC ISLANDS:

Date: 6/16/12, American Samoa

Format: In person

Partners briefed: DMWR (JEA partner) Chief Conservation Ofcr. Peter Eves and CO Hanipale
Hanipale

Summary of call/mtg: Plan and PowerPoint was presented & explained. No
questions/comments at this time. If future questions/comments will submit, via internet link.

PACIFIC ISLANDS:

Date: 5/17/12, Island of CNMI

Format: In person

Partners briefed: DFW (JEA partner) Ofcr. Erwin Flores *(name added 5/18/12) CNMI DLNR
Secretary Arnold Palacios.

Summary of call/mtg: Plan was presented & explained. No questions/comments at this time.
If future questions/comments will submit, via internet link.

PACIFIC ISLANDS:

Date: 5/17/12, Islands of CNMI

Format: In person but still enroute as of this to meeting.

Partners briefed: U.S. Attorney's Office in CNMI. *(added on 5/18/12) AUSA Ross Naughton.

Summary of call/mtg: Plan and PowerPoint will be presented & explained. No
questions/comments at this time. If future questions/comments will submit, via internet link.

[REDACTED] Thank you. I have reviewed the entire proposed staffing plan, all the supporting material that was posted through the Web site, the explanatory letters. And I've been following this since the original report was issued.

And I see somewhat a form following function issue here that once the initial suggestion was made that a realignment should be examined. It was a foregone conclusion that it would occur.

But in examining the priority statements in the plan and the OLE priorities identified and set forth three or four times in the explanatory material it's clear that one of the areas that is deemed a high priority for OLE is resource protection in marine sanctuary areas.

In looking at the plan as the staffing is proposed Page 54 which is the easiest breakout, but 53 and 54 have the proposal for the Southeast division, the keys are basically being written not criminally.

It's not reasonable to expect that the Miami field office with essentially three special agents is going to do the job that is currently being done in the Florida Keys by the two criminal agents there.

And yet that's the largest Marine sanctuary on the East Coast of the United States. It is also a sanctuary that is heavily dependent on protection of its coral resources which is one of the other major priorities of the division and a subject that is getting a lot of attention right now.

Do you really anticipate that you're going to have the budget and the wherewithal to be fielding agents out of the Miami field office which is actually quite a bit north of Miami all the way down through the Florida Keys to conduct the necessary criminal investigations to support the deterrent effect

we're going to need down the given the historic activity level we've had and the fact that the Keys also have at least medium priority resources that are identified for OLE protection?

Otha Easley: Those are good questions [REDACTED] and, you know, it's clear to everyone in my office in this division that there's much more criminal work out there than we have criminal investigators to conduct even without a reduction.

We have, you know, I've mentioned the priorities, the various priorities we have to deal with and though this approach that we're - this location of - that we have these couple of agents in the Southeast now may not be the best for the Keys criminal enforcement.

But that's where the plan is right now. The plan is in its early stages of implementation. And also as I've mentioned earlier in the call that this is kind of an adaptive management, you know, plan here that the changes will occur.

And as the as shortcomings are identified or strength and as strengths are identified those will be addressed in the best way that we possibly can keeping reality realizing that we have budget constraints upon us as well.

But your thoughts are captured well, you know, well-placed and this definitely will be in the picture.

And I'll tell you also that you're not the first to bring that, you know, that observation to light, appreciate it.

[REDACTED] Yes. The problem there is that in reality the, even the partnership with the local and state agency enforcement folks down there is jeopardized

by pulling out the criminal investigators even where we have the enforcement agreements with FWC operating vessels and cross designated.

They lack the capacity for a number of reasons not least of which is excessively close association with the regulated community to make the arm's length decisions to investigate and refer cases for criminal action.

And I understand the budget problem. I understand the priority issue which is why I'm not even thinking about anything below at least medium priority when I try and assess, you know, what this plan means for the Southern District of Florida.

And I also confess I'm being very parochial about this but I see collateral issues because of the budgeting thing you point out, driving people from there.

There are times when the cars practically get parked because there's not the money to support the agents to support the travel.

There's the whole issue of the proper and appropriate use of the Lacey Fund for investigative efforts which I think has taken a excessively restrictive approach to the use of those funds.

But that aside you're really going to be jeopardizing even the effective collective enforcement between the federal and the state entities in Florida if you pull everybody out of the keys and put two civil investigators there.

Otha Easley: Well spoken. You sound - you're very well informed [REDACTED] Hopefully the investigators, the civil investigators will help bolster the F - the JEA the FWC relationship and activity.

And I hear you as far as travel and budget. So I'll have to leave it at that. Your points are well taken.

Lesli Bales-Sherrod: Thank you [REDACTED]. I'm glad that I know that I've talked with you several times for different press releases and things.

You're very articulate so I appreciate you being on the call and sharing those thoughts and glad we have a transcript of that.

And also if you want to send anything in writing to us we are going to get all these comments to Director Bruce Buckson. Thank you.

Coordinator: Thank you. [REDACTED] your line is open.

[REDACTED]: Yes. Otha I hadn't had a chance to go over the entire plan but just a quick question.

In light of all the problems we've had with turtles in the last two years in the northern Gulf this re-alignment is there anything in the plans to beef up the enforcement by putting more agents here in the northern Gulf region? And how many agents or enforcement officers are you looking at trying to put here?

Otha Easley: Well thanks [REDACTED] for the question. The - we're trying to increase the number of enforcement officers. You know, majority of (Ted) work especially in your area, the majority of (Ted) work is non-criminal.

So we're having to - I'm wanting to better match the employee with the mission. And there is - we were hoping to have the back up a bit. We're

hoping to have five officers up there in the northern Gulf of this fiscal year but the budget kind of narrowed that down to two.

