

U.S. DEPARTMENT OF COMMERCE
Office of Inspector General



***National Oceanic and
Atmospheric Administration***

***Audit of NOAA Cooperative Agreements
to the
Pacific States Marine Fisheries Commission
Portland, Oregon***

***Final Report No. OIG-11-026-A
June 10, 2011***

FOR PUBLIC RELEASE

Office of Audit and Evaluation





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

June 10, 2011

MEMORANDUM FOR: Mitchell J. Ross, Director
NOAA Acquisition and Grants Office

FROM: Ann C. Eilers 
Principal Assistant Inspector General
for Audit and Evaluation

SUBJECT: *Audit of NOAA Cooperative Agreements to the
Pacific States Marine Fisheries Commission
Portland, Oregon*
Final Report No. OIG-11-026-A

We are attaching a copy of the audit report on two cooperative agreements awarded to the Pacific States Marine Fisheries Commission for your action in accordance with DAO 213-5, "Audit Resolution and Follow-up." This is the second of three related reports we completed on the Commission. The first, *Audit of Indirect Cost Plans and Rates*, was issued on May 19, 2011. We are issuing the third report in final form, presenting the results of the audit of three task orders under a NOAA contract, to the NOAA Contracting Officer concurrently with this report.

The original of this cooperative agreement report has been sent to the Commission. The Commission has 30 days from the date of the transmittal to submit comments and supporting documentation to you (we have attached a copy of our transmittal letter for your records). We have also notified the Commission that we intend to post the final report on the Office of Inspector General (OIG) website and requested that the Commission and an associated commercial contractor confirm whether data contained in this report is considered to be business proprietary. Depending upon the resulting responses, either a full or a redacted version of this report may be made available to the public.

Under DAO 213-5, you have 75 calendar days from the date of this memorandum to reach a decision on the actions you propose to take on each audit finding and recommendation and to submit an audit resolution proposal to this office. Because the three reports share indirect cost issues, we have recommended that you, the NOAA Contracting Officer, and the Department's Indirect Cost Coordinator consider all of the reports together and collaborate to ensure uniform and consistent resolution proposals and action plans. Therefore, the 75-day deadline for this cooperative agreement report applies to all three reports.

As applicable, the written proposals must include the rationale and/or legal basis for reinstating any questioned cost in the report and should reference any supporting documentation relied on. Your comments should also address any funds to be put to better use cited in the reports. Under

the DAO, OIG must concur with your proposal before it may be issued as a final determination and implemented. The DAO prescribes procedures for handling any disagreements we may have with the audit resolution proposal. Please also copy us when the audit determination letter is sent to the auditee and when you issue your accounting notice.

Any information or inquiry regarding this final report should be directed to Jerry McMahan, Assistant Regional Inspector General, at (404) 730-2065, and should reference the report title.

Attachment

cc: Barry Berkowitz, Senior Acquisition Executive and Director, Office of
Acquisition Management
Arlene Simpson-Porter, Director, NOAA Grants Management Division
John Stein, Ph.D., Acting Science Director, NOAA/NWFSC
Susan Sherrell, Director, NOAA Western Acquisition Division
William Stelle, Jr., Regional Administrator, NOAA/NMFS NWR
Mack Cato, Director, NOAA Audit and Information Management Office



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

June 10, 2011

Mr. Randy Fisher, Executive Director
Pacific States Marine Fisheries Commission
205 SE Spokane Street, Suite 100
Portland, OR 97202

Dear Mr. Fisher:

Enclosed is a copy of our final audit report concerning two NOAA cooperative agreements awarded to the Commission. We evaluated and considered your April 13, 2011, response to the draft audit report in preparation of this final report. Your response, excluding the 19 attachments, appears in the report as appendix E; a synopsis of your response and our comments is also included as appendix F. The attachments to your response are on file at our office and will be made available for review upon request. Depending upon your response to the accompanying letter from our Counsel, we will make either a full copy or a redacted copy of the final audit report available to the public at OIG's website.

This letter is notice of your opportunity and responsibility to review the report and to develop a complete response that addresses each audit finding and recommendation. If you believe the final report is in error in any respect, or if you disagree with any of the findings and recommendations, it is important that you explain the error or your reasons for disagreement and submit to the Department evidence that supports your position. You should also explain how each documentary submission supports the position you are taking; otherwise, we may be unable to evaluate the information.

Your complete response will be considered by the Department in arriving at a decision on what action to take with respect to the findings and recommendations in the audit report. Enclosure 1 is an explanation of applicable administrative dispute procedures.

Your response to this report must be postmarked no later than 30 days from the date of this letter. There will be no extensions to this deadline. If you do not submit a response within the required time frame you will have no other opportunity to submit comments, arguments or documentation before the Department makes a decision on the audit report. Please send your response (including documentary evidence) to:

Arlene Simpson-Porter, Director
NOAA Grants Management Division
Silver Spring Metro Center Building 2 (SSMC2)
9th Floor
1325 East-West Highway
Silver Spring, MD 20940-3280

Please send a copy of your response to:

Jerry McMahan, Assistant Regional Inspector General for Audits
United States Department of Commerce
Office of Inspector General
401 W. Peachtree Street NW, Suite 2742
Atlanta, GA 30308

If you have any questions about the final report or the audit process, please call Jerry McMahan at (404) 730-2065 and refer to this report's title.

Sincerely,

A handwritten signature in black ink, appearing to read "Ann C. Eilers". The signature is fluid and cursive, with the first name "Ann" and last name "Eilers" clearly distinguishable.

Ann C. Eilers
Principal Assistant Inspector General for
Audit and Evaluation

Enclosures

cc: Barry Berkowitz, Senior Acquisition Executive and Director, Office of
Acquisition Management
Mitchell J. Ross, Director, NOAA Acquisition and Grants Office
John Stein, Ph.D., Acting Science Director, NOAA/NWFSC
Susan Sherrell, Director, NOAA Western Acquisition Division
William Stelle, Jr., Regional Administrator, NOAA/NMFS NWR
Mack Cato, Director, NOAA Audit and Information Management Office

NOTICE TO AUDITEE

Financial Assistance Audits

1. Audit requirements applicable to a particular financial assistance award may be established by law, regulation, policy, or the terms of the recipient's financial assistance agreement with the Department of Commerce.
2. The results of any audit will be reported to the bureau or office administering the financial assistance award and to the recipient/auditee, unless the Inspector General of the Department determines that it is in the Government's interest to withhold release of the audit report.
3. The results of an audit may lead to adverse consequences for the auditee, including but not limited to the following actions (which are subject to applicable laws and regulations):
 - suspension and/or termination of current awards;
 - referral of identified problems to other federal funding agencies and entities as deemed necessary for remedial action;
 - denial of eligibility for future awards;
 - canceling the authorization for advance payment and substituting reimbursement by check;
 - establishment of special conditions in current or future awards; and,
 - disallowance of costs, which could result in a reduction in the amount of federal payments, the withholding of payments, the offsetting of amounts due the Government against amounts due the auditee, or the establishment of a debt and appropriate debt collection follow-up (including referrals to collection agencies).

Because of these and other possible consequences, an auditee should take seriously its responsibility to respond to audit findings and recommendations with explanations and evidence whenever audit results are disputed and the auditee has the opportunity to comment.

4. To ensure that audit reports are accurate and reliable, an auditee may have the following opportunities to point out errors (of fact or law) that the auditee believes were made in the audit, to explain other disagreements with audit findings and recommendations, to present evidence that supports the auditee's positions, and to dispute final recommendations:
 - During the audit, the auditee may bring to the attention of the auditors at any time evidence which the auditee believes affects the auditors' work.

- At the completion of the audit on-site, as a matter of courtesy, the auditee is given the opportunity to have an exit conference to discuss the preliminary audit findings and to present a clear statement of the auditee's position on the significant preliminary findings, including possible cost disallowances.
- Upon issuance of the draft audit report, the auditee may be given the opportunity to comment and submit evidence during the 30-day period after the transmittal of the report. (There are no extensions to this deadline.)
- Upon issuance of the final audit report, the auditee is given the opportunity to comment and to present evidence during the 30-day period after the transmittal of the report. (There are no extensions to this deadline.)
- Upon issuance of the Department's decision (the "Audit Resolution Determination"), on the audit report's findings and recommendations, the auditee has the right to appeal for reconsideration within 30 calendar days after receipt of the Determination letter if monies are due the government. (There are no extensions to this deadline.) The Determination letter will explain the specific appeal procedures to be followed.
- After an appeal is filed, or after the opportunity for an appeal has expired, the Department will not accept any further submissions of evidence concerning an auditee's dispute of the Department's decisions on the resolution of the financial assistance audit. If it is determined that the auditee owes money or property to the Department, the Department will take appropriate collection action but will not thereafter reconsider the merits of the debts.
- There are no other administrative appeals available in the Department.



Report In Brief

U.S. Department of Commerce Office of Inspector General

June 10, 2011



Background

The Pacific States Marine Fisheries Commission is a quasi-governmental organization operating under an interstate compact authorized by federal statute. It is composed of five member states (Alaska, California, Idaho, Oregon, and Washington) that work together to better utilize and protect the resources of fisheries under their jurisdictions.

Most of the Commission's funding comes from the administration of federal contracts and financial assistance agreements related to fisheries resource management. Federal funds are directed to the Commission because of the unique and pivotal position it occupies between its member states and the federal entities that manage Pacific fisheries, as well as the integral role the Commission plays in support of research on, and stewardship of, these fisheries. Since 2003 the Department of Commerce, as the Commission's cognizant federal agency, has provided most of the Commission's federal funding.

Why We Did This Review

We audited two multi-year cooperative agreements awarded by NOAA to the Commission to fund programs for monitoring and observational data. During the audit period, the Commission claimed total costs of \$22,632,429 for these agreements.

Our audit objectives were to determine whether the costs claimed were reasonable, allowable, and allocable to the sponsored project; award objectives were achieved; and the Commission's practices and controls complied with award requirements, assured efficient project administration, and resulted in an acceptable final product.

National Oceanic and Atmospheric Administration

Audit of NOAA Cooperative Agreements to the Pacific States Marine Fisheries Commission Portland, Oregon (OIG-11-026-A)

What We Found

We found that a significant portion of the Commission's claimed costs were not reasonable, allowable, and allocable to the awards. We also found that, while the Commission's performance under the two agreements met the award goals and objectives by gathering information for inclusion in databases maintained by NOAA to assist with the management of West Coast fisheries, the Commission did not comply with numerous federal requirements and cost principles. Additionally, the Commission's financial management and procurement systems did not perform adequately, project scope revisions had not been properly approved, and performance and financial reporting was incomplete and inaccurate.

For these reasons and others detailed in this report and in our May 19, 2011, report titled *Audit of Indirect Cost Plans and Rates, Pacific States Marine Fisheries Commission, Portland, Oregon* (report no. OIG-11-025-A), we questioned \$2,420,489 in federal funds claimed as costs by the Commission.

What We Recommended

Because the Department acts as the Commission's cognizant federal agency, we recommended that NOAA's Director, Acquisitions and Grants disallow and recover \$2,420,489 in questioned project costs. We also recommended the Director take a more aggressive role in monitoring the Commission's grants by

1. Requiring the Commission to provide evidence of improving its policies and internal controls to comply with minimum federal financial, administrative, and procurement management standards before awarding any new agreements or contracts to the Commission.
2. Requiring the Commission's board of commissioners to enhance oversight of Commission financial and administrative operations by ensuring that all levels of the organization receive adequate supervision consistent with the Commission's policies.
3. Requiring the Commission to provide performance reports that are complete and consistent with approved project scope and budgets, and that fully and accurately identify the resources applied.

