



May 24, 2012

Under Secretarial Decision Memorandum

FROM: Jane Lubchenco, Ph.D.
Under Secretary of Commerce for
Oceans and Atmosphere

Jane Lubchenco
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SUBJECT: Corrective Actions re: Internal Inquiry into Alleged Mismanagement of Funds Within the National Weather Service

On November 29th, 2011 NOAA's Deputy Under Secretary for Operations (DUS/O), informed me that a preliminary review of allegations about potential improper budget execution within the National Weather Service (NWS) had uncovered evidence supporting the allegations. Because of the seriousness of these allegations and the preliminary evidence, I immediately took four actions or directed the DUS/O to take them:

- 1) I informed the Deputy Secretary of Commerce, Dr. Rebecca Blank, of this information.
- 2) The CFO of NOAA Fisheries, Gary Reisner, was asked to serve as Acting CFO of NWS. I believed it was imperative that someone from outside NWS immediately assume responsibility for NWS budget execution and formulation that were underway for FY 2012 and FY 2013 respectively. Mr. Reisner understood that his responsibilities included ensuring that funds were used consistent with appropriations law and other applicable sound financial principles.
- 3) On December 2, the then-Acting Deputy Secretary of Commerce, Dr. Rebecca Blank, and I initiated an investigation led by senior executives from NOAA and the Department Office of Budget to review the preliminary findings and expand upon the work of the internal review.

Dr. Blank and I agreed to appoint senior leaders within NOAA and the Department of Commerce to lead the Investigative Team. After adjustment, the leaders were my Deputy, Assistant Secretary for Observation and Prediction Dr. Kathryn Sullivan; and the Department's Deputy Assistant Secretary for Resource Management Hari Sastry, respectively. Dr. Blank and I gave clear instructions from the outset that the leaders were to determine to the best of their ability what actions were taken by individuals within the NWS CFO's office and NWS leadership, what should be done to correct any improprieties, and why any improper actions were not detected and corrected sooner. Dr. Blank, the Investigative Team, and I sought and received advice and guidance from the Department of Commerce Office of the Inspector General during this investigation.

Background

Prior to this investigation, senior officials inside NOAA and elsewhere in the Department of Commerce received but failed to follow up on a series of anonymous complaints about improper activity in the NWS in 2010 and early 2011.



The current set of actions was set in motion on July 13, 2011 when the Office of Inspector General referred an anonymous complaint to NOAA's Chief Administrative Officer through the OIG's normal procedure for referring anonymous hotline complaints. The complaint was not flagged in any extraordinary manner. That complaint resulted in a preliminary review of budget execution within NWS launched on August 17, 2011. I received a verbal report of their findings on November 29, 2011 and took the actions described above. As early as December 6, the Investigative Team was in communication with the Office of the Inspector General to seek advice and guidance; on December 13 – with the OIG's cooperation - language was explicitly added to the Charge for the investigation that the OIG would "actively engage in this effort." The Investigative Team was charged with immediately beginning an internal inquiry into the alleged mismanagement of funds at the National Weather Service during Fiscal Years 2010 and 2011 and to provide recommendations for corrective action.

Over the course of the past five months the Investigative Team conducted thirty interviews of over twenty Department of Commerce employees, completed an extensive review of NWS financial records, and reviewed a large number of documents including emails, financial information, memoranda, and other material provided by witnesses in support of their testimony. Throughout the investigative process the Team consulted with the Office of the Inspector General regarding the conduct of the investigation, including whom to interview and what lines of questioning to pursue. The investigation focused on FY2010 and FY2011 because that was the time period referenced in the complaints received. The Team has since noted that NOAA may need additional inquiry into activities in prior years. Later in this memo I direct additional inquiry.