One's on board now and one announcement we're hoping to go out any day waiting on our workforce management office to publish that announcement.

But the plan it shows an additional increase for just that for, you know, primarily just that particular purpose for (Teds) and (Ted) enforcement.

The - we're about ready to come back around also as far as readjusting our seeking input towards potentially readjusting our priorities whether it's the, you know, the Keys that [REDACTED] was talking about or (Ted) enforcement or IFQ enforcement et cetera, to see if we need to not only adjust your priorities but also potentially adjust this allocation, this goal of putting people of various experiences in the various location.

[REDACTED]: All right thank you.

Otha Easley: Sure.

Coordinator: Thank you. [REDACTED], your line is open.

[REDACTED]: Hi. Good morning Otha and everybody else. I've got a question, reality if you're adding more of the officers, the NOAA officers to the staffing they will probably be the ones that are encountering some of the smaller cases since they're not doing that in deep - in-depth long term investigation.

Is there any provision in the staffing plan to increase staffing at the prosecution level in OGC?

Otha Easley: Good question [REDACTED]. That's outside of my - I know the prosecuting end of things is part of the bigger enforcement picture. But I cannot speak to what they can and cannot do.

They have budget concerns too. And I can only speculate but I can't say anything for certain.

[REDACTED]: Okay. It just makes sense to me one would think that if you're increasing your number of boots on the ground, the frontline uniformed that they would be writing the smaller more de minimis cases.

And, you know, we're writing those type of cases as well but we're not able to forward those through to prosecution because they are de minimis in the view of OGC.

So that's just a concern that I have. And I know we've been beating that drum for a while. But anytime there's an opportunity to get that information out there I try to take advantage of it.

Otha Easley: Well it's documented and noted. And I know exactly what you mean. We've had this conversation a number of times between ourselves and with [REDACTED] and council. And we'll share your thoughts with them too.

[REDACTED]: Thank you.

Coordinator: Thank you. [REDACTED] your line is open.

[REDACTED]: Hi. Good morning. This is [REDACTED] with the Florida Fish & Wildlife. I'd like to echo what [REDACTED] and what [REDACTED] already said second their view on those on their opinions on the restructuring.

Also like to add that the reduction of criminal investigators would have a large impact on the resource overall, the long term investigations they we do in conjunction with the NOAA's criminal investigators.

The long term investigations that we currently have now that are ongoing need the criminal investigators (themselves) move those forward through the prosecution phase.

And if we reduce those numbers I think that we would be opening up exploitation of Florida's resources overall to the criminal element.

Now I personally think that this if anything we should be adding more criminal investigators instead of reducing them.

Otha Easley:

Well thank you [REDACTED] for your comment. This is also - it is also hoped that or the plan is that with an increase in civil investigators and enforcement officers that will eventually allow the criminal investigators that are still on staff to more concentrate on those.

Because right now we all know that they're being pulled away from criminal investigations to do civil work.

And patrols and those other things will hopefully I guess the positive end of this is that they can better concentrate on those types of criminal investigations you think that you're mentioning that really should be beefed up.

And I understand and still have the concern. And another big concern is is the level of importation and exportation of products coming in and out of Florida.

And I would encourage in this study that we look at the number of inspections that are taking place relative to that. And I think the number's very low.

If you look at the average of salt water products that are coming in and out of Florida that actually get looked at by investigators and, you know, the impact that it has when we do a large long term investigation on the community that deals in that how they perceive, you know, the - those investigations as a deterrent.

Otha Easley: Will do [REDACTED] You know, if we were to double every position that we have in the Southeast, you know, we probably still wouldn't have enough to cover all these important things that, you know, these enforcement efforts and all the various laws that we - and regulations that at least just OLE has to deal with.

We still would have all those - wouldn't have all those covered. But and so it makes it very important to balance these priorities and focus what we do have and to where they need to be focused.

And we're looking at those at the number of imports and how to address those also. And also in that study or that look at the imports we're also bringing into bear other federal agencies that can have some impact that we could partner up with to, you know, pick up some of our slack so to speak.

[REDACTED]: I understand. I'll look at the report -- I'm on the road today -- and provide additional input via email. Thanks for your - the opportunity to have a chance...

Otha Easley: That would be great [REDACTED]. Thank you.

[REDACTED]: Thank you.

Coordinator: Thank you. [REDACTED] your line is open.

[REDACTED]: Hello everyone. Also I one comment is maybe to put a little bit more of the component as far as the JEA partners provide for the workforce.

I know Bruce has spoken and testified in the past about the JEA partners are actually doing a lot of boots on the ground work.

Maybe putting a component showing that how the JEA funding over time has not increased and that those equivalent and FTEs provided by those state partners have subsequently decreased and maybe in the report put a recommendation that over time that those funding levels be increased to increase those boots on the ground FTA - FTEs provided by the state partners.

I think that that's an important component, it kind of goes along with the extra boots on the ground for your guys.

Otha Easley: Well we'll consider that [REDACTED]. I know in other arenas we have been trying to emphasize the need or how the agency would benefit by additional funding for additional JEA, you know, partner assistance.

So putting in this plan I can see a place for it. And your - we'll capture - well your thoughts are captured of course. And Bruce will address that when this (email to you) and we all get together and go over these suggestions.

[REDACTED]: All right thank you.

Otha Easley: Appreciate it [REDACTED]

Coordinator: I am showing no other questions at this time.

Otha Easley: Well I wanted to say that, you know, again that this is - this implementation is in its early stages.

You know, as far as changes in our division and changes in what we do here in the southeast I don't expect a tremendous movement, really not even a whole lot of significant movement in the immediate future. Because, you know, we're fairly compared to other divisions we're fairly flushed out. We're fairly staffed.

We only have three vacancies -- Puerto Rico, Texas, and North Carolina while as other divisions have significantly greater vacancies and they'll see much more immediate progress towards the plan, towards the goal of this plan.