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Introduction

This report presents the results of our audit of National Oceanic and Atmospheric Administration (NOAA) cooperative agreement numbers NA17FN2284 and NA17FN2536 awarded to the Pacific States Marine Fisheries Commission of Portland, Oregon. Our audit objectives were to determine whether (1) costs claimed, including indirect costs, were reasonable, allowable, and allocable to the sponsored project; (2) award objectives were achieved; and (3) the Commission's accounting, procurement, and project management practices and controls complied with award requirements, assured efficient project administration, and resulted in an acceptable final product. See appendix A for details regarding our audit objectives, scope, and methodology.¹

We found that a significant portion of the Commission's claimed costs were not reasonable, allowable, and allocable to the awards; also, while the Commission's performance under the two agreements met the award goals and objectives by gathering information for inclusion in databases maintained by NOAA to assist with the management of West Coast fisheries, the Commission did not comply with numerous federal requirements and cost principles related to financial management, procurement, and project revisions, nor did it provide sufficient performance and financial information to NOAA. For these reasons and others detailed in this report and in our report titled *Audit of Indirect Cost Plans and Rates, Pacific States Marine Fisheries Commission, Portland, Oregon*, we questioned and recommended recovery of \$2,420,489 in federal funds. We also recommended numerous improvements to the Commission's policies, controls, and procedures.

Background

The Commission is a quasi-governmental organization operating under an interstate compact authorized by federal statute in 1947. It is composed of five member states (Alaska, California, Idaho, Oregon, and Washington) that work together through the Commission "to promote the better utilization of fisheries, marine, shell, and anadromous, which are of mutual concern, and to develop a joint program of protection and prevention of physical waste of such fisheries in all of those areas of the Pacific Ocean over which the compacting states jointly or separately now have or may hereafter acquire jurisdiction."² Its principal offices are in Portland, Oregon.

The Commission has a long history as a federal financial assistance recipient and contractor. Outside of nominal state membership dues and funds received under agreements with states, most of the Commission's funding comes from the administration of federal contracts and financial assistance agreements related to fisheries resources management. For example, from 2002 through 2009, approximately 89 percent of the Commission's total revenue (\$504 million) came from federal financial assistance and contracts, with 65 percent of its total revenue

¹ Our audit also included a review of the indirect cost rate proposals and rate computations for indirect cost and administrative assessments for the Commission's fiscal years ending June 30, 2002, through 2008. The results of the indirect cost audit are included in our May 19, 2011, report titled *Audit of Indirect Cost Plans and Rates, Pacific States Marine Fisheries Commission, Portland, Oregon* (OIG-11-025-A).

² *Pacific States Marine Fisheries Commission Compact*, Article I.

(\$367.6 million) from the Department of Commerce.³ Since 2003 the Department has provided the majority of the Commission's federal funding and is the Commission's cognizant federal agency for both indirect cost and single audits. Federal funds are directed to the Commission because of the unique and pivotal position it occupies between its member states and the federal entities that manage Pacific fisheries, as well as the integral role the Commission plays in support of research on, and stewardship of, these fisheries. Of the many financial assistance awards and contracts the Department has awarded to the Commission over the years, we selected two cooperative agreements for audit. Each is part of a series of multiple-year awards NOAA made to the Commission to fund the Pacific Fisheries Information Network (PacFIN) and the West Coast Groundfish Observer Program (WCGOP). Table 1 provides details about the agreements, and appendix B provides statements of source and application of funds for the two awards. The results of our audit are detailed in appendixes C and D.

**Table 1. Details of Cooperative Agreements
Included in This Report**

Award Name and Number	Award Period	Total Estimated Project Cost	Federal Share	Purpose
Pacific Fisheries Information Network (PacFIN) (NA17FN2284)	2/1/02 – 6/30/06	\$ 9,503,605	100%	PacFIN is the major commercial fisheries monitoring system used for West Coast fisheries. Funds are provided for the purpose of working with the states of Washington, Oregon, and California to organize state fish tickets (tags used to record the weight of fish), port sampling data, and other activities into a coast-wide database.
West Coast Groundfish Observer Program (WCGOP) (NA17FN2536)	6/1/02 – 8/31/07	\$ 13,128,825	100%	WCGOP provides coast-wide, year-round data on groundfish fleet activity by gear, area and season using a timely and efficient system for data collection, storage, analysis, and communication. Collected data will be linked to the Northwest Fisheries Science Center and PacFIN databases and used for stock assessment and management of west coast groundfish fisheries.
Source: NOAA				

On April 13, 2011, the Commission provided comments and supporting documentation in response to our draft audit report, which we have evaluated and considered in preparation of this final report. Due to the volume of the Commission's response we appended only the full text of the Commission's cover letter at appendix E. A copy of the Commission's complete response, including 19 attachments, is available for review at our office. We have included synopses of the Commission's responses and our comments as appendix F.

³ Other major federal funding sources during our audit period included the Departments of Energy, Defense, and Interior.

Findings and Recommendations

I. A Total of \$2,420,489 Is Due the Government

The Commission claimed total final project costs of \$22,632,429 for the PacFIN and WCGOP cooperative agreements. Our review disclosed, however, that the Commission did not ensure that its administration of these agreements adhered to award terms and conditions, including federal cost principles, Title 15 of the Code of Federal Regulations (15 CFR) Part 24—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, and special and standard award terms and conditions. We also found that the Commission’s financial management and procurement systems did not perform adequately, project scope revisions had not been properly approved, and performance and financial reporting was incomplete and inaccurate.

Consequently, we questioned and recommended recovery of \$2,420,489 in federal funds (see table 2). We also recommend NOAA take immediate actions requiring improvements to the Commission’s policies and internal controls to bring it into compliance with minimum federal requirements before awarding the Commission any new agreements or contracts. In the following sections of this report, we describe some of the factors that contributed to our questioning of these costs; the details of our audit of the two agreements are presented in appendixes C and D.

Table 2. Summary of the Financial Results of Our Audit

Federal Funds Disbursed		\$22,632,429
Total Project Costs Claimed	\$22,632,429	
Less Questioned Costs ^a	2,420,489	
Accepted Costs	\$20,211,940	
Federal Share (100%)		\$20,211,940
Amount Due to the Government		\$ 2,420,489

Source: OIG.

^a Questioned costs consisted of \$1,239,658 of indirect cost, \$797,454 of contractual expense, \$328,079 in net labor and fringe benefits expense, and \$55,298 in data processing fees. Of the \$2,420,489 questioned, \$2,368,619 was unsupported.

A. The Commission's Financial Management System Needs Improvement

The Commission's financial management system was not adequate to accurately report the financial results of its awards. In addition to the deficiencies we described in our audit of the Commission's indirect cost plans and rates,⁴ the Commission's implementation of its automated accounting and time distribution systems was inadequate. The Commission did not have all necessary policies, procedures, and controls in place, nor did it adhere to the ones it had;⁵ therefore, the Commission's project cost accounting records and its claims to NOAA included unsupported or unallowable costs.⁶

Time Distribution System. Personnel activity reports must reflect an after-the-fact distribution of the actual activities of each employee. Use of budget estimates or other distribution percentages are not allowed.⁷ In some cases, the Commission disregarded documented time allocations and charged staff to projects or activities based on arbitrary, unsupported percentages. In addition, the Commission retroactively shifted several months of an employee's or an entire group's time from one project to another without regard to budgets or timesheets.

As detailed in appendixes C and D, we questioned a total of \$328,079 in labor and related fringe benefits because the Commission overrode its time distribution system and charged labor and fringe benefit costs to the PacFIN and WCGOP awards.

Internal Controls. The Commission needs to either establish new controls or update, strengthen, and promote adherence to existing policies and procedures in the areas of financial management, procurement, reporting, and project revision.

The weaknesses in the Commission's policies and procedures increased the risk of potential noncompliance with award requirements and were responsible in part for our questioning of costs (as described in appendixes C and D). These weaknesses also contributed to our inability to accept indirect cost rates and ancillary assessments and fees the Commission claimed for fiscal years 2002 through 2008, and for unaudited fiscal year 2009.⁸

B. The Commission's Procurement System Needs Improvement

The Commission accomplished much of the work for both cooperative agreements through cost-reimbursable contracts with state agencies and a commercial contractor (see table 3 on the next page). At the time of our review, the Commission's *Fiscal Processes Manual* included both a written purchasing policy addressing procurements by purchase order and subcontracting guidelines that addressed general contract provisions and incorporated guidance for preparing justifications for sole source procurements, contract statements of work, and budget proposals for contracts and grants.

⁴ See OIG's *Audit of Indirect Cost Plans and Rates* (OIG-11-025-A).

⁵ Uniform Administrative Requirements, 15 CFR 24.20.

⁶ Office of Management and Budget (OMB) Circular A-87, *Cost Principles for State, Local, and Indian Tribal Governments*.

⁷ OMB Circular A-87 (1995), attachment B.11.h (4) and (5); and (2004) attachment B.8.h. (4) and (5).

⁸ For analyses of the weaknesses in controls related to the Commission's indirect costs, see our *Audit of Indirect Cost Plans and Rates*.

Despite the written policy, our review disclosed that the Commission's procurement and contract administration needed significant improvements to ensure compliance with minimum federal procurement standards pertaining to noncompetitive procurements, procurement history and cost/price analysis, contract type and terms, contract change orders, and contract administration.⁹ Deficient procurement practices resulted in our questioning \$797,454 in claimed contract cost, as described in appendixes C and D.

The two cooperative agreements ran for several years each via base-year awards and subsequent amendments that incrementally added funding and increased the agreements' performance periods. Rather than award single, multiple-year contracts to its contractors, the Commission issued a series of yearly contracts to each. All of the contractors were identified in the cooperative agreements or amendments.

Table 3. Schedule of Contracts Awarded by Cooperative Agreement

NOAA Award	PacFIN Cooperative Agreement				WCGOP Cooperative Agreement			
	Total Estimated Project Cost	Contractor			Total Estimated Project Cost	Contractor		
		Contract Period	State of Oregon ^a	State of Washington ^a		Contract	State of Washington ^a	Contractor A
Base Year	\$2,102,000	2/1/02 – 1/31/03	\$ 470,680	\$ 649,038	\$ 3,215,203	1	\$ 65,000	\$ 2,521,030
Amendment 1	391,505	11/1/02 – 10/31/03	93,869		2,850,205	2	50,000	2,366,434
						Modification		300,366
Amendment 2	2,093,300	2/1/03 – 1/31/04	487,375	644,847	3,476,787	3	50,000	2,762,772
Amendment 3	190,000				3,586,630	4	50,000	2,812,988
Amendment 4	2,420,000	2/1/04 – 1/31/05	434,197	647,651				
Amendment 5	2,306,800	2/1/05 – 1/31/06	502,246	620,568				
Undefined	400							
Totals	\$9,504,005		\$1,988,367	\$ 2,562,104	\$13,128,825		\$ 215,000	\$10,763,590
Source: OIG								
^a States of Oregon and Washington Departments of Fish and Wildlife.								

Noncompetitive Procurement. Minimum federal procurement standards require that all procurements be conducted in a manner that provides full and open competition. The requirements also stipulate that noncompetitive proposals may only be used when a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals, and one of the following circumstances applies:

- 1) an item is available only from a single source,
- 2) an urgent public need for the requirement will not permit potential delays resulting from competitive solicitation,

⁹ Uniform Administrative Requirements, 15 CFR 24.36.