On May 11, 2012 the Investigative Team provided me with its report, including its findings and recommendations. I have fully reviewed the report and carefully considered each recommendation. Any inappropriate action at the National Weather Service is serious and a matter of grave concern. I consider the improper and irresponsible actions described in the report to be wholly unacceptable and to require swift corrective actions. At the end of this memo, I set forth my decisions about the corrective actions needed to address the problems identified.

I have reviewed the report with the knowledge that our nation relies on NOAA's National Weather Service to be a trusted source of real-time information. I have been assured that none of the local forecasts and warnings --life- and property- saving services provided by NWS on a daily basis-- was jeopardized by the misconduct. I consider NOAA's responsibility to provide these services to the nation to be one of NOAA's most important missions.

Findings

The Investigative Team found that NWS employees engaged in the reprogramming of NWS funds without Congressional notification during the years in question. These actions may be a violation of the Anti-Deficiency Act. The Team also found failure of management and oversight by NWS leadership. In addition, the Team found significant problems with budget and financial controls at the National Weather Service and that Departmental financial and management controls were ineffective at

detecting or preventing this inappropriate reprogramming. I have taken immediate actions – detailed at the end of this memorandum - to address these failures.

Importantly, the Team did not find any evidence that any NWS employee committed fraud or received personal financial gain through their actions. This fact does not excuse, or reduce the seriousness of the employees' actions.

The Investigative Team did identify personnel-related issues; NOAA is addressing those issues separately and concurrently.

The actions taken by the NWS employees were not immediately apparent to the Investigative Team because they were buried in difficult-to-detect transactions. The Investigative Team took pains to do a thorough analysis of the relevant and extensive financial records to fully understand what actions took place and to be able to make recommendations about steps to take to prevent similar transgressions in the future.

The Investigative Team found that in FY 2010 and FY 2011 the NWS employees used a variety of financial mechanisms during budget execution. Specifically, they did not assess NWS programs evenly or in appropriate amounts to cover NWS common services. This left a shortfall in the Management and Administration account, an account handled by the Office of the Assistant Administrator. In response to this shortfall, and other operational needs, the employees moved expenses out of Local Warnings and Forecasts (LWF) base budget and into other NWS programs. This in turn freed up funds to cover expenses in other programs within LWF.

In addition, while the NWS employees did not transfer obligation authority between accounts, they inappropriately used summary level transfers (SLTs)--meant under normal circumstances to allow corrections to accounting errors--to transfer previous expenses from one NWS program to another. To accomplish this, NWS employees switched accounting codes on expenses paid out of the LWF base budget to codes for programs outside of LWF. Because of these actions, funds appropriated for programs like the Advanced Weather Interactive Processing System Program and the Weather Radio Improvement Project were used to pay for NWS expenses within LWF. And separate funds within LWF were in turn freed up to pay for shortfalls in other NWS operations.

In addition to the reprogramming violations, the investigation also found that these actions went unchecked in large part due to various management issues. It is clear that this issue would have been discovered and corrected earlier had senior leadership within the NWS exercised appropriate oversight. The NWS operated with an unacceptable lack of transparency relating to budgeting and without mechanisms for staff to air their concerns about budget formulation and execution within NWS, creating an environment of mistrust.

There is no doubt that financial controls in place at Department, NOAA and NWS were ineffective at detecting this practice. The automated controls within the financial management system were not configured to flag transactions such as these SLTs. SLTs are examined at the NOAA CFO's Office level but only for particular "business rules"; none of which were triggered by these transactions. Moreover,

there had been insufficient training for NWS budget personnel or NWS leadership on reprogramming and appropriations law.

While certain mechanisms existed that ultimately allowed employees to report improprieties to a number of different sources outside of NWS, NOAA headquarters, the Office of the Inspector General and the Department of Commerce Chief Financial Officer's Office all bear responsibility for missing and mishandling early complaints about the questionable financial transactions.

The section below details the twelve decisions I find necessary to address the problems uncovered in the investigation. Below, I first summarize an investigation finding(s) and the recommendation(s) made by the Investigative Team, then I present the action I hereby direct.