But we're, you know, we again, this is our goal. How we're going to get there is going to, you know, is going to be dependent on the budget.

We're not going to force anyone - any of our staff to be reassigned. We're not going to force them to, you know, move to other locations.

And so it's going to take some time before any of us realize any great changes. So I wanted to go ahead and let you know that as well that, you know, this is kind of early stages and though this is our goal, appreciate your input.

We, you know, this again the goal that can change, is expected to change over time as, especially as priorities change and is very much budget driven. And I think you all know have a real good picture of what the federal budget is looking like lately.

So that's all I have in closing...

Lesli Bales-Sherrod: Hey Otha it actually looks like we have a couple of other questions if you have time to take a couple of others?

Otha Easley: Oh sure, sure thing.

Coordinator: Thank you. [REDACTED] your line is open.

[REDACTED]: Thank you. I actually queued in after you said you had no more figuring that, you know, you probably paid for an hour on the call, hate to waste the money.

One of the issues that I see in the background of the report and I see this essentially as an artifact of the flawed IG report and I refer to it as a flawed report because I believe it did not correctly reflect with accurate numbers and critical analysis what's going on in NOAA law enforcement.

It's constantly cited and put out there as something that addresses NOAA enforcement but it doesn't. It really addresses the civil problems in the civil program.

There's very little in that report and I've combed it carefully that really addresses criminal enforcement.

And I don't deal with the civil program much except for an occasional parallel proceeding. But on the criminal side the program has been effective and the numbers prove it.

But if you're looking for deterrents, education has to run in hand with deterrents. Education is a big portion of the push.

A lot of Lacey money that came from criminal enforcement is now being used to support education programs.

And the point I want to make on that is your criminal enforcement effort by your special agent is not focused on people that are violating the law by mistake. They're not violating the law out of ignorance.

And I know every agent state and federal on the phone right now probably agrees with me on this. They're violating it because they see an opportunity.

And the only thing that deters them from taking advantage of that opportunity especially when the educated law abiding community stays away from the criminal conduct is stepping in and exploiting the resource for financial gain when the field has been opened.

The only deterrents to that is criminal enforcement. Enforcement officers writing tickets in the Florida Keys would never have stopped the Casita industry.

And with a nod to FWC who was in that with the agents down there they really stopped that industry, were in the tag end of it.

If you look at the objective numbers on landings and reports to FWC under the trip ticket program you can see that those four or five cases have had a huge impact.

And we know because fishermen talk that people have stopped doing it and they're not going to risk it because they know there are NOAA criminal investigators there that will investigate and push the cases.

You can't simply say education is the answer. You can't simply say that civil enforcement is the answer. I wish it were true. It's not in reality.

From the Florida Keys office to the Nitzel Office around the state, closing out the criminal investigation offices is simply declaring open season on all the resources.

And I don't believe that, you know, even were we able to fund the JDAs up to where everybody would like them that that's going to change materially.

You have to have the certainty of criminal enforcement as the 600 pound gorilla in the corner if you will.

And I believe you really need to reassess this plan with that in mind. I hope that's a question.

Otha Easley: I was taking it as a comment. But if that's a question I think there might be a pretty obvious answer that I don't think I need to say.

[REDACTED]: Then let me if I'm just commenting let me comment on one thing in the plan or this document that is just absolutely wrong today.

It talks about the difficulty of getting NOAA criminal cases taken up by the Department of Justice and the US attorney's offices.

And in that discussion I would have agreed wholeheartedly two or three years ago. When Attorney General. Holder gave his, you know, introductory speech to the Department of Justice he indicated his third priority was environmental enforcement.

Out of that every US attorney was trained for a full day. And that may not sound like a lot but when you bring in 94 political appointees and make them sit in a room for a day to be trained on environmental law that's a big deal.

They were required to bring one of their prosecutors with them as well so over 180 people were in the room not counting the instructors at all the breakout sessions.

There is a major push underway throughout the OJ to enhance environmental enforcement supporting all of the agencies including NOAA in those activities.

I can tell you for those who are on the distribution for the environmental crime section bulletin that if you look at it over the last four or five months you will see that the number of districts doing environmental cases including NOAAs has skyrocketed.

A year ago you would have typically seen six or seven districts reporting every month activity. Now it averages over 25.

The cases are being taken. Receptivity has gone up tremendously. It's part of an internal education program we're doing for our prosecutors. Your cases are going to get in the door and they're going to be taken criminally.

That needs to be factored in. It's the old Field of Dreams, if you build it they'll come. Bring the cases. They're going to get taken now and you'll get the deterrents in districts that historically may have been less receptive because the word is out and people are taking the cases and they've been trained to take the cases.

Otha Easley: Very powerful comments there [REDACTED], appreciate it. We'll consider - I'll consider the numbers. And I'll have my chain try to reconsider the numbers and placement of special agents we have in the Southeast.

[REDACTED] I appreciate it because I really, the comments on importations resonated as you know although we've been doing a number of cases here and there's now a national initiative on the false marking, mismarking and mislabeling of seafood products coming in.

And it doesn't matter whether it's Chilean sea bass or Vietnamese catfish, those pose a risk to the public. They pose a health risk and they also unfairly impact the US producers from the fishermen to the processing facilities.

That's a big issue. And that's an issue the dollar value's you'll only deter with the criminal. You really just can't stop it with civil action because those have been there forever.

People have been trying to beat that type of civil interdiction since the Phoenicians.

Lesli Bales-Sherrod: Thank you [REDACTED]. It looks like we just have one more question in queue and I just want to make sure we have time to capture that question or comment before our hour runs out.

Coordinator: Thank you. [REDACTED] your line is open.