- 3) the awarding agency authorizes noncompetitive proposals, or
- 4) competition is determined inadequate after a number of sources have been solicited.¹⁰

The Commission's proposals for the WCGOP award and subsequent amendments specifically identified that it intended to award contracts to Contractor A. However, the nature of the procurement was not clear, and our audit disclosed that the associated noncompetitive procurements were flawed. Use of a noncompetitive procurement to acquire this contract was inconsistent with procurement rules because none of the contracts to Contractor A met the specific circumstances necessary to permit a noncompetitive procurement.

Procurement History, Cost/Price Analysis, and Contract Type. Procurement standards require

- 1) independent cost estimates;
- 2) verification of proposed cost elements and projections;
- 3) evaluation of costs and profits;
- 4) retention of records sufficient to detail the significant history of a procurement, including at a minimum the rationale for the method of procurement, selection of the contract type, contractor selection or rejection, and the basis of the contract price;
- 5) a cost or price analysis for every procurement action; and
- 6) a cost analysis when procurements, including modifications, are noncompetitive.¹¹

However, the Commission did not maintain the minimum documentation required for procurement histories, produce required cost analyses, provide evidence of either its independent cost estimates or cost analyses of the contractor's proposals and contract amendments, or demonstrate that profit was separately negotiated and resulted in a fair and reasonable amount. In addition, contract terms were not always clear; compensation provisions were ambiguous; there was no evidence that the Commission considered using a contract compensation provision other than a cost-plus-fixed-fee; and there was no evidence of recipient due diligence to determine whether the contractor understood compensation requirements. Finally, the Commission was unable to demonstrate that its continued use of the cost-reimbursable compensation method was reasonable and warranted.

We questioned \$272,301 in contract costs claimed because the contractor claimed costs in excess of the amount actually incurred, and exceeded both contract fees and cost ceilings. (See schedule 2 of appendix D. The total of \$572,667 in questioned costs is comprised of \$300,366 for amendment 1 of the contract, discussed below, and \$272,301 for the excess costs claimed.)

Contract Change Orders. Commission procedures for issuing contract change orders were not adequate to ensure that a change order was properly justified and that the costs and fees were reasonable and complied with the basic contract.¹² In July 2004, the Commission issued

¹⁰ Uniform Administrative Requirements, 15 CFR 24.36(c) and (d) (4) (i).

¹¹ Uniform Administrative Requirements, 15 CFR 24.36(b) (9), (d) (4) (ii), and (f) (1)-(2).

¹² Uniform Administrative Requirements, 15 CFR 24.36(f).

amendment 1 to its cost-plus-fixed-fee contract for groundfish observers increasing the contract ceiling by \$300,366 consisting of \$275,809 in additional costs and \$24,557 in additional fees.

The fixed fee associated with the original contract amounted to 7 percent of the original proposed costs, but the Commission added a fixed fee for a contract amendment equivalent to 8.9 percent of the increased cost. Aside from the budget supporting the amendment amount there was no cost analysis, nor was there support documenting an increase in the scope of work or contract period necessary to justify increasing the fixed fee. Increasing the fee on a cost-plus-fixed-fee contract without a documented change of scope converts the contract compensation provision to a cost-plus-percentage-of-cost contract, rendering the contract unallowable for federal participation; Uniform Administrative Requirements prohibit the use of cost-plus-percentage-of-cost contracts.¹³ Therefore, we questioned the full \$300,366 the Commission claimed for amendment 1 as unsupported (see schedule 2 of appendix D, note 3i).

Contract Administration System. Uniform administrative provisions require recipients to maintain a contract administration system to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts.¹⁴ However, the Commission had no formal management procedures for cost-reimbursable contracts, and its contract administration system was not adequate to ensure that costs claimed were in accordance with contract terms. Consequently, the financial results of the contracts were not accurately reported to the Commission by contractors and from the Commission to NOAA, and the amounts billed to the Commission and subsequently claimed to NOAA were inaccurate.

The Commission's monitoring of contractor advances was inadequate. For example, the Commission permitted a contractor to draw monthly payroll and contract advances as well as a health trust advance, but neither the Commission nor the contractor consistently monitored and reconciled the advances or ensured that the advances were cleared when the contracts ended. Also, the Commission allowed advances of funds intended to cover future contract performance periods to be billed and paid under the contract in place. These improper billing practices led to incurred costs being overstated by as much as \$219,000 and understated in subsequent years (see schedule 2 of appendix D, note F). And finally, the Commission completely overlooked health trust advances totaling nearly \$173,000 over four contracts, and these advances were not reconciled to ensure that the related expenses had been accurately charged to the proper contract by either the Commission or the contractor (see schedule 2 of appendix D, note 3g).

In addition, one contractor billed over \$35,400 of fixed fees in excess of the contract limits for four contracts (see schedule 2 of appendix D, note 3h). The contractor simply billed fees by adding a percentage to the total costs billed without recognizing the fee limits. In the absence of the required contract administration system, the excess fee billings went undetected by the Commission.

¹³ Uniform Administrative Requirements, 15 CFR 24.36(f) (4).

¹⁴ Uniform Administrative Requirements, 15 CFR 24.36(b) (2).

C. Revisions to Project Scope Were Not Approved

Uniform Administrative Requirements state that recipients must obtain prior approval of the awarding agency whenever there is a revision of the scope of work or objectives of a project, regardless of whether there is an associated budget revision requiring prior approval.¹⁵ The awarding agency may take remedial actions, as appropriate in these circumstances, including disallowance of related costs and wholly or partially suspending or terminating the award. The Commission elected to claim the efforts of its age reader staff (personnel who determine the age of fish), including a Geospatial Information Systems (GIS) analyst, for 5 months; the Commission also claimed nearly 11 months for a full-time fisheries biologist during the closing year of the WCGOP award. The budget submitted in the fall of 2006 for a no-cost time extension included 903 hours for the biologist, but neither the NOAA program nor the Commission initiated an amendment through the NOAA Grants Officer to adjust the scope of the award to include age reader activity or the GIS analyst.

In the absence of an award amendment specifically adding age reader work to the WCGOP award, we questioned \$157,865 in labor and fringe benefits as outside the approved scope of the WCGOP award (see schedule 1 of appendix D, Age Reader line item).

Based on several factors, we also questioned \$66,873 in labor and fringe benefits for the fisheries biologist as outside the scope of the award (see schedule 1 of appendix D, Fisheries Biologist line item). First, the budget contained an expense amount for the fisheries biologist, but he recorded all of his time to a different NOAA cooperative research award. Second, the biologist was not identified in the Commission's observer program performance reports. And finally, February 2007 NOAA management correspondence stated that the biologist's efforts were not observer related and should not be charged to WCGOP.

The Commission's age reader staff was also included in the PacFIN cooperative agreement prior to switching to the WCGOP award. In July and September of 2003, several age readers spent time at sea with commercial fishing crews to observe the fishing and sampling process, incurring significant amounts of overtime and additional expenses for benefits. Although subsequent amendments to the cooperative agreement allowed for this activity, the agreement in place at that time did not include the activity within its allowable scope or objectives. Consequently, we questioned \$14,353 in related personnel and benefits expenses (see appendix C, notes 2 and 3).

D. Performance and Financial Reporting Was Incomplete and Inaccurate

Performance reports are intended to provide key information on the technical progress of an award. Uniform Administrative Requirements provide for periodic performance reporting and prescribe procedures for preparing and submitting accurate financial reports to NOAA.¹⁶ NOAA's special award conditions set the performance reporting interval at 6 months. However, NOAA's ability to properly monitor project progress and ensure effective stewardship of federal funds was hindered by the Commission's failure to accurately report the work that was in process or accomplished and to fully and completely disclose the resources being applied. Early

¹⁵ Uniform Administrative Requirements, 15 CFR 24.30(d) (1).

¹⁶ Uniform Administrative Requirements, 15 CFR 24.40 and 24.41.

reports for the PacFIN award and later reports for the WCGOP were either incomplete or inaccurately reported resources applied to the award.

PacFIN. For the PacFIN award, three of the first four required semiannual reports did not include any discussion of enhanced groundfish monitoring and data processing in Oregon even though the budgeted activity for this portion of the cooperative agreement totaled \$1,052,739 and represented 23 percent of the of \$4,586,805 total approved cooperative agreement budget through amendment 2.

WCGOP. For the WCGOP award, observer program performance reports were not consistent with the approved award budget or the Commission's cost claims for the award. The semiannual performance report for December 2006 through May 2007 identified an assigned observer crew, as well as the GIS analyst, as working on the project. However, at the time the report was written, none of the assigned observer crew had actively charged to the award since September 2006; the GIS analyst, while not specifically included in the approved project budget, had been working on the project only since the beginning of April 2007. This report also commented that the services of age readers were required but did not disclose that the Commission had actually been charging the full age reader staff to the WCGOP award since early April 2007.

Similarly, the final, comprehensive report for the WCGOP project identified that a standard observer crew as well as the GIS analyst worked on the award, but again did not mention that the age readers were charged to the award for the final 5 months of the project. Additionally, none of the performance reports disclosed that the Commission charged the fisheries biologist, who was assigned to and working on another project, to the WCGOP project for the entire final year of the award. (For further discussion, see section C on page 8.)

The Commission provided significant cash advances to Contractor A for payroll, operating expenses, and a health trust. The operating and payroll advances generally provided for 30-day operations; during the four-contract period, they ranged in amount from \$150,000 to \$375,000 for operating advances and from \$25,000 to \$43,000 for payroll advances. Health advances extended over more than 3 years' worth of contracts, from February 2003 through May 2006, with a range of \$75,000 to \$84,596. However, the NOAA Grants Management Division was unaware that the Commission had advanced federal funds to its contractor, and therefore lacked the information it needed to effectively manage disbursement of federal funds.¹⁷

II. Conclusion

As an applicant for federal funding, the Commission assured its federal sponsors that it possessed the necessary institutional, financial, and managerial capability to ensure proper planning, management, and completion of its funded projects. But the conditions we found in our audit were inconsistent with those assertions and resulted in our questioning \$2,420,489 of costs claimed under the PacFIN and WCGOP awards for lack of adherence to the Uniform Administrative Requirements and federal cost principles.

¹⁷ Uniform Administrative Requirements, 15 CFR 24.41(c).

In light of the number of federal funding sources it has and the amount of federal awards it receives, the Commission's board of commissioners, management, and staff must promptly revisit and refresh their understanding of the Uniform Administrative Requirements, federal cost principles, and the award terms and conditions governing the Commission's various federal awards. These parties must also ensure that the Commission's underlying operations and controls comply with federal requirements, and that they actively provide the oversight crucial to a strong control environment as well as the safeguards essential to effective stewardship of the federal resources entrusted to the Commission.

III. Recommendations

We recommend that the Director, NOAA Acquisition and Grants, take a more aggressive role in monitoring the Commission's grants by

- 1) Disallowing and recovering \$2,420,489 in questioned project costs.
- 2) Requiring the Commission to provide evidence of improving its policies and internal controls to comply with minimum federal financial, administrative, and procurement management standards consistent with 15 CFR Part 24 and OMB Circular A-87 before awarding any new agreements or contracts to the Commission. At a minimum, improvements are needed in the following areas:
 - a. Accurate recording and distribution of labor cost.
 - b. Providing justification for noncompetitive procurements.
 - c. Preparing independent cost estimates and conducting cost analysis for contract proposals.
 - d. Retaining procurement history, including, at a minimum, the rationale for the method of procurement, selection of the contract type, contractor selection, and the basis of the contract price.
 - e. Ensuring that contractor claimed costs are in accordance with contract terms and do not exceed allowed limits.
 - f. Controlling change orders.
 - g. Managing cash advances.
 - h. Approving project scope changes.
- 3) Requiring the Commission's board of commissioners to enhance oversight of Commission financial and administrative operations by ensuring that all levels of the organization receive adequate supervision consistent with the Commission's policies.
- 4) Requiring the Commission to provide performance reports that are complete and consistent with approved project scope and budgets, and that fully and accurately identify the resources applied.