Decisions

The investigation found that:

Acting NWS CFO has reviewed the state of the NWS budget and has determined a reprogramming of \$26 million is needed into LWF and an additional \$9 million is needed to complete the NEXRAD Dual Polarization upgrade for FY 2012.

Investigative Team Recommendation 1:

"We recommend presenting this reprogramming to Congress and discussing options to appropriately fund these accounts in FY 2013."

ADMINISTRATOR DECISION #1:

I instruct my staff to immediately deliver the FY 2012 reprogramming requests to our Appropriations and Authorizing Committees, to begin a discussion on changes needed to the FY 2013 budget and to include a clear picture of the current state of the NWS budget and any adjustments that may be needed to ensure continuity of core NWS operating activities. The FY 2012 reprogramming and changes needed in the FY 2013 budget have been prepared by the Acting NWS CFO, the NWS Assistant Administrator (AA), the Acting NOAA CFO and the Department of Commerce Deputy Assistant Secretary for Resource Management. They have been briefed to senior officials within the NWS, NOAA and the Office of the Secretary including myself and Deputy Secretary Blank.

Investigative Recommendations 2 and 3:

"We recommend that, as part of [the Acting NWS CFO's] review, he determine how best to assess NWS programs to fully fund the NWS OAA common services account."

"We recommend that [the Acting NWS CFO] harmonize NWS practices with those of other line offices and NOAA Finance policies, ensuring that NWS programs are assessed uniformly and that the OAA account is fully funded at the beginning of each fiscal year."

ADMINISTRATOR DECISIONS #2:

I instruct the NWS CFO to fully fund the NWS Office of the Assistant Administrator common services account at the beginning of each fiscal year.

I instruct the NWS CFO to assess NWS programs equably for common services beginning immediately.

I further instruct the NOAA CFO to work with each line office CFO to ensure all program offices within a line office are assessed equably for common services accounts. I expect the NOAA Acting CFO to consult with NOAA's Assistant Secretary for Environmental Observations and Prediction, Chief of Staff and General Counsel before providing me an update by July 1 on his progress towards ensuring programs within line offices are assessed for common services equably and expect this work to be completed no later than August 1.

I instruct the NOAA CFO to ensure there is a training procedure for staff in Line CFO Offices to make staff aware that it is NOAA policy to ensure program offices are assessed equably for common services accounts. This procedure must be in place no later than July 1.

The investigation found that:

Existing budget controls failed to prevent [NWS employees] from engaging in questionable financial practices and failed to promptly identify ... behavior. Clearly, NOAA must have adequate budget controls in place to prevent such behavior in the future. Currently, some line office CFOs report to the DAA and others, as in this case, report directly to the AA. ... The Deputy AA had no direct supervisory role over the CFO and, despite significant efforts, was unable to get even basic financial information that could have revealed a problem earlier. Nor did the NOAA CFO play a supervisory role, even though she was clearly in the best position to understand the line office CFO's financial decisions.

Investigative Team Recommendations 4 and 5:

"We recommend that NOAA modify the supervisory structure of the NWS to ensure that there is appropriate oversight over the CFO, and that NOAA reviews the CFO reporting structure in all its line offices."

"We recommend that NOAA adjust the supervisory structure of each line office so that the AA and DAA, along with the NOAA CFO, each play a part in supervising their respective line office CFO."

ADMINISTRATOR DECISIONS #3:

I instruct the NOAA Deputy Undersecretary for Operations to change the supervisory structure of the NWS so that the financial process is directly supervised by the NWS DAA and the NWS AA and NOAA CFO serve as reviewing officials on the NWS CFO performance plan and evaluation.

I instruct the NOAA Deputy Undersecretary for Operations to review the supervisory structure in all other NOAA line offices to ensure the Line Office AA, DAA and NOAA CFO all play a role in the rating and reviewing of Line Office CFO performance plans and evaluations. I expect an update from the Deputy Undersecretary for Operations no later than July 1.