[REDACTED]: Hello Otha. This is [REDACTED] I was employed by NOAA for over ten years. I started out as an enforcement officer and then was a special agent.

So I know both ends of the criminal and civil enforcement. I guess my comment, one of my comments would be was that now I'm a Special Agent with US Fish and Wildlife.

And I've over the years I've worked with many different agencies -- state, local, and federal. And I would put a NOAA Special Agent next to me any day to help me with an investigation.

The guys are very well trained and understand the complexity of the civil and criminal enforcement.

If you have a criminal investigator who is trained to do complex investigations on civil and criminal matters then you have someone that can cover if there's a priority need to have a patrol off of Galveston, Texas for turtle enforcement or if you need to have someone go to the Houston airport and conduct a complex investigation on some foreign species coming in that may be a public health concern or Lacey act violation then you have someone that can cover all aspects of any potential enforcement problem that you would have.

If you limit yourself to just criminal or just civil investigators you may be limiting that. Investigators such as with USDA and others that I've worked with that only have criminal investigators don't seem to have quite the relationship with the US attorney nor have the training to conduct the criminal aspects of violations.

So my - that's my comment is that I think if you have someone that can cover an agent, they can cover any priority need that you have I think that you're better well equipped.

Secondly it's - I'm not sure if the word on the street is rumor or if it's a potential to merge with Fish & Wildlife but if that was to happen how would this - how would these changes affect that merger?

Otha Easley: Answer - there's two questions there. First is dealing with HA11s and their ability to do both civil and criminal.

So there we won't be able to prevent or stop the HA11 the criminal investigator for doing just criminal investigations and nor do we want to.

You know, we'd like for that person to spend the majority of his or her time in that area. But you're right that agent is a better agent by being able to work both areas to some degree.

It's just that with the fewer number of historical, with the fewer number of enforcement officers or civil investigators that we've had that a significant percentage of what - and has determined too high of a percentage of what those HA11 or what those agents were doing was not criminal.

So we plan to mix them but keep them mixed, keep their, you know, their toolbox, keep them in the toolbox such that they can do both types of investigations.

Now merging with Department of Interior that - that's the question that no one has the answer to at this point.

You know, it's - we've heard a lot of - we've heard about movement towards examining whether that was even feasible fiscally or otherwise.

And then once more movement has been made or more close to a determination of whether that's going to happen or not then we'll definitely, you know, have to relook at this whole allocation plan, not only from agents and officers but even from support staff and command structure.

So don't have an answer. It's too soon to tell for regarding your second question there [REDACTED]

[REDACTED]: Thank you sir.

Coordinator: I'm showing no other questions at this time.

Lesli Bales-Sherrod: Great thank you. In closing for those of you who are still on the phone I personally as the communications person here for OLE want to apologize for the technical difficulties that we had today.

I'm not sure looking at the list of participants if I have all of your email addresses.

So let me give you mine because if you need to reach out to me I'd be happy to share the link to the plan again or I will check with my director to see about sharing the PowerPoint.

I'm not sure that the Webinar link will work after our conference call is over. So let me give you my email address since these are technical difficulties that had nothing to do with the southeast or Otha or (Jeff) just, you know, how computers work sometimes.

And [REDACTED] if we could open it up for Q&A, that'd be great.

Coordinator: If you would like to ask a question, please press star 1. To withdraw your question, please press star 2. Again, if you would like to ask a question please press star 1.

The first question is from [REDACTED] Your line is open.

[REDACTED]: Thank you.

Todd, Martina, thank you very much. This is [REDACTED] representing Coast Guard District 11. I was wondering if you could speak to budget support for the proposal? You know, you made clear that there isn't going to be reapportionment of current force, but the overall proposal was for an increase (unintelligible) personnel. Given that some regions have been harder hit, but by the hiring freeze than others, speak to implementation and the time scale that you're looking at. Thank you.

Todd Dubois: I know I could count on the Coast Guard to give me a tough question. I actually don't believe that we have what you can call a formal timeline that's supported by the budget. Because I think as you know, and I'm sure many of our partners are going through is incredibly difficult budget times. There's very little in the budget and in the budget planning cycle that's confirmed at this stage. You've got many things at play in the federal budget cycle.

The one thing that I can say from a budget perspective is a part of the reason for this plan and the benefits of this plan, having been bought off by leadership, is that they've acknowledged that this is where they would like to see the Office of Law Enforcement be and that there is support to get us there. There's been a recognition of the staffing challenges that we've faced the

difficulty over the past several years. And I think that there is support in our budget planning process to ensure that NOAA helps us get here.

As far as the timeline to improve it, I think it's clear in the staffing plan that it was not a defined end time that we would reach this goal, but that as soon as our hiring freeze for special agents and personnel in general is lifted, which we hope will be in the very near future, we will begin filling positions by priority. And that will certainly be effects on each division, and those harder hit than others and the mission, will certainly be a factor in determining what those priority positions will be. But having that support and good will from the standpoint of NOAA and Commerce, moving forward, certainly many of these budget questions are outside the control of either NOAA or the department. But this is our goal and we will move forward as quickly as we can to get adequate staffing or get our staffing back moving forward in this direction.

[REDACTED]: Thank you very much.

Coordinator: The next question is from [REDACTED]. Your line is open.

[REDACTED]: Hello. Thank you, Todd and Martina. [REDACTED] and [REDACTED], here from California.

A couple of questions, we were, you know, looking at your breakdown of positions there. And then just before the positions you broke down sort of the special agents doing large criminal type investigations and then you had the uniforms, you know, doing the smaller everyday stuff. And then you had this whole civil piece. So when we're looking at the positions you have listed here, these 51 support people, those eighteen-zero... What were they, 1802s, or something? Are those also investigators or are they just a part of the support

staff along with the other 68 admin people? It seemed like it was pretty admin heavy with that.