Appendix A: Objectives, Scope, and Methodology

Our audit objectives were to determine whether (1) costs claimed, including indirect costs, were reasonable, allowable, and allocable to the sponsored project; (2) award objectives were achieved; and (3) accounting, procurement, and project management practices and controls complied with award requirements, assured efficient project administration, and resulted in an acceptable final product.

Our audit methodology included

- reviewing award files at the Commission and award and technical files provided by the National Oceanic and Atmospheric Administration (NOAA);
- reviewing contract files at the Commission;
- performing cost-incurred audits of several cost-reimbursable contracts funded under the NOAA awards;
- examining financial, personnel, and performance records;
- interviewing NOAA, Commission, and contractor staff;
- applying relevant analytical procedures using a risk-based approach to select areas for audit and non-probability sampling to identify select elements within those areas for detailed transaction testing; and
- reviewing Office of Management and Budget (OMB) Circular A-133 single audit reports and related work papers and management letters issued by the Commission's external auditor for the fiscal years ending June 30, 2002, through June 30, 2008.

We conducted fieldwork in the Commission's office during the periods of January 20 through February 4 and March 30 through April 17, 2009; at the Commission's independent audit firm; and at the offices of three of the Commission's contractors.

The audit included an evaluation of the Commission's internal controls and compliance with laws and regulations as they related to financial assistance award provisions—specifically those provisions pertaining to financial management, procurement, and reporting. Key criteria we considered in conducting the audit included the Commission's applications and application assurances, the NOAA awards and their respective standard and special terms and conditions, *Department of Commerce Financial Assistance Standard Terms and Conditions*, federal cost principles set forth in OMB Circular A-87 and 15 CFR Part 24. Our review disclosed that the Commission and its contractors did not adhere to applicable award requirements as detailed in this report; compliance deficiencies are similarly detailed in finding I and appendixes C and D.

The Commission used computer-based accounting systems to track and report the financial results of the project. To address the objectives of this audit, we obtained the Commission's payroll information in electronic format for the period July 1, 2001, through December 31, 2008. As a result of an accounting system conversion, we received general ledger and accounts payable

information electronically for the period of March 15, 2002, through mid-January 2009. For the initial portion of the Commission's fiscal year 2002 excluded from the electronic submission, the Commission provided system summary reports. To assess the reliability of the electronic revenue and expenditure data, we looked for obvious errors in accuracy and completeness and

- interviewed Commission employees that were knowledgeable about the data,
- worked closely with the Commission employees to identify any data problems,
- agreed general ledger totals from the electronic files to the audited financial statements,
- traced financial claims and contract invoices to the automated accounting systems and to source documents, and
- traced selected accounts payable documents to the general ledger for costs in the indirect cost pool.

We did not rely solely on the computer-generated data as the basis for our audit conclusions. We traced financial claims to the Commission's automated accounting systems and to source documents, and we also relied on source records for our tests and reviews of program results and compliance. We believe the revenue and expenditure data are sufficiently reliable for the purposes of this report.

This audit was performed under the authority of the Inspector General Act of 1978, as amended, and Department Organization Order 10-13, dated August 31, 2006. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix B: Summaries of Source and Application of Funds

Final Audit of NOAA Cooperative Agreement No. NA17FN2284 (PacFIN) and Final Audit of NOAA Cooperative Agreement No. NA17FN2536 (WCGOP)

Source of Funds	NA17FN2284 (PacFIN)		NA17FN2536 (WCGOP)	
	February 1, 2002 - June 30, 2006		June 1, 2002 - August 31, 2007	
	Approved Award Budget	Claimed By Recipient	Approved Award Budget	Claimed By Recipient
Federal Share	\$9,503,605	\$9,503,605	\$13,128,825	\$13,128,825
Recipient Share	-	-	-	-
Total	\$9,503,605	\$9,503,605	\$13,128,825	\$13,128,825
Application of Funds				
Personnel	\$2,792,520	\$2,923,571	\$848,106	\$1,151,061
Fringe Benefits	1,170,878	1,265,195	363,852	504,892
Travel	128,439	88,249	98,056	66,749
Equipment	-	-	-	-
Supplies	148,419	113,390	423,156	338,960
Contractual	4,533,949	4,374,116	10,917,333	10,566,588
Indirect	729,800	739,083	478,322	500,575
Total	\$9,504,005	\$9,503,604	\$13,128,825	\$13,128,825

Appendix C: Summary of Financial/Compliance Audit (PacFIN)

Final Audit of NOAA Cooperative Agreement No. NA17FN2284 For the Period of February 1, 2002, through June 30, 2006

Cost Category	Approved Project Budget	Claimed by Recipient	Costs			Ref. Notes
			Accepted	Questioned	Unsupported (Note 1)	
Personnel	\$ 2,792,520	\$ 2,923,571	\$ 2,999,294	\$ (75,723)	\$ -	2
Fringe Benefits	1,170,878	1,265,195	1,297,382	(32,187)	-	3
Travel	128,439	88,249	88,249	-	-	
Equipment	-	-	-	-	-	
Supplies	148,419	113,390	58,092	55,298	55,298	4
Contractual	4,533,949	4,374,116	4,149,329	224,787	220,845	5
Other Direct Cost	-	-	-	-	-	
Total Direct Cost	8,774,205	8,764,521	\$ 8,592,346	172,175	276,143	
Indirect	729,800	739,083	-	739,083	739,083	6
Fee	-	-	-	-	-	
Total	\$ 9,504,005	\$ 9,503,604	\$ 8,592,346	\$ 911,258	\$ 1,015,226	
Federal Share	100.0%		\$ 8,592,346			
Less Federal Disbursements to Date			9,503,604			
Due (Government)/Recipient			\$ (911,258)			

Reference Notes

- Note 1 Unsupported costs are those costs that the recipient could not adequately support at the time of audit; unsupported costs are also included in the total of questioned costs.
- Note 2 The offset to questioned costs of \$75,723 consisted of the net of \$94,585 in PacFIN labor costs that were erroneously charged to the WCGOP award and \$18,862 in questioned labor costs. Questioned labor costs included (1) \$9,909 for charges inconsistent with the Commission's time distribution system, and (2) \$8,953 in labor costs claimed for activities that were outside the scope of the cooperative agreement. (OMB Circular A-87, attachment A, C.1.a. and b. and C.4., and attachment B.11.h.[5][e] [1995] and B.8.h.[5][e] [2004])
- Note 3 We accepted an offset to questioned costs of \$32,187 consisting of the net of (1) \$41,504 in additional benefits applicable to the PacFIN award that were erroneously charged to the WCGOP award, (2) \$125 in additional benefits that should have been charged to the PacFIN award had the fringe benefits rate applied been adjusted to actual, (3) \$5,400 in benefits expenses questioned as related to the unallowable activities questioned in note 2, and \$4,042 in benefits questioned as applicable to unsupported personnel expenses.(OMB Circular A-87,

attachment A, C.1.a. and b. and C.4., and attachment B.11.h. [5][e] [1995] and B.8.h. [5] [e] [2004])

- Note 4 Questioned costs of \$55,298 consisted of unsupported data processing fees charged to the project. We questioned the data processing fees as unsupported because the expenses were based on the annual budgeted data processing expenses for the Commission, similar to a central service expense. The Commission did not reconcile budgeted fees claimed to actual data processing costs incurred, as required by federal cost principles described in OMB Circular A-87, attachment C.G.4. Refer also to our report on indirect cost.
- Note 5 We questioned \$224,787 consisting of \$220,845 in unsupported personnel, benefits, and indirect costs claimed under cost-reimbursable contracts between the Commission and the State of Washington and Oregon Departments of Fish and Wildlife (WDFW) and (ODFW) and \$3,942 in unallowable costs charged to this project in error by ODFW. Of the \$220,845 questioned as unsupported, \$207,930 consisted of personnel, fringe benefits, and indirect expenses for an employee charged to the project from 2002 through 2005 for whom WDFW was not able to provide adequate documentation. (OMB Circular A-87, attachment A, C.1.b. and j. and C.3., and attachment B.11.h. [5][e] [1995] and B.8.h. [5][e] [2004])
- Note 6 We questioned the total of \$739,083 claimed, consisting of \$86,488 in administrative assessments and \$652,595 in indirect cost. The \$86,488 represents the total of the recipient's claim for the 2 percent administrative assessment levied on pass-through funds to cover associated expenses such as procurement and accounting. We questioned the administrative assessment as both unsupported and duplicative.

We were unable to accept the recipient's indirect cost rates. We questioned the entire \$652,595 in indirect cost claims as unallowable and unsupported. Of this amount, \$12,998 was also questioned because it was in excess of the final approved project budget for indirect cost of \$639,597. The remainder of the budgeted indirect cost of \$729,800 was budgeted as administrative assessments. In accordance with the provisions of *Department of Commerce Financial Assistance Standard Terms and Conditions* A.05 4(a) (2001 and 2004) and f (1) (2005 and 2007), in no event may the amount of indirect cost allowed exceed the final approved project budget line. Refer to our separate audit report on indirect cost for details on the administrative assessments and unallowable indirect cost.

Appendix D: Summary of Financial/Compliance Audit (WCGOP)

Final Audit of NOAA Cooperative Agreement No. NA17FN2536 For the Period of June 1, 2002, through August 31, 2007

Cost Category	Approved Project Budget	Claimed by Recipient	Costs			Ref. Notes
			Accepted	Questioned	Unsupported (Note 1)	
Personnel	\$848,106	\$1,151,061	\$849,962	\$301,099	\$194,305	2
Fringe Benefits	363,852	504,892	370,002	134,890	85,846	2
Travel	98,056	66,749	66,749			
Equipment						
Supplies	423,156	338,960	338,960			
Contractual	10,917,333	10,566,588	9,993,921	572,667	572,667	3
Total Direct Cost	12,650,503	\$12,628,250	\$11,619,594	\$1,008,656	\$852,818	
Indirect	478,322	500,575	-	500,575	500,575	4
Fee	-	-	-	-	-	
Total	\$13,128,825	\$13,128,825	\$11,619,594	\$1,509,231	\$1,353,393	
Federal Share	100.0%		\$11,619,594			
Less Federal Disbursements to Date			13,128,825			
Due (Government)/Recipient			(\$1,509,231)			

Reference Notes

Note 1 Unsupported costs are those costs that the recipient could not adequately support at the time of audit; unsupported costs are also included in the total of questioned costs.

Note 2 We questioned labor and fringe benefits as detailed in schedule 1 (on the next page).