I instruct the NWS AA to examine the membership, roles, and responsibilities of the Corporate Board for providing budget review and oversight going forward, and in consultation with the Assistant Secretary for Environmental Observations and Prediction and the Deputy Undersecretary for Operations provide to me an analysis and proposal by August 1.

The investigation found that:

Summary Level Transfers (SLTs) Were Used Improperly to Facilitate the Inappropriate Transfer of Funds. In this case, SLTs were used to switch accounting codes assigned to past expenses from one account to another, a purpose for which they were never intended...The [NWS employee's] use of SLTs accomplished two objectives. First, the [employees] believed that SLTs allowed any "color" of money (PAC or ORF) to be converted into flexible LWF or other funds...Second, SLTs made detection of movement between funds difficult, and prevented clear reprogramming transactions from being flagged in project reviews or audits.

[T]here was a breakdown in controls intended to prevent the misuse of SLTs.

Investigative Team Recommendation 6 and 7:

"We recommend that the DOC CFO be tasked with reviewing the use of and approval rights for SLTs across the Department, to determine whether they are an appropriate financial tool and, if so, what changes to controls at either at the bureau or the Departmental level may be warranted. In particular, we recommend that the DOC CFO focus on automated controls within the DOC financial management system, if feasible, that might flag SLTs involving large dollar amounts or SLTs used to transfer funds between PPAs. "

"We further recommend that the NOAA CFO's Office expand its current supervision of the SLT process to ensure that SLT transactions are provided appropriate higher level review."

ADMINISTRATOR DECISION #4:

Recommendation 6 is outside my purview as NOAA Administrator but I fully concur with the recommendation.

I instruct the NOAA CFO's Office to expand its current supervision of SLTs to ensure the transactions are provided appropriate review. I expect a memo from NOAA's Acting CFO detailing the current review of SLTs and a timeline for implementing procedures to ensure a higher level review no later than date July 1.

The investigation found that:

Many of the problems in this matter arose because of a lack of budget process transparency and a culture within NWS that did not encourage questioning or provide independent channels for reporting dubious budget decisions.

Investigative Team Recommendation 8:

"We recommend that the NWS AA create an action plan to address these issues, to be reviewed by the NOAA Deputy Undersecretary for Operations. The plan should focus on ensuring adequate input into NWS budget decisions from senior program managers and NWS leadership, and creating avenues to raise concerns about budget issues to senior NWS or NOAA leadership without fear of retaliation. Furthermore, we recommend that the DOC CFO examine these issues in the other bureaus and other NOAA line offices."

ADMINISTRATOR DECISION #5:

I instruct the NWS AA to create an action plan to address the issues outlined in Recommendation 8 that ensures proper input into NWS budget decisions from senior program managers and NWS leadership and creates avenues to raise concerns about budget issues to both senior NWS and NOAA leadership without fear of retaliation. Additionally the plan should

explicitly concern itself with the structure and function of the NWS Corporate Board. This plan is due no later than July 1 to the Deputy Undersecretary for Operations.

I instruct the Deputy Undersecretary for Operations to review this plan and make changes or approve the plan no later than August 15. Prior to approval I expect the Deputy Undersecretary for Operations to brief me on the action plan.

I further instruct the Deputy Undersecretary for Operations to examine issues outlined in Recommendation 8 within the other NOAA Line Offices and report the findings to me no later than August 15.

The investigation found that:

Those interviewed ... were clear that NWS did not have a documented, transparent process to address emerging budget issues.

Investigative Team Recommendation 9:

"We recommend that NWS create a process that is well-documented, vetted with stakeholders, and includes explicit programmatic decisions allowing the bureau to align its budget formulation and execution with the available funds."