And then the second question is about priorities, fulfilling positions. We've been hit really hard on the West Coast here and would like to see some sort of commitment by headquarters to make these West Coast positions a priority as soon as things open back up. So what can you tell us about that? Thank you.

Martina Sagapolu: For clarification on the support positions, they are 1802. And those positions, if you noticed, [REDACTED] that we are significantly low in that area. We're talking about examples would be (Lisa Clarins) position, which (Eileen) has absorbed. And currently, our administrative staff is carrying three different responsibilities. By increasing the admin staff support we'll be able to better serve not only our own division but also our partners.

The second question relates to filling the positions. I think we're all online in hoping that the West Coast states will be able to backfill. I think in our last conversation in Sacramento we were talking about moving forward with the enforcement officers and we're still waiting, which is out of our hands, when the two enforcement officers will report for duty, one in Santa Rosa one up in Arcadia.

Todd Dubois: Thanks, Martina. This is Todd. Just to fill in, I guess, from the Northwest, those support positions, those non-sworn positions, also looking in the Northwest and other places around the country were looked at, as state intelligence analysts or those types of support positions that give better support to investigations.

And towards your question about the civil, I did try to mention earlier on of the areas I think we're not completely comfortable with is the civil

investigation side and how to fully implement those. But just a reminder that even though our 1811s are criminal investigators, that point, and as they've always been, they do both. And the push is simply to recognize that as, by definition under Federal personnel rules, that requires 51% of their time to be involved in criminal investigations. That does not mean that 100% of their time is criminal. So there's a possibility there. There's also a recognition from Director Buckson and all of leadership that those civil investigations are actually very critical and key. And special agents will be involved in those going forward and a development of how we utilize the 1801s and the 1801 job series, which doesn't have to be just uniformed, is also in the discussion.

Coordinator: Once again, if you'd like to ask a question, please press star 1.

At this time, there are no questions.

Todd Dubois: Maybe I'll go back just briefly to the previous question. I think I didn't quite answer the last part of that and Martina hit on it with the priorities that was raised, that the commitment by headquarters that fill those. I mean it will certainly be in the mix all the divisions and all the priorities. There is a recognition on the staffing issues on the West Coast. But I know that the first priority will be to start filling some of the supervisory positions on a permanent basis that are currently filled with acting positions and to ensure that we have that structure in place, and then we'll go from there. And certainly there will be involvement by all of comments from our partners as well as all of our SACs and the divisional priorities feeding into the Director's decision on which positions will be priorities.

Lesli Bales-Sherrod: Great. Thank you.

Coordinator: The next question is from [REDACTED]. Your line is open.

[REDACTED] Hello, sorry. Thanks. Maybe I'm missing it on this, on what I'm looking at on my computer. Who is on the call, so I know if Washington and Oregon are represented?

And then, you know, when I'm talking about, you know, priorities, it seemed as though California, Washington and Oregon took a very serious hit in the number of agents we have out on the West Coast here in what looked like a downsizing but not sure if it was just, you know, settling on how many of these uniformed folks we were going to end up with. So finding a way for us to help push, you know, getting good staffing levels back here would be helpful for us to know. So thank you.

Lesli Bales-Sherrod: Hello, [REDACTED] This is Lesli, at headquarters. And I know that our leadership in the divisions also are reaching out to people, one on one, and in face to face meetings and personal phone calls if they couldn't make the conference call. So I know some of that's going on because it's obviously hard for us to find the time that works for everybody at the same time. I do know that we have several different partners on the call, including a representative from Oregon.

As for your question about the number of agents and enforcement officers on the West Coast, that's probably a better question for Todd or Martina to address.

Todd Dubois: [REDACTED] I think, I mean the point is well taken. We appreciate it and I think what we need to do is just make sure that these comments are captured and passed back to the Director, as well as an individual discussions with the area SAC. I know that all the SACs and leadership are pushing to ensure that the

priorities are met in their divisions. So I appreciate your comments and certainly will make sure that that point is made and pushed forward as well.

I'm not sure that, that was an answer to your question, but unfortunately I think it's the best that I can give you at this stage.

Martina Sagapolu: If I could answer that, I think one thing we need to remember is that the plan will continue to be reevaluated over time, addressing the different changes. We're still moving forward with this proposed future staffing level. But, you know, the nature could change. It may, in a year or two, show that there may be a need for an increase of 1811s. But we don't know where we're at with that until we move forward. So your questions will definitely be moved up the chain.

Thanks, [REDACTED] I hope I answered your question.

Coordinator: At this time there are no questions.

Lesli Bales-Sherrod: Okay. I just want to give everybody one more opportunity if they want to hop in the queue, when you've got, obviously the opportunity to raise these issues in the discussion with other people on the West Coast who may have the same concerns or questions that you have.

It looks like we have another question.

Coordinator: [REDACTED] your line is open.

[REDACTED]: Hello, I'm sorry. The (Chief) is laughing at me here, so one last thing. And I don't know if Vicki's being on special assignment has any affect or changes anything that's going on with the West Coast here, but we're hearing a lot of

rumors that the two districts out there are going to be put together as one. And I don't know how that affects the filling of positions, supervisor positions and that type thing. Do you have anything you can share with us on that?

Lesli Bales-Sherrod: Todd or Martina may have a better idea than I have here at headquarters, [REDACTED] But I have been told that, that proposal would not affect enforcement. That, that was something they're looking at doing, but it a was fisheries thing and it wasn't specific to Office of Law Enforcement. I don't want to misspeak and so that's obviously something I can check into for you and get back to you, one on one with an email. But I I'm not sure if Todd or Martina have more information on that.

Martina Sagapolu: This is Martina. That's about the same information that we have here. When we met with the region, it was a discussion relating only to fisheries, but it did not involve the Office of Law Enforcement.