Schedule 1. Labor and Fringe Benefits Questioned and Unsupported

	Note a		Note b	
	Labor Expense ^{2a}		Fringe Benefits Expense ^{2b}	
	Questioned	Unsupported	Questioned	Unsupported
California Coordinator	\$ 90,204	\$ 90,204	\$ 40,133	\$ 40,133
Oregon Coordinator	32,553	32,553	14,779	14,779
Commission Project Manager	18,481	18,481	6,745	6,745
Commission Project Manager	7,579	7,579	2,804	2,804
Fisheries Biologist	45,488	45,488	21,385	21,385
Age Readers (including GIS Analyst)	106,794		51,071	
Fringe Benefits Adjustment to Actual			(2,027)	
Totals	\$ 301,099	\$ 194,305	\$ 134,890	\$ 85,846

Source: OIG

Notes:

2a Of the \$1,151,061 claimed for labor, we questioned \$301,099 consisting of \$194,305 in labor that was unsupported and \$106,794 for labor associated with a function that was outside the scope of this award and funded under another NOAA award. While the Commission had an adequate time distribution system, the Commission disregarded the labor allocations recorded and attested to by the Oregon and California coordinators and the Commission project manager and arbitrarily claimed labor either using established budget ratios or transferring costs from another project or from the indirect cost pool to the project under audit. To be allowable under federal awards, costs must be adequately documented (OMB Circular A-87, attachment A, C.1.j.). The federal cost principles further define the type of support that recipients must use to document labor claims. Specifically, where employees work on multiple activities or cost objectives, salary or wage distribution must be based on personnel activity reports that include, among other things, an after-the-fact distribution of the actual activity of each employee. The principles add that budget estimates or other distribution percentages determined before the services are performed do not qualify as support for charges to federal awards. (OMB Circular A-87, attachment B.11.h.[4] and 5[a] and [e] [1995], and attachment B.8.h.[4] and [5][a] and [e] [2004])

The Commission claimed \$106,794 consisting of 100 percent of the labor expenses for April through August 2007 of its five-member age reading laboratory. The laboratory was funded under another NOAA award, NA05NMF4371160, with a project period that eventually extended from June 1, 2005, through December 31, 2008.

2b Of the \$504,892 of fringe benefits claimed, we questioned \$134,890, of which \$85,846 was unsupported. With the exception of a \$2,027 fringe benefits offset, the costs questioned and unsupported represent fringe benefits related to the labor expense questioned and unsupported in Note 2a and are questioned for the same reasons. The \$2,027 offset to questioned fringe benefits costs represents the total the Commission under-billed for staff that were budgeted and claimed under the award. The Commission used an array of rates to bill fringe benefits to the award but had not adjusted the billing rates to actual. At our request, the Commission developed actual rates and computed the adjustment necessary to apply actual fringe benefits to the award. The actual fringe benefits rates applicable to labor accepted per audit were greater than the amount claimed. Therefore, we used the Commission's under-billed fringe benefits as an offset to the questioned fringe benefits expense.

Note 3: We questioned unsupported contract costs and fees of \$572,667. The costs were part of \$10,351,851 claimed for contracted observer services under the Commission's four cost-plus-fixed-fee contracts with Contractor A and consist of the costs in schedule 2.

**Schedule 2. Contract Cost Questioned and Unsupported
<Under (Over) Billed>**

Contract Number/Notes	2-85	4-23	5-21	6-27	Notes
Costs Claimed by Contractors	\$ 2,348,147	\$ 2,666,803	\$ 2,761,987	\$ 2,574,183	
Personnel Expense	917			7,574	a
Fringe Benefits	(49,999)	(79,640)	(47,159)	(60,068)	b
Insurance Expense	364	16,769	(6,089)	(72,565)	c
Health Expense	(5,697)	3,729	(1,294)	(675)	d
General and Administrative Expense	74,765	28,431	11,955	(5,820)	e
Payroll and/or Contract Advances	(32,000)	32,000	(219,000)	219,000	f
Health Trust Advance	(68,843)	68,843			g
		(36,843)	36,843		
			(15,426)	15,426	
				(51,649)	
Fixed Fees	(5,906)	(11,096)	(11,265)	(7,151)	h
Costs Plus Fixed Fees Incurred Net of Audit Adjustments	\$ 2,261,747	\$ 2,688,996	\$ 2,510,551	\$ 2,618,255	
Less Amendment 1 Modification to Contract 4-23		(300,366)			i
Costs Plus Fixed Fees Incurred Net of Audit Adjs. and Amendment 1 Modification (Equals Contract Maximum since ceiling is higher)	\$ 2,261,747	\$ 2,388,630	\$ 2,510,551	\$ 2,618,255	
Less Commission Claims to NOAA – Total \$10,351,851	2,348,881	2,666,800	2,761,987	2,574,183	
Total Questioned \$572,667	\$ 87,134	\$ 278,170	\$ 251,436	\$ (44,073)	

Source: OIG

Notes

3a The contractor under-invoiced labor costs for contracts 2-85 and 6-27.

3b Questioned costs represent contractor claims for fringe benefits that exceeded the actual amount incurred per the contractor's general ledger.

3c The contractor under-invoiced insurance costs for contracts 2-85 and 4-23 and over-billed insurance costs for contracts 5-21 and 6-27. The contractor used fixed rates to bill for insurance but, at the end of the contract, did not adjust the rates to the actual expense incurred per the contractor's general ledger.

3d The contractor used fixed rates to bill for observer health expense, but did not adjust to actual expense at the end of the contract.

- 3e The contractor used a fixed rate to bill general and administrative expense to the Commission, but did not adjust the rate to actual amount incurred at the end of the contract.
- 3f Beginning prior to contract 2-85, the Commission permitted the contractor to draw monthly payroll advances, and then during contract 4-23 also allowed the contractor to draw monthly contract advances. Both practices continued through contract 6-27 and beyond. The contractor did not properly adjust the invoicing to ensure that the advances made at the end of one contract for work to be accomplished under the following contract were properly applied. The Commission made some adjustments to the contractor's invoices in an attempt to properly recognize costs in under the appropriate contract. However, the Commission's adjustments were not always accurate or complete, and therefore resulted in overbillings and under-billings.
- The contractor included a payroll advance of \$32,000 for contract 4-23 in the final invoice for contract 2-85. The contractor included \$219,000 in payroll and contract advances for contract 6-27 in the final invoice for contract 5-21. The adjustments above move advances claimed to the appropriate contracts.
- 3g Neither the Commission nor the contractor adjusted the amounts of health trust advances to recognize expenses as actually incurred under each of the four contracts included in the award period. The offsetting adjustments above recognize self-insured health payments actually incurred under the appropriate contract. The follow-on contract to 6-27, which is for a period subsequent to cooperative agreement NA17FN2536, should have recognized an outstanding health trust advance of \$51,649 at the start of the follow-on contract period. The \$51,649 adjustment appropriately moves the advance out of contract 6-27.
- 3h The contractor invoiced, and the Commission paid and claimed, fixed fees in excess of the amount authorized for each of the four cost-plus-fixed-fee contracts.
- 3i We questioned the total of amendment 1 to contract 4-23 as unsupported. The contractor did the work as directed by the Commission, incurred the cost, and earned the payment; however, the Commission did not provide justification for the \$300,366 amendment (see table 3 and Contract Change Orders on page 7).

Note 4 We questioned the total of \$500,575 claimed consisting of \$211,372 in administrative assessments and \$289,203 in indirect cost. We questioned \$211,372 as unsupported and duplicative. The \$211,372 represents the total of the recipient's claim for the 2 percent administrative assessment levied on pass-through funds to cover associated expenses such as procurement and accounting. We questioned the assessment as both unsupported and duplicative.

We were unable to accept the recipient's indirect cost rates. We questioned the entire \$289,203 in indirect cost claims as unallowable and unsupported. Of this amount, \$29,229 was in excess of the final approved project budget for indirect cost of \$259,974 (the remainder of the total budgeted indirect costs of \$478,322 was budgeted as administrative assessments). In accordance with the provisions of *Department of Commerce Financial Assistance Standard Terms and Conditions* A.05 4(a) (2001 and 2004) and f (1) (2005 and 2007), in no event may the amount of indirect cost allowed exceed the final approved project budget line. Refer to our audit report on indirect cost for details on the administrative assessments and unallowable indirect cost.

Appendix E: Commission Response



PACIFIC STATES MARINE FISHERIES COMMISSION

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April 13, 2011

Mr. Jerry McMahan
Assistant Regional Inspector General for Audits
U.S. Department of Commerce
Atlanta Regional Office
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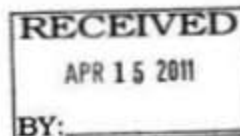
BY EXPRESS DELIVERY: FED EX

Dear Mr. McMahan:

This letter transmits the response of the Pacific States Marine Fisheries Commission to the Draft Report issued by the Department of Commerce Office of Inspector General, dated March 15, 2011 concerning NOAA Cooperative Agreements to Pacific States Marine Fisheries Commission.

Given the breadth and seriousness of the assertions and recommendations made in the report, the long delay between completion of the field work in April 2009 and the release of the draft report it is very troubling to our agency and appears contrary to the supplementary guidance on audit report quality contained in *Governmental Auditing Standards*.

Due to the severity of the findings and recommendations in the draft, we are addressing them in their entirety in the enclosed attachment. Further, under separate cover, we are transmitting copies of the documentation which we believe, throughout the draft report, is incorrectly claimed to have been lacking or inadequate at the time of the audit. Based on the submission of these items, you will note that we have, at various points, requested that the text of the audit report be revised to more accurately reflect the facts surrounding our administration of these two awards. Further, in accordance with Section 8.33 of *Governmental Auditing Standards*, we specifically request that the full text of this letter and the enclosed attachment be included in any final report issued by your office.



"To promote the conservation, development and management of Pacific coast fishery resources through coordinated regional research, monitoring and utilization"

A particularly troublesome aspect of the draft audit report relates to assertions about recovery of indirect costs on the subject cooperative agreements that are based on draft findings from another audit conducted by your office and dated February 22, 2011. On March 18, 2011, our office submitted a lengthy response to that earlier draft audit in which we disagreed with many of its findings and submitted considerable documentation to support our positions. Accordingly, we believe that the assumption that the previous draft audit report was correct and should be fully relied upon in the context of this later examination is unwarranted.

We believe that the extensive submissions that we are making will help assure that the resulting audit report is more fair, complete, and objective. If there are questions about these documents or further need for clarification or dialogue, please contact me or Pam Kahut, our Chief Financial Officer.

Yours truly,



Randy Fisher
Executive Director

Attachments:

Response to Draft Audit Report

Supporting Documentation as listed throughout:

1. Summary of Performance and Financial Reports, extracted from Grant On-line
2. Contract Card from PSMFC Financial Management System
3. Job Listing
4. General ledger codes
5. PSMFC check with supporting documentation
6. Response to Audit Report of Indirect Cost Plans and Rates
7. Pacific States Marine Fisheries Commission A-133 Financial Audit
8. Indirect Cost Rate Certificate
9. May 2008 letter from DOC
10. PSMFC Subcontracting Guidelines
11. Request for Proposal for Observer Coverage – May 2001
12. Comparison of Observer Proposals – May 2001
13. Request for Proposal for Observer Coverage – October 2010
14. PSMFC Contract with NOAA Award Number
15. Response to Request for Information dated September 12, 2003
16. PSMFC Budget Status Report for WCGOP contractor
17. Senior Program Manager Representation of hours
18. Reconciliation of Contractors Advances
19. Summary of PacFIN Awards and Amendments

Cc: Arlene Simpson-Porter, Director Grants Management Division
William Stelle, Jr., Regional Administrator, NOAA/NMFS/NWR
John Stein, Ph.D., Acting Science Director, NOAA/NWFSC
Mack Cato, NOAA Audit Liaison

**Response to Draft Report of Audit of NOAA Cooperative Agreements
To Pacific States Marine Fisheries Commission**

The draft audit report states that the Commission did not comply with the numerous federal requirements and cost principles related to financial management, procurement and project revisions, nor did it provide sufficient performance and financial information to NOAA.

Commission's Response: The Commission's financial management system meets the standards of financial management as defined in the Uniform Administrative Requirements 15 CFR 24.20, complies with the cost principles under A-87 that costs be necessary and reasonable for proper and efficient performance and administration of federal awards, and the Commission did provide performance and financial information to NOAA as noted in the attached summary from the Grants On-line system (Attachment 1).