ADMINISTRATOR DECISION #6:

I accept this recommendation and instruct the NWS AA to create a well-documented process that includes explicit time for programmatic decisions that align its budget formulation and execution with available funds. Each year this process must include a formal briefing for the NOAA Administrator and Deputy Administrator on the NWS budget execution plan after a budget is enacted. The goal is to ensure NWS leadership is planning budget execution based on the available funds.

The process for explicit programmatic decisions that align formulation and execution with available funds must be complete no later than September 1 and must be briefed to NOAA leadership including the NOAA Administrator, Deputy Administrator, Deputy Undersecretary for Operations, Chief Resource and Operations Manager, and NOAA CFO prior to that date.

The investigation found that:

Those interviewed during the course of the Team's inquiry agreed that neither the NWS CFO staff nor senior NWS leadership had received formal reprogramming or appropriations law training. It is imperative that those making financial decisions fully understand basic

appropriations concepts so that they can recognize and prevent illicit activity when it arises.

Further, members of the Senior Executive Service (SES) must be prepared to discharge properly the duties of financial oversight that SES positions entail. Individuals are promoted to the SES from an array of backgrounds, often more technical and programmatic than financial management experience. It should not be assumed that their prior experiences equip them fully for the new dimensions of financial oversight responsibility they are assuming.

Investigative Team Recommendation 11:

"We recommend that NOAA and the DOC review the sufficiency of financial management and oversight experience in the SES cadre."

ADMINISTRATOR DECISION #7:

I instruct the Director of NOAA Workforce Management and the NOAA Chief Resource and Operations Manager (CROM) with consultation with the Assistant Secretary of Environmental Observations and Prediction to undertake a review of the financial management and oversight experience within NOAA AA, DAA, and any other SES leadership positions they identify as having budget formulation and execution oversight roles. (This information is to be used only to inform the level of additional training needed and not as a metric for promotion or continued service.) I further instruct the Director to propose the additional training necessary to ensure all NOAA personnel who are involved in financial transactions have the requisite knowledge to perform their duties responsibly. This report should be reviewed and approved by the Deputy Undersecretary for Operations and the Assistant Secretary for Environmental Observations and Prediction and is due to me no later than August 1.

I reviewed the Investigative Team's recommendation for increased training on appropriations law. The Deputy Secretary's decisions speak to this important recommendation.

The investigation found that:

NOAA may need to initiate additional investigation into actions arising in prior years, and into tangential issues. Issues that NOAA may seek to investigate further include:

- (1) A full audit of the NWS budget for FY 2010 and FY 2011, to determine the full extent of unlawful fund reprogramming;
- (2) An audit of NWS financial practices prior to FY 2010, to determine when and how the NWS budget shortfall began,

and whether there was improper reprogramming of funds prior to 2010; and

- (3) An NWS program review, to determine (a) the impact of Mr. Byrd's financial decisions on NWS programs; and (b) whether financial problems existed within NWS because of program dysfunction.

Investigative Recommendation 13:

"We concur with these recommendations and endorse a full NWS financial and program audit."

ADMINISTRATOR DECISION #8:

I agree a full NWS financial and program audit is warranted.

I instruct NOAA's CROM to initiate the process of contracting with outside independent firms to conduct a financial audit and a program audit of the NWS. These audits will look at FY 2006 through the first quarter of FY 2012 and are to begin no later than July 15. The financial audit must investigate whether the belief held by NWS employees that there is a "structural deficit" within the NWS budget bears merit. In addition it must examine if any other Line Offices were involved in or harmed by these unauthorized transactions. I instruct the CROM to obtain the concurrence of the Deputy Undersecretary for Operations on the audit scope and schedule.

The investigative team reported to me that:

The Hill has been notified of the on-going NWS investigation and is anxious to learn the results. Once Congress learns of the activity that occurred in this matter, it will be imperative to begin restoring Congress' and the public's confidence in the NWS' ability to appropriately manage its budget.