Lesli Bales-Sherrod: Great. Do we have any more questions?

Coordinator: At this time, there are no questions.

Lesli Bales-Sherrod: Okay.

I appreciate all of the partners taking time out of your busy days, especially on a Friday to hop on the call with us. And again, I'm here at headquarters and I hope that you were able, either through me or through the leadership in the Northwest and Southwest divisions to receive the link to the staffing plan online. And if you have any other questions for us or ways that we can help you, just let me know. Again, my email information, and phone number for that matter, are on our OLE Web site. And I would be happy to pass those along to the appropriate person.

NOAA's Office of Law Enforcement
Workforce Analysis and Staffing Allocation Plan; May 2012

Comments from [REDACTED]

Submitted: May 29, 2012

We applaud OLE's efforts at analyzing whether its workforce composition is appropriate to NOAA's statutes and mission. However, we have a number of concerns regarding some of the assumptions applied in the Workforce Analysis. In addition, since we question some of the assumptions, we have some serious concerns regarding the analytical conclusions and the proposed Staffing Plan allocation. Since we are most familiar with the Alaska Region, the following comments are directed most specifically to the Analysis and Plan as it would affect the Alaska Region.

OIG Report – Page 9

The OIG Report No. OIG-19887 asserts that NOAA should evaluate whether to “continue to approach fisheries enforcement from a criminal investigative standpoint.” We question the basic assumption of this statement across the regions since, in our over 30 years of collective experience in the Alaska Region, fisheries enforcement was generally not from “a criminal investigative standpoint”. Rather, GC and OLE have been diligent in ensuring that the large majority of cases in this region were effectively handled as civil administrative matters. In most instances,¹ a case was not referred for criminal prosecution until the facts of the case demonstrated that the case rose above the norm in terms of culpability and/or seriousness of the offense. Although the large majority of criminal cases pursued by the Agency were investigated by special agents, any case investigated by either enforcement officers or special agents could become a criminal case. Regardless of who first identified the potential criminal case, actual referral was usually accomplished after we reached a regional consensus between OLE, GC and the U.S. Attorney's office. Moreover, the approach of investigating a case as thoroughly as practicable, without pre-deciding whether the case should be criminal or civil administrative has served the Alaska region and NOAA well, both in terms of prosecution successes as well as industry compliance with and support of NOAA regulations.

We also understand that much of this Workforce Analysis is grounded in the perception that 1811s are classified as predominantly criminal investigators. However, to point to the OIG Report as the basis for a dramatic reduction in the number of special agents will likely result in an outcome not supported by the overall concerns raised by the OIG. Specifically, a decrease in the number of investigators with skills and training of the 1811 special agents will like result in a corresponding decrease in the number of complex civil administrative cases the Agency will be able to pursue. This is due to not only the sheer reduction in special agent numbers planned, but also that special agents are now receiving the clear message that their performance evaluation and promotion potential depend significantly upon their criminal investigative work. Although the intent of the

¹ Occasionally, the only way to thoroughly investigate a case is through the grand jury process. Even in such situations, OLE and GC have been careful to pursue only those investigations that we believe have the potential to reveal serious criminal behavior.

Workforce Analysis and Staffing Plan may not be to reduce the number of complex civil administrative cases, we believe that such will be the inevitable outcome of the proposed drastic reduction in investigators with the 1811 skill set and training. Even if it means keeping more 1811 special agents on staff, OLE and the Agency should do what it takes to avoid reducing its enforcement effectiveness in the civil administrative forum. We recommend that the Agency focus more on supporting its civil administrative investigations and prosecutions, rather than on diminishing the Agency's criminal investigative capacity.

Nature of fishing and seafood industries – Page 14

This analysis of the “Business Drivers” misses a large component of the seafood industry in the Alaska Region because it seems to assume there are only two regulatory aspects: those regulations that are enforced through real time observation, and those enforced through evaluation of reports and records filed, including VMS records. There is a third regulatory aspect that is the trend not only in Alaska, but in all NOAA regions: regulations that are full of requirements that cannot be investigated through review of submitted documents or firsthand observation. Rather, they must be investigated by someone who has a sophisticated understanding of business practices, who is effective at interviewing both fishermen and businessmen, and who also understands the larger business context of the fishing industry. For example, any leasing, transfer or ownership restrictions on catch share permits requires interviews of witnesses to gather information regarding the nature of their financial inter-relationships, as well as the ability to understand tax returns, purchase and sale agreements, and financing documents. Most of this information is not “filed with state and federal authorities”. The analytical skills needed for effective enforcement of NOAA's catch share programs have not commonly been found in the ranks of NOAA's 1801 enforcement officers. On the other hand, because of the complexity of such regulatory program, this type of violation requires an investigator with the skill set that looks more like that of an 1811 special agent. However, it is generally not likely that prosecution of those violations would be accomplished in the criminal forum. Since this aspect of NOAA regulations is becoming increasingly significant in today's commercial and charter fisheries, it is important that it be recognized and included in the Workforce Analysis. One of the cornerstones of successful catch share programs rests upon appropriate limitations for holding, use and control of access privileges. The enforcement of abuses of these limitations is just as important to the success of any catch share program.