The draft report questions and recommends recovery of federal funds due to claimed costs that were not reasonable, allowable, and allocable to the awards and for reasons detailed in their report titled *Audit of Indirect Cost Plans and Rates, Pacific States Marine Fisheries Commission, Portland, Oregon* issued on February 22, 2011.

Commission Response: The Commission's responded to the OIG's draft report on the Commission's indirect cost plans and rates on March 18, 2011 (Attachment 6). The draft report stated that the Commission retained its indirect cost proposals on file rather than submitting them to the Department of Commerce, despite the NOAA Grants Officer's multiple requests for the proposals. In OMB Circular A-87, Attachment E, Section D.1.b, as a state or local government unit not specifically assigned to a cognizant, the Commission is not required to submit cost allocation plans unless specifically requested. The Commission must prepare and retain copies. In information that follows, the Commission demonstrates that these blanket statements are incorrect and overreaching.

The audit report also states that since 2003 the Department has provided the majority of the Commission's federal funding and is the Commission's cognizant agency.

Commission Response: There is no indication that this assignment was accomplished through any formal notice to the Commission issued by the Department or any other party.

Our organization is committed to proper stewardship of the federal funding we receive and to the accomplishment of the important program objectives that those funds support. The Commission is responding section by section to the draft audit report as outlined below.

PSMFC Background

The Pacific States Marine Fisheries Commission (PSMFC) was formed by a Compact in 1947 to help resolve fishery issues in California, Oregon, Washington, Idaho and Alaska. The purpose of PSMFC is to promote and support policies and actions directed at the conservation, development and management of fishery resources of mutual concern to the member states through a coordinated regional approach to research, monitoring, and mitigation. The Commission serves a number of vital functions concerning Pacific Coast fisheries. The Commission:

- 1) Is non-regulatory and functions as a neutral party in providing data and project management for West Coast and Alaska recreational and commercial fisheries.
- 2) Fosters collective participation by the States to work on issues of mutual concern.
- 3) Offers a forum for discussing vital fisheries resource issues.
- 4) Works to create coast-wide consensus with state and federal authorities.
- 5) Addresses issues outside state or regional management council jurisdiction.
- 6) Coordinates research and management projects related to interstate fisheries.
- 7) Holds a non-voting seat on the Pacific Fishery Management Council and the North Pacific Fishery Management Council.

One of the major functions that the Commission provides our member states and federal partners is collecting and managing fisheries data that supports both in season and postseason fishery management for the West Coast and Alaska fisheries. The Commission is a neutral party with regards to these data programs; we collect, manage, and consolidate the data. The Commission provides data and project management for five major data programs. These programs include:

- 1) Alaska Fisheries Information Network; consolidates, manages and distributes commercial fisheries data used by fisheries analysts and economists for the North Pacific Fishery Management Council.
- 2) Pacific Fisheries Information Network; consolidates, manages and distributes data to support the management of Pacific Coast commercial fisheries by the Pacific Fishery Management Council.
- 3) PIT Tag Information System (PTAGIS); monitors the migratory habits of fish and effects of federal Columbia River power systems by collecting and distributing data via electronic PIT (passive integrated transponder) tags.
- 4) Regional Mark Processing Center provides data to international, state, federal and tribal fisheries organizations involved in marking anadromous salmonids as part of the US Canada Treaty, the Pacific and North Pacific Fisheries Management Councils.
- 5) Streamnet consolidates, standardizes, and distributes fisheries and aquatic habitat data from the Columbia River basin and the Pacific Northwest.

All of these programs are done in collaboration with our member states and federal partners. Each of the State fishery agencies receives Federal funding to augment state funding for supporting activities relating to these programs to collect the data. Due to the confidentiality of the data that is collected by the States, they supply the necessary data to the systems managed by the Commission. This funding is provided to the States by the Commission through Cooperative Agreements from our federal partners.

The Commission also manages a number of other programs that are not totally data driven. These programs include:

- 1) West Coast Invasive Species;
- 2) West Coast Trawl Observer Program;
- 3) Northern Pikeminnow Management Program;
- 4) Tri-State Dungeness Crab Project;
- 5) Pacific Coast Marine Habitat Program

Findings and Recommendations

The report states that the Commission's Financial Management system was not adequate to report the financial results of its awards. In addition to the deficiencies described in the audit of the Commission's indirect cost plans and rates, the Commission's implementation of its automated accounting and time distribution system was inadequate. The Commission did not have all necessary policies, procedures, and controls in place, nor did it adhere to the ones it had; therefore the Commission's project cost accounting records and its claims to NOAA included unsupported or unallowable costs.

In this audit report of the NOAA Cooperative Agreements, there are questioned costs consisting of \$1,239,658 of indirect costs.

A. *The Commission's Financial Management System Needs Improvement*

The report states that the Commission's financial management system was not adequate to accurately report the financial results of its awards.

Commission Response: As stated in Uniform Administrative Requirements 15 CFR 24.20:

(a) a State must expend and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to:

- (1) Permit preparation of reports required by this part and the statutes authorizing the grant, and
- (2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

- (1) *Financial Reporting.* Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.
- (2) *Accounting Records.* Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures and income.
- (3) *Internal Controls.* Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that is issued solely for authorized purposes.
- (4) *Budget controls.* Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required estimates based on available documentation will be accepted whenever possible.

- (5) *Allowable cost.* Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability and allocability of costs.
- (6) *Source documentation.* Accounting records must be supported by such source documentations as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.
- (7) *Cash management.* Procedures for minimizing the time elapsing between the transfer of funds from the US Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transaction reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

The Commission's financial management system maintains a proper fund accounting procedures and records which adequately identify the source and application of funds provided for financially assisted activities as required by 15 CFR Part 24, Subpart C. When the Commission receives an award from a funding entity, the Award is entered into the financial management system with identifiers on the Contract Card as (see Attachment 2):

- (a) Agreement Number: This is the official award number from the funding agency
- (b) Project Name: Project Name as identified on the funding award
- (c) A-133 Audit required
- (d) Billing frequency: Monthly, 270 Required, By Phase, Upon completion
- (e) Payment type: Invoice or Drawdown
- (f) Customer and Job Number: Funding entity and PSMFC Unique Job Number
- (g) Starting Date
- (h) Ending Date
- (i) Total Award Amount
- (j) Award amount less fees: Direct Costs
- (k) Budget: This is a cumulative total of the amount of budgets entered in the system
- (l) Usage (Cost): Amount of expenses to date

Once the contract card is established, individual budgets are entered into the financial management system based on the budgets submitted with the grant proposal. If an agreement has several tasks or individual budgets, a job number also has a letter assigned to it to track expenses by tasks as shown in the Job Listing attached (Attachment 3). The jobs assigned to the award have budgets in the accounting system tracking expenses with general ledger codes (Attachment 4) as identified in OMB Circular A-87.

The source documentation maintained by the Commission for each transaction whether accounts payable, payroll, or contract billings substantiates the expense to the individual award and includes as appropriate cancelled checks, paid bills and contract award documents. With each accounts payable transaction, we attach a copy of the invoice to the Commission's copy of the check (Attachment 5).

Time Distribution System: All Commission employees record their hours worked in an electronic timekeeping system. Each employee has a home department based on their job number assigned to their funding agreement, and some employees have transfer codes if they are working on more than one project (job number). Over the years, the Commission has found it beneficial to assign a Senior Program Manager to all projects to help with program oversight. Currently we have five Senior Program Managers, whose responsibilities include guidance to program staff outlining program objectives, assisting with funding applications, supervision of staff, attending meetings, and ensuring that programs are adhering to Commission policies and procedures. The two Cooperative Agreements identified in this audit report have an assigned Senior Program Manager. These and the other projects he administers for the Commission are all funded by NOAA throughout different awards, and have overlapping tasks which can often make it difficult to delineate his time from one NOAA award to another. Throughout the day he will work on all the NOAA awards. In the past, an amount was budgeted (average of 2 months in a 12 month period) in each of the awards for a portion of his efforts and based on the budget period these funds were used to cover his time that was being posted to a central job number. While we believe that this past charging practice distributed individual effort in an equitable manner to all benefiting federal projects, employees have been instructed to track actual hours allocable to individual projects on a daily basis and enter them into the time distribution system accordingly. During a recent 12 month period, this Senior Program Manager spent 391 hours on the PacFIN project, which is equivalent to 2.26 months. Therefore, based on this representative period (see Attachment 17), we believe the approach used previously was also equitable to the government.

In addition to the Senior Program Managers labor and benefits in question, there was labor and benefit for the Groundfish Age Readers time charged to the WCOP agreement that was not originally identified in the budget estimate. However, the work these individuals perform had a direct relation to the observer program and per the NOAA Federal Program Office (email dated February 14, 2007) we received authorization to use the funds in this award in lieu of the funding from another NOAA award. The age readers determine fish ages by reading fish otoliths (bones in the ears of the fish) for stock assessment analysis based on fish samples collected by port samplers, field biologists, observers, and others. At times the age readers assist in field sample collection to capture otoliths by participating on survey research cruises (non-commercial trips) primarily coordinated by NMFS. Without collections on all such trips we would necessarily have a hole in the age structure of the samples.

The two Cooperative Agreements identified in this audit report, NA17FN2284 and NA17FN2536, have employees within the various states that job share due to the type of work and location of the work. The report has questioned costs for the 2 coordinator positions in Oregon and Washington. Much of the work for these two projects is done at various ports along the coastline throughout Oregon, Washington and California. These two projects only need half time position at the various ports to make assignments to port samplers for NOAA Award NA17FN2284 (PacFIN) and as a coordinator for NOAA Award NA17FN2536 (WCGOP) to assist National Marine Fisheries Service in achieving coverage goals and coordinate state portside biological sampling activities. To be efficient and cost effective, it was in the best interests of the programs to have a full year, full time person at the various ports but split their efforts between the two projects. A single person can travel to a given port and deal with a variety of outstanding issues as opposed to two people travelling to the same port and incurring duplicate costs for travel. Also, a single individual knows the fleet better since they are working with them on a variety of related tasks. Our ability to do our work relies on good working relationships with the fishermen and fish buyers. The observers and port samplers often interact, usually on good terms. However sometimes differences of opinions arise on how best to accomplish a given task. Having a single

supervisor for both positions allows them to better arrive at mutually agreeable solution more quickly. It allows PSMFC to more efficiently provide support to our Federal cooperators. While we believe that this past charging practice distributed individual effort in an equitable manner to all benefiting federal projects, employees have been instructed to track actual hours allocable to individual projects on daily basis and enter them into the time distribution system accordingly.

Internal Controls:

Commission Response: The Commission has established policies and procedures in the areas of financial management, procurement, reporting and project revisions. As explained later in this response, the Commission is following the established policies and procedures in the areas of procurement, reporting, and project revisions. As an ongoing effort to improve our processes, the Commission staff has reviewed and is updating procedures and policies in the areas of travel, procurement and purchasing.

Indirect Costs: The report states that weaknesses in the Commission's policies and procedures contribute to the Inspector General's inability to accept indirect cost rates and ancillary assessments and fees the Commission claimed for fiscal years 2002 through 2008.

Commission Response: As we have addressed in our response to the February 22, 2011 report *Audit of Indirect Cost Plans and Rates* (Attachment 6) the Commission went to extraordinary lengths over an extended period of years to clarify the fact that it was in compliance with requirements regarding its indirect cost recovery plan.