Investigation Recommendation 14:

"We recommend that NOAA immediately notify Congress of any unlawful reprogramming of funds within NWS of which it has knowledge. At the same time, NOAA should provide Congress with a corrective action plan, in line with this Report and Recommendations, outlining how NOAA intends to address the problems that led to NWS' unlawful reprogramming of funds. NOAA's submission to Congress should include a clear picture of the current state of the NWS budget, as well as any necessary modifications to the FY 2012 and FY 2013 spend plans."

ADMINISTRATOR DECISION #9:

I have instructed my staff including my Chief of Staff, Deputy Director of Legislative Affairs, and NOAA CFO to work with Department officials to notify Congress of the inappropriate

reprogramming found in this report. I instruct my staff to work with Department officials to determine whether an Anti-Deficiency Act violation occurred and if so, to make appropriate notifications to Congress. I have also instructed my staff to provide our Appropriations and Authorizing Committees with our FY 2012 reprogramming request, which include a clear picture of the current state of the NWS budget, and to begin discussions with them about a FY 2013 reprogramming. In addition I have instructed my staff to release this Decision Memorandum to Congress and to ensure that I and my staff are available to brief interested Members.

The Investigation found that:

[The NWS employees that were interviewed] believe there is a “structural deficit” with the NWS budget. This, along with apparent shortfalls in the NWS OAA account, created a motive for [the NWS employee’s] actions. Accordingly, it is imperative to determine if such a structural deficit exists and, if so, the causes and extent of that shortfall.

ADMINISTRATOR DECISION #10:

I instruct the Acting NWS CFO to examine each program office to determine if [the government employee’s] belief that a “structural deficit” existed is supported by evidence and if so, to determine the causes and extent of that shortfall. I expect a time line and plan of action to complete this review no later than July 1.

I expect the outside independent financial and programmatic audits to be appointed in response to Investigation Recommendation #13 to examine this issue as well.

The Investigative Team found that:

NOAA, DOC, and the OIG did not take timely action when notified of alleged improprieties within the NWS CFO’s Office. Although hindsight is 20-20, it is clear that NOAA Officials, DOC Office of the Chief Financial Officer, and the Inspector General’s Office were all made aware that there were allegations of significant problems within the NWS CFO’s Office throughout 2010 and 2011, but failed to act in time to stop the activity until the very end of FY 2011.

ADMINISTRATOR DECISION #11:

The senior NOAA officials , Department of Commerce Office of the CFO, and the Office of the Inspector General all failed to act on earlier anonymous complaints relating to this matter. In order to ensure all NOAA personnel understand how to deal with and where to send anonymous

complaints NOAA will review the current system of filing, logging, and responding to the type of fiscal complaints that prompted this investigation and recommend any further changes in consultation with Department officials and the Office of the Inspector General. NOAA will also reaffirm through yearly all hands messages where and how employees should send anonymous complaints, and what steps managers can take to quickly evaluate such complaints and ensure appropriate and timely follow-up. In addition NOAA will institute a yearly training for all NOAA SES employees regarding how to handle anonymous complaints.

ADMINISTRATOR DECISION #12:

This report raises the issue of the delegation of authority into NOAA's Line Offices without sufficient oversight. During my tenure as Administrator I have been confronted with other instances within NOAA in which authority was delegated before my time to Line Offices and Program Offices within our Lines without providing sufficient oversight from Headquarters. It has been my goal to find those instances and to take action. Today I instruct my Deputy Undersecretary for Operations to review delegations of authority into all NOAA Line Offices that lack sufficient oversight. I expect this review to be completed within the next three months. It should include existing mechanism for controls and structures of reporting and recommendations for the appropriate levels of oversight and control. In addition I instruct the Deputy Undersecretary for Operations to ensure that sufficient avenues exist within NOAA for employees to raise serious concerns to headquarters without fear of retaliation from their immediate supervisors.

I hereby instruct all officers and employees of NOAA to take all steps necessary to implement these actions.