OLE's Workforce Composition Compared to Similar Federal Law Enforcement Agencies – Page 16

This section addresses only the physical number of 1811s and 1801 in other federal law enforcement agencies. This simple counting exercise misses at least a couple significant factors of why any particular federal law enforcement agency may have needs for different workforce skills and strengths, including the statutory mandates and legal structure of the regulations. The principal fisheries statute enforced by NOAA is the Magnuson Stevens Fisheries Conservation and Management Act (MSA). The second most enforced fisheries statute in the Alaska region, the Northern Pacific Halibut Act (NPHA) which is the legal source for the IFQ Halibut catch share program, was not even mentioned in the Workforce Analysis. Both the MSA and the NPHA establish that enforcement of regulations promulgated under those statutes are expected to occur predominantly in the context of civil administrative enforcement proceedings. Since jail time under both statutes is limited to 6 months (16 USC 1859(b) and 773g(b)), those statutes are generally viewed as imposing only a misdemeanor liability for violations. The analysis on page 16 does not address the EPA or FWS statutory mandates and whether those agencies' statutory enforcement

authorities are predominantly civil or criminal. It also does not address whether those agencies might require different workforce capabilities than NOAA . Without consideration of those additional factors, any comparisons regarding the appropriate ratio of 1811 to 1801 positions cannot be complete.

Mission Needs and Division Summary: Alaska Division – Page 24

The Workforce Analysis asserts that the division staffing requirement will accomplish the needs of the Agency’s mission, as well as national and regional priorities. We are concerned about the accuracy of this assertion, at least with regard to Alaska Division enforcement priorities. For example, the High Priority enforcement matters for the Alaska Division are:

- 1) observer assault, harassment or interference violations
- 2) Felony and major civil cases involving significant damage to the resource or the integrity of management schemes
- 3) Commercialization of sport-caught or subsistence halibut
- 4) Maritime Boundary Line incursions by foreign fishing or transport vessels.

Most cases arising under these particular priorities would generally need to be investigated by someone with the 1811 skill set, rather than what heretofore has been the 1801 skillset. A reduction in those investigators with the knowledge, experience and skills of special agents will likely result in less support of these high priority matters.² Conversely, some items that are considered “low priority” (e.g. non-compliance with cumulative trip limits) may require an 1811-level investigation to determine whether those trip limits have been violated. We are concerned that such “low” priority cases could still be referred for criminal prosecution just because it requires the skillset of an 1811 to effectively accomplish the investigation.

This shift from the 1811 investigative skills to 1801 “patrolling, boarding and inspecting” (Appendix A, 1801 Series description) also does not match the direction given to enforcement attorneys with the NOAA Office of General Counsel, Enforcement Section. As a group, GC enforcement attorneys are being told that we should be handling more significant, more complex cases. However, to increase the number of 1801s while dramatically reducing the number of 1811s may reduce the number of significant and more complex cases referred to NOAA GC/Enforcement Section. The OLE investigative staffing allocations should more closely match the prosecutorial directions being given to GC/Enforcement Section attorneys.

Centralizing of Special Agents only in Juneau and Anchorage – Page 24

We are concerned that locating the special agents only in Juneau and Anchorage will result in a less sophisticated and effective 1811 cadre. The complex cases we see being generated by NOAA’s special agents rely in large part on the agents’ familiarity with local fishermen and businesses. Frequently, the most egregious cases are identified because a special agent is available in the field office and someone who knows something decides to just “drop in” to talk. Much of the

² Under the NPHA, there is important authority for a civil administrative investigative subpoena. This authority has enabled effective investigations and civil administrative prosecutions of numerous halibut violations, particularly with regard to unlawful sale of sport and/or subsistence caught fish, as well as violations of the ownership limits in the IFQ Halibut catch share program. There are ethical and legal limitations on use of civil administrative investigation tools in criminal investigations. I believe it would be contrary to Congressional intent of the NPHA to default into using criminal investigative authorities rather than the specific civil administrative enforcement tools specifically provided by Congress.

effectiveness of special agents has derived from experience in the field, including working from USCG platforms, and conducting vessel and facility audits. Removing these special agents from the opportunities to do this work will quickly result in their real-world knowledge of rapidly evolving fisheries and regulatory programs becoming of very limited value. It is the special agent's sophistication and understanding of the fishery context that enables him or her to see the implications of what is being reported in a particular case. We are gravely concerned that immuring the special agents in Juneau and Anchorage, rather than also stationing them in the much more active industrial fishing communities of Kodiak and Dutch Harbor,³ will reduce their effectiveness.

In addition, we are concerned that one of the most effective uses of experienced and knowledgeable special agents (i.e. keeping a finger on the pulse of industry problems and troubleshooting regulatory issues in the field) will be virtually lost with the special agents only being located in Juneau and Anchorage. In our experience, frequently the most effective interactions are between industry participants and special agents located in the field offices where the agents' local knowledge and broad experience have enabled them to develop a quick and sophisticated understanding of the dynamics of any enforcement/compliance problem. The Workforce Analysis, Appendix A acknowledges that a major component of 1811 work includes "ensuring effective interaction with the public (education, outreach and compliance assistance)". The apparent assumption that special agents stationed in Juneau and Anchorage could be as effective at "ensuring effective interaction with the public" should be more critically examined.

Finally, based on regional briefing on the Workforce Analysis, we understand that a "significant" portion of casework done by 1811s must be criminal, and that "significant" is currently expected to be at least 51% of a special agent's caseload. We have some concern that this will result in an increase in the number of criminal prosecutions, if only to satisfy the agents' performance reviewers. Moreover, if most or all 1811 investigations are initiated as criminal matters, the prudent civil administrative prosecutor would need a declination from the U.S. Attorney's office before handling any case as a civil administrative action. This will result not only in a delay of processing of those cases, but will likely impose some additional workload on the U.S. Attorney's office to determine to decline cases that, in the past, would never have been referred to that office in the first place. Each division should be encouraged and expected to work with its respective GC/ES and the U.S. Attorney's office(s) to develop a workable local protocol for ensuring that both civil and criminal cases investigated by Special Agents are able to proceed without being hindered by confusion regarding who has the case for prosecution.