The Commission's indirect cost rate is calculated on an annual basis as part of our A-133 annual financial audit (Attachment 7). Based on the financial information from this audit, an indirect cost rate is calculated (see copies of annual indirect cost rate certification -Attachment 8). Commission staff always attends the NOAA Grant Workshops that are held on the West Coast for grant recipients. For many years, the topic of indirect cost allocation plans and the lack of response from the Department of Commerce with regards to acceptance were discussed. We were continually advised that due to the backlog of requests, recipients should keep copies on file, as stated in OMB Circular A-87, until the Department of Commerce released clear guidance. It was not until April 2008 that we were notified by our NOAA Federal Program Officer that this updated, revised guidance had been released. The Commission immediately submitted the Certificate to the Department of Commerce Office of Acquisition Management and we requested, in writing, their acceptance of our Certificate (dated May 8, 2008, Attachment 9).

It is noted in the draft report on *Audit of Indirect Cost Plans and Rates* that departmental policy limits indirect cost recovery to the lesser of (1) the amount authorized in the approved award budget, or (2) the federal share of the total indirect cost allocable to the award computed using the indirect cost rate approved by a cognizant or oversight federal agency and current at the time the cost was incurred (provided that the rate used was approved on or before the award end date). Footnote 5-referenced the Financial Assistance Standard Terms and Conditions attached to awards. The Financial Assistance Standard Terms and Conditions states in Section A.05:

- (a) Indirect cost will not be allowable charges against the award unless specifically included as a cost item in the approve budget incorporated into the award.

PSMFC indirect costs were included in the approved budget incorporated into the awards and included on SF424A-Budget Information.

- (c) If recipient has not previously established an indirect cost rate with a Federal agency, the negotiation and approval of a rate is subject to the procedures in the applicable cost principles and the following subparagraphs.

PSMFC had established an indirect cost rate with a Federal agency (DOC in 1986 and DOE in 1994).

With regards to the 2% administrative fee assessed on pass-through funds to our member states was approved in 1994 by the Bonneville Power Administration and the Commission submitted a Certificate in 2008 to Department of Commerce for approval. At the end of the Commission's fiscal year, the amount of revenue generated with the 2% pass through administrative fee had an equal amount of indirect cost expenses deducted before the indirect cost calculation. The expenses deducted are for the accounting and contracting staff to administer the contracts (pass-thru) funds to our member states.

B. The Commission's Procurement System Needs Improvement

The audit report questioned \$797,454 because of alleged deficient procurement practices. However, the Commission has written Subcontracting Guidelines (Attachment 10) which we believe meet the procurement standards contained in 15 CFR 24.36.

Commission Response:

Noncompetitive Procurement: With the two NOAA Cooperative Agreements addressed in this audit report, the Commission procured services from State fishery agencies and a contractor. As noted in the draft report, noncompetitive procurement may be used when an item is available only from a single source (State fishery agencies).

The States fishery agencies (Oregon, Washington, and California) performed services under the Cooperative Agreement for the Pacific Fisheries Information Network (PacFIN) project. This project is a collaborative effort by the states, NOAA, and Commission in support of both inseason and postseason fishery management events. The information provided by the project is one of the primary resources the Pacific Fishery Management Council uses in the fishery management process. Each of the State fishery agencies receives funding under this cooperative agreement to augment state funding for supporting activities for collecting, monitoring, and data processing for requests for the Pacific Fishery Management Council. Due to the confidentiality of the type of data captured, the State fishery agencies are the **only** contractors with the ability to supply the necessary data to the PacFIN central database managed by the Commission staff.

The WCGOP cooperative agreement included procurement of a contractor to provide services to the Commission supplying at-sea observers. The Commission issued a Request for Proposal, dated May 2001 (Attachment 11) when this program began. There were five companies who submitted proposals. Upon review, three companies were seriously considered based on experience, approach to accomplish the work proposed, and compensation/costs (see attached Observer Comparison-Attachment 12). In

subsequent funding proposals, the observer contractor was identified throughout the documents. Since there are no specific timelines in 15 CFR 24.36 on how often a grantee must engage in full and open competitive competition for an ongoing service and due to the complexity with training and logistics for this project, we had not re-procured for these services. However, in 2010 the Pacific Fishery Management Council adopted a new management system for the groundfish trawl fishery which changed the requirements on vessels for observer coverage and shoreside monitoring. Because of the change in observer coverage required on vessels, the Commission issued a new Request for Proposal for the WCGOP observer program on October 15, 2010 (Attachment 13).

The audit report also states that the Commission issued a series of yearly contracts to its contractors rather than entering into multiple-year contracts.

Commission Response: Despite the fact that the two cooperative agreements identified in this report had multi-year performance periods, the Commission was only assured of an annual obligation of funds from the Department of Commerce. Therefore, the Commission issued yearly contracts to the contractors due to the specific performance and funding periods identified in the NOAA awards. Over a period of 4 years the Commission issued contracts under the NOAA Award NA17FN2284 for the PacFIN program to the Oregon Department of Fish and Wildlife and Washington Department of Fish and Wildlife. When additional funds were added to the NOAA award, the Commission would enter into a new contract with the State agencies for the specific performance and budget period identified in the NOAA award. Each of the new contracts to the agencies identified the NOAA award for which the funds were allocated (see Attachment 14). By identifying the NOAA award, the Commission assumed that the State fishery agencies used this identifier for record retention purposes. However, through this audit, we have learned that was not the case. As noted in Appendix C: Summary of Financial Compliance Audit (PacFIN), footnote 5, Washington Department of Fish and Wildlife had questioned costs of \$207,930 during the project periods of 2002 through 2005 due to lack of adequate documentation. Because of this auditing finding, the Commission is revising the procedures for awarding funds to contractors with ongoing funding agreements and revisiting the record retention provisions of our contracts.

Procurement History, Cost Price Analysis, and Contract Type.

The audit report states that procurement standards require: 1) independent cost estimates; 2) verification of proposed cost elements; 3) evaluation of costs and profits; 4) retention of records sufficient to detail the significant history of a procurement, including at a minimum the rationale for the method of procurement, selection of the contract type, contractor selection or rejection, and the basis of the contract price; 5) a cost or price analysis for every procurement action; and 6) a cost analysis when procurements, including modifications, are noncompetitive.

Commission Response: The procurement actions for the two cooperative agreements under this audit were non-competitive due to the nature of the work to be accomplished and a continuation of a contractor from a prior competitive process. In 2001 the Commission did a formal bid process for the services of an observer company and based on the information from that solicitation, the cost of an observer was established. When the budget estimate was prepared for the annual funding, the number of observer days was calculated based on historical data (actual days from prior observer season), which was translated into the award document for the amount of funds needed to provide the observer coverage necessary to accomplish the tasks identified in the grant award. When the Commission issued

the solicitation in 2001, there were a limited number of companies who responded due to the nature of the work for this particular program. In 2010 the Commission issued a new solicitation for similar work and received 4 responses. Based on the nature of the program, the Commission has entered into a cost-reimbursable agreement with a maximum amount allowed with the contractor. Depending on the level of vessel activity, the number of observers required to meet coverage goals can vary on an annual basis. Therefore, the Commission reimburses the Contractor for actual expenses incurred for the level of activity to meet the coverage goals for the program. The Contractor is required to provide and retain an experienced observer core to meet the coverage goals of the program. Approximately 24 observers are active year round with an additional 19 observers available to coincide with the peak in fishing effort during February through October. This flexible plan accounts for the changes of the management schemes of the groundfish fishery and/or needs of managers or stock assessment teams.

The Commission requires the contractor to provide insurance adequate to cover injury, liability, and accidental death for observers. These observers are at-sea often in hazardous work conditions and the insurance for workers compensation can fluctuate significantly from year to year based on past experience claims. For a period of time, the level of funds budgeted for observer insurance premiums were not reconciled to actual expenses on the Contractor's records. Corrective action has been taken with the Contractor's records. The contractor has refunded to the Commission the amount identified in question during the audit. We are continuing to work with the contractor to reconcile the information provided during the field work by the OIG and the information provided in this audit report.

The procurements in the PacFIN cooperative agreement were to the State fishery agencies and independent budget estimates (constituting an independent cost estimate) were prepared each year for the work they were to perform under this cooperative agreement. The detailed history of their expenses is documented in the Commission's financial management system by the cost categories identified in each budget proposal.

Contract Change Orders: The Commission issued an amendment to the WCGOP Contractor for services provided during the period September 1, 2003 through September 30, 2004 increasing the total price by \$300,366 due to additional observer at-sea days that were discussed in the performance progress report submitted to NOAA Federal Program Officer and NOAA Grants Management Division on March 15, 2004 and again in July 23, 2004. The services the WCGOP contractor provides to the Commission varies depending on level of fishing effort and number of vessels selected by NOAA. The amendment increased the total amount authorized to \$2,666,799 of which \$179,371 was for WCGOP contractor's fee, which was 7.3% of total direct costs not 8.9% of total direct costs. As explained in Attachment 15, PSMFC Responses to Request for Information and/or clarification for continuation application NA17FN2536 provided to NOAA GMD on September 12, 2003, the contractor fees is the 7% maximum amount a for-profit organization as allowed. Therefore the questioned costs of \$300,366 are allowable and if anything only \$5,251 should be disallowed based on 7% of direct costs of \$2,487,428 for a fee of \$174,120. The scope of work and time period for this contract did not change from the original award; therefore, no additional documentation is needed.

Contract Administration System: The Commissions procedure for cost-reimbursable contracts and its contract administration system ensures that costs claimed are in accordance with contracts terms. All contractors with the Commission are required to submit monthly invoices to the Commission for expenses they incurred performing the services identified in their agreement with the Commission. Each agreement with the contractor has a statement of work and budget attached for the work they are

to perform under a NOAA award. The contractor is identified in the Commission's financial management system with a job number, and a budget is entered into the accounting system. When the invoices for WCGOP contractor were sent to the Commission office, copies were forwarded to the Commission Observer program manager for review and approval. The Commission Observer program manager works closely with the contractor and fleet for monitoring the number of observer days utilized each month, and accordingly, is able to verify the information on the invoice actually occurred. The invoice is not paid by Commission accounting staff until we receive approval from the program manager that the information on the invoice is true and correct.

The Commission made an advance payment to the WCGOP contractor for one month's expenses to help facilitate payment for the labor of observers. Nothing contained in the procurement standards of 15 CFR 24.36 precludes such a payment as a means to assure adequate financing of the contractor's operations. In no case did the advance payment exceed the amount of cash needed for 30 days and so was similar to that which would have occurred had the contractor been a subrecipient subject to 15 CFR 24.21 and 15 CFR 24.37. As noted in the Department of Commerce Financial Assistance Standard Terms and Conditions Section A.02 Award Payments (subsection d) advances shall be limited to the minimum amount necessary to meet immediate disbursement needs, but in no case should advances exceed the amount of cash required for a 30 day period. On a monthly basis, the contractor's invoices for actual was applied to the outstanding advance, and a new advance was requested based on projected level of effort needed for the next payroll cycle. On a monthly basis, the Commission reconciled each invoice to advances (see attached spreadsheets-Attachment 18) and notified the contractor if a discrepancy was found. The advances were posted to a separate general ledger account (G/L 90100) as shown on the attached budget status report (Attachment 16).

The audit report states that the WCGOP contractor billed \$35,400 of fixed fees in excess of the contract limits for four contracts as explained in Schedule 2, footnote 3h.

Commission Response: The fee that the WCGOP contractor applied to each funding period was a contractor fee of 7% of direct costs as explained in Attachment 15, PSMFC Responses to Request for Information and/or Clarification for Continuation Application NA17FN2536, dated September 12, 2003. The terminology of "fixed" fee is an incorrect term.