Summary of Staffing Plan Details – Page 27

Based on the deficiencies in the analysis identified above, the plan to reduce the number of 1811s stationed in Alaska to 8 from 18 authorized FTEs is not justified. In particular, there needs to be a better explanation of why NOAA's past practice is so offensive. Although it may be true that 1811s

³ According to NOAA 2010 statistical information, the port of Dutch Harbor had the greatest amount of commercial fish (515.2 million pounds) landed, and the second highest value of commercial fishery landings (\$163.1 million), at any U.S. port. Unfortunately, the current OLE practice of only staffing Dutch Harbor through TDYs has already resulted in fewer complex cases arising out of that highly industrialized and active port. Despite the best efforts of the special agents and officers who work out of Anchorage on Dutch Harbor issues, we both have observed a distinct decline in the number of complex cases that have historically arisen out of that field office.

have been used to fulfill functions that should have been fulfilled using different classifications of employee, this could be addressed with a less dramatic change in the ratio. Since special agents have been doing the same work for NOAA for decades, and the vast majority of enforcement cases investigated by OLE have historically ended up by being prosecuted as civil administrative matters, why does the OLE workforce have to be changed now? We are particularly concerned that 1811 special agents currently with the Agency may be lost. NOAA cannot afford to lose any more personnel, particularly those who have a wealth of knowledge and experience that cannot readily be replaced by new people coming into the 1801 classified jobs.⁴ This will result in NOAA not having an adequate amount of investigators with the skills necessary to perform mission-critical investigative and public outreach functions, particularly in the arena of catch share programs. The Workforce Analysis at page 9 seems to acknowledge that the ratio decision should not be made in a “vacuum”. Since NOAA has traditionally used 1811s because of their skills to investigate cases across the civil/criminal spectrum, such a deep reduction in 1811s should be avoided because of the potential for undermining NOAA’s ability to perform mission-critical enforcement functions.

Conclusion

A dramatic shift in personnel as proposed by the Workforce Analysis threatens to undermine much of the excellent civil administrative enforcement work that continues to be done in the Alaska Region, and across the nation. Hinging our complex case needs upon so few investigators who currently have the skill set to investigate violations in NOAA’s complex regulatory landscape will leave NOAA vulnerable to even the slightest change in fishery management dynamics and employment circumstances. We have lost so many people that losing even one or two more experienced investigators could have far reaching consequences to the Agency’s ability to effectively enforce NOAA regulations, and to effectively engage with the North Pacific Fishery Management Council and other policy and regulatory bodies. This will become particularly distressing over time when we have failed to “grow” our dedicated and knowledgeable investigators internally.

We urge the decision makers to reconsider their proposed approach. After a more thorough analysis to address the analytical gaps, if any shift in the 1811/1801 ratio is confirmed, then that shift should be accomplished in phases rather than just through attrition or any other method that depends entirely upon the vagaries of retirement or individual work decisions. No 1811 special agent should be lost because that employee perceives the Agency does not support his or her work. More importantly, the Agency needs to engage in a strong effort to recruit, retain and reward 1801 enforcement officers who have the skills to effectively investigate the increasingly complex regulatory violations that are becoming the norm in NOAA fishery regulations. Such a phased-in approach would help avoid the real possibility that OLE will lose its capability to effectively support all facets of NOAA’s marine resource management and protection mission. Even if it means maintaining a higher ratio of 1811 special agents to 1801 officers, OLE and the Agency should do what it takes to avoid that possibility.

⁴ There are some very good 1801 enforcement officers in the Alaska Region. Nonetheless, it is my perception that the OLE, Alaska Division, has a difficult time finding and then keeping good people to fill the 1801 jobs. This may be because other Agencies have a competitive advantage due to their ability to promote 1801 class employees into the higher paying, better retirement 1811 jobs. NOAA needs to meet this problem head on, either by working to get a better payment/benefits package for the 1801 class, or figuring out some other way to avoid this 1801/1811 dilemma.

And no matter what decision is made regarding OLE staffing, OLE managers will need to be vigilant to ensure that there is no significant increase in criminal cases and there is no significant decrease in the number of complex civil administrative prosecutions. If either of those events occur, then there will need to be a change in course to bring the Agency back in line with the intent and expectations expressed in the OIG Report.

U.S. Department of
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16214
June 07, 2012

Mr. Bruce Buckson
Director, Office of Law Enforcement
National Oceanic and Atmospheric Administration
8484 Georgia Avenue, Suite 415
Silver Spring, Maryland 20910

Dear Mr. Buckson:

I wanted to thank you for taking the time to discuss with me and my staff the details of your recently completed workforce staffing analysis. The USCG believes that for effective federal living marine resource enforcement, the partnership between OLE and USCG must remain strong. In addition, we must actively seek out opportunities to remove strategic, operational, and tactical barriers to improving the efficiency and effectiveness of our efforts.

The USCG has reviewed the completed analysis and my staff has received positive responses from our field staff on the quality of the coordination with Coast Guard, including joint patrols and information sharing. Specifically, the model used in New England to embed a sworn officer with USCG intel staff was highly successful and should be explored in other regions. We are hopeful this trend of partnerships and integrated staffs will increase as OLE regains personnel strength.

In addition to operational coordination, the USCG sees value in pursuing operational support in concert with OLE. The USCG remains interested in researching opportunities to align our IT systems to provide additional transparency on interactions with the regulated public. The USCG would also like to deliberately explore alignment of our respective training systems to leverage each agency's unique capabilities and experience in developing curriculum, training materials, and sharing training facilities and instructors.

My lead for this effort is our liaison to your office, LCDR Gregg Casad. However, if you or your staff have any questions, please do not hesitate to contact me or any other member of my office.



NOAA Office of Law Enforcement

National and Division Enforcement Priorities for 2012

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Rebecca M. Blank**

**Administrator of National Oceanic and Atmospheric Administration
and Under Secretary of Commerce
Jane Lubchenco, Ph.D.**

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