C. Revisions to Project Scope Were Not Approved

The activities accomplished under the WCGOP and costs associated with these activities by the Commission were not a change in scope. The WCGOP is to provide timely information by gear, area, and season on activities undertaken by the groundfish fleet. To provide this timely information, the Commission provides the necessary staff and tools through a cooperative effort with NMFS and state agencies. At no time is it possible to plan for every situation that may occur during the year with regards to accomplishing the tasks originally identified or additional needs to meet the fishery managers' requirements for additional information to manage the fisheries. However, the Commission's performance reports documented the additional activities and staff needed to accomplish the tasks identified through the cooperative efforts with NMFS to meet the data needed to finalize assessments for the fishery managers. When a proposal is submitted to NOAA for funding, it is the recipient's best estimate on the staffing needs and costs to accomplish the work identified. If the scope of work does not change, but the level of effort to accomplish the work does, there are conversations that occur with

the cooperating parties throughout the award period. In addition, this information is provided in the performance reports submitted to NOAA Grants Management Division, which are reviewed and accepted by the NOAA Federal Program Officers who have an ongoing relationship throughout the process.

D. Performance and Financial Reporting was Incomplete and Inaccurate

The Commission was required to file quarterly financial and performance reports per the Standard Terms and Conditions. Every quarter the Commission filed their SF-269 as a multi-award report. As shown in Attachment 1, the Commission submitted all required Financial Reports (SF-269 and SF 270) and Performance Reports and they were reviewed and accepted by the NOAA Federal Program Officer and NOAA Grants Management Division. When, on occasion, there is a contractor that has not provided input to the performance report for the tasks that they are assigned, the Commission submits the report without that portion and then subsequently forwards that portion under separate cover or as part of a later report. In addition, the two NOAA awards covered in the draft report are cooperative agreements under which substantial federal agency involvement during performance was both anticipated and accomplished. The incumbent federal program managers were in regular contact with Commission staff during the periods of performance and were kept informed of significant project developments in accordance with 15 CFR 24.40(d).

II. Conclusion

As an applicant for federal funding, the Commission assured its federal sponsors that we possessed the necessary institutional, financial, and management capability to ensure proper planning, management, and completion of its funded projects. The costs claimed under the PacFIN and WCGOP awards did adhere to the Uniform Administrative Requirements and federal cost principles. The Commission's financial management system meets the standards of financial management as defined in the Uniform Administrative Requirements 15 CFR 24.20, complies with the cost principles under A-87 that costs be necessary and reasonable for proper and efficient performance and administration of federal awards, and the Commission did provide performance and financial information to NOAA.

Of the \$2,420,489 of costs questioned in the draft report, \$1,239,658 is indirect cost the Commission claimed during 2002 through 2008. The Commission responded to the OIG's draft report on the Commission's indirect cost plans and rates on March 18, 2011. The draft report stated that the Commission retained its indirect cost proposals on file rather than submitting them to the Department of Commerce, despite the NOAA Grants Officer's multiple requests for the proposals. In accordance with OMB Circular A-87, Attachment E, Section D.1.b, the Commission is not required to submit cost allocation plans unless specifically requested.

The Commission staff has a clear understanding of the Uniform Administrative Requirements, federal cost principles, and Department of Commerce Standard Terms and Conditions. We have also reviewed and modified as appropriate policies and procedures with regards to all post award activities.

III. Recommendations

As stated throughout this document, we disagree with the recommendations proposed by the Inspector General staff for the following reasons:

- 1) The questioned costs of \$2,420,489 which include (a) Commission indirect cost for the period 2002-2006; (b) costs borne by the State Fishery Agencies performing the work identified in the cooperative agreements; (c) labor and benefits for staff to perform the work necessary to meet the needs of the projects; (d) administrative assessments that were reviewed and approved by the Commission's oversight agency for indirect cost in 1994 and again in 2004;

Commission Response: The Commission's indirect cost rates and ancillary assessments and fees claimed for fiscal years 2002 through 2008 were addressed in our response to the Audit Report of Indirect Cost Plans and Rates dated March 18, 2011. The Commission's indirect cost rate is calculated on an annual basis as part of our A-133 annual financial audits.

The questioned costs borne by the State Fishery Agencies for performing the work identified in the cooperative agreements were costs associated with staff to support the work identified in the original statement of work. The cooperative agreements identified in this report had multi-year performance periods. However, the Commission was only assured of an annual obligation of funds from the Department of Commerce, therefore, annual contracts were issued to the State fishery agencies. Because of this auditing finding, the Commission is revising the procedures for awarding funds to contractors with ongoing funding agreements and revising the record retention provisions of the contracts.

In order to meet the overall objectives of the work identified in the cooperative agreements, the Commission provided the necessary staff to accomplish these tasks and other activities identified throughout the performance period. When the funding application was prepared, we prepared a budget estimate and identified the level of effort expected to accomplish the tasks identified. During the course of the performance period, situations arose which required additional effort to meet the fishery manager's requirements for additional information to manage the fisheries. Throughout the performance period, the Commission addressed and documented the additional activities and staff needed to accomplish the tasks through its performance reports and the ongoing dialogue with the cooperating parties.

- 2) The Commission has policies and internal controls to comply with the minimum federal financial, administrative and procurement management standards consistent with 15 CFR 24 and OMB A-87 as noted in the following areas:
 - a. Accurate record and distribution of labor costs. The Commission has a time keeping system that each employee records their time on a daily basis.
 - b. Provide justification for noncompetitive procurements. The noncompetitive procurements that the Commission executes are for services only available from a single source in accordance with 15 CFR 24.36(d)4 (i.e., the states of California, Oregon, Washington, Idaho, and Alaska).

- c. Prepare independent cost estimates (through budgeting for the cooperative agreement awards) and conduct cost analysis for contract proposals.
 - d. Retains procurement history, including, at a minimum the rationale for the method of procurement, selection of the contract type, contractor selection and the basis of the contract price.
 - e. Ensure that contractor claimed costs are in accordance with contract terms and do not exceed allowed limits.
 - f. Control change orders
 - g. Manage cash advances (see Attachment 18)
 - h. Approve project scope changes
- 3) The Commission's Board of Commissioners is kept abreast at a minimum on a quarterly basis of the Commission's financial and administrative operations. A website has been established for the Commissioners in which a quarterly review of activities and financial status are posted. In addition the Executive Director has ongoing dialogue with the State Fishery Directors and other Commissioners throughout the year at meetings, through conference calls and other telephone conversations.
- 4) The Commission provided performance and financial reports as required by the Standard Terms and Conditions of the federal awards.

Response to Appendix C and D

Appendix C: Summary of Financial/Compliance Audit (PacFIN)

Questioned Costs:

Notes 2: The Commission has assigned a Senior Program Manager to the Cooperative Agreements identified in this audit report. The projects he administers for the Commission are all funded by NOAA throughout different awards, and have overlapping tasks which can often make it difficult to delineate his time from one NOAA award to another. Throughout the day he will work on all the NOAA awards. In the past, an amount was budgeted (average of 2 months in a 12 month period) in each of the awards for a portion of his efforts and based on the budget period these funds were used to cover his time that was being posted to a central job number. While we believe that this past charging practice distributed individual effort in an equitable manner to all benefiting federal projects, employees have been instructed to track actual hours allocable to individual projects on daily basis and enter them into the time distribution system accordingly. During a recent 12 month period, this Senior Program Manager spent 391 hours on the PacFIN project, which is equivalent to 2.26 months. Therefore, based on this representative period (see Attachment 17), we believe the approach used previously was also equitable to the government.

Note 3: The report has questioned costs for the 2 coordinator positions in Oregon and Washington. Much of the work for these two projects is done at various ports along the coastline throughout Oregon, Washington and California. These two projects only need half time position at the various ports to make assignments to port samplers for NOAA Award NA17FN2284 (PacFIN) and as a coordinator for NOAA Award NA17FN2536 (WCGOP) to assist National Marine Fisheries Service in achieving coverage goals and coordinate state portside biological sampling activities. To be efficient and cost effective, it was in the best interests of the programs to have a full year, full time person at the various ports but split their efforts between the two projects. A single person can travel to a given port and deal with a variety of outstanding issues as opposed to two people travelling to the same port and incurring duplicate costs for travel. Also, a single individual knows the fleet better since they are working with them on a variety of related tasks. Our ability to do our work relies on good working relationships with the fishermen and fish buyers. The observers and port samplers often interact, usually on good terms. However sometimes differences of opinions arise on how best to accomplish a given task. Having a single supervisor for both positions allows them to better arrive at mutually agreeable solution more quickly. It allows PSMFC to more efficiently provide support to our Federal cooperators. While we believe that this past charging practice distributed individual effort in an equitable manner to all benefiting federal projects, employees have been instructed to track actual hours allocable to individual projects on daily basis and enter them into the time distribution system accordingly.

Note 4: Questioned costs of \$55,298 of data processing fees. The Commission's data processing fees were established in 2000 to cover expenses incurred by the Computer Services department which provided support to all Commission staff for computer operations. In addition, the Commission oversees five (5) major fishery data bases which require additional servers, software, and maintenance support. Some of the fishery data bases required specific software licenses (Ingress, Oracle, Sun) which other Commission activities did not require. The process established for recovering these costs was

based on the general activities all Commission staff required (PC support, internet connections, Commission firewalls, spam software, UPS backup, generator) and project specific needs (Ingress, Oracle, Sun software), and the computer services department staff time and effort. The data base projects were assessed a computer service fee based on number of PC's needing support and their specific software, licenses, maintenance needs. The Commission was also assessed a computer service fee for the support needed for the personal computers and servers identified for the indirect cost activities (accounting, payroll, human resources, administrative support staff).

After discussions with the auditors during their visit, we have revisited the Computer Services distribution of costs. The data projects that have specific needs (Oracle, Ingress, Sun) are charged directly to the projects. The costs for the computer services department to operate the Commission computers used in the administrative support of the organization are included in the indirect cost activities.

Note 5: The questioned costs of \$224,787 of which \$220,845 is unsupported personnel, benefits, and indirect cost claimed by the State Fishery Agencies (Washington Department of Fish and Wildlife and Oregon Department of Fish and Wildlife). The expenses incurred by these two entities are costs associated with staff to support the work identified in the original statement of work. During the site visits the state fishery agencies had not retained the supporting documentation for the labor costs charged to this project. The original cooperative agreement that the Commission received from NOAA was for one year and subsequent years were added as funding became available for the continuation of this work. In order to clearly identify that each year performance period and budget period was separate, individual agreements were awarded to the state fishery agencies, with the Federal Award Number clearly identifying the source of funds. The Commission is revising their record retention clause of their subcontracts and reviewing the subcontracting process for projects that are funded with ongoing (multi-year) federal awards.

Note 6: The questioned costs of \$739,083 of administrative assessments and indirect cost has been thoroughly addressed in the Commission's response to the Audit Report of Indirect Cost Plans and Rates, Pacific States Marine Fisheries Commission, Portland, Oregon dated February 22, 2011 (attached). The Commission did prepare and support its indirect cost rate for the years in question 2002-2008. This information was kept on file as required in OMB A-87, Attachment E, Section D.1.b, and also as noted in the Department of Commerce Financial Assistance Standard Terms and Conditions. When we were contacted in April 2008 by our NOAA Federal program Officer that DOC had issued revised guidance for submittal of Indirect Cost Rates, we submitted on May 1, 2008 our certification to the Department of Commerce Office of Acquisition Management, Indirect Cost Program and received a reply on May 8, 2008 that it had been accepted. Each year thereafter, the Commission has submitted a certification as in the revised guidance issued in April 2008. The Commission 2% administrative assessment for pass-thru funds is reduced from the indirect cost activities at the end of each fiscal year. Due to the offset, there is no duplication of the Commission indirect cost recoveries. These indirect cost activities include contracting and accounting services. As addressed above, the data processing assessments has already been changed.

The Commission has followed the process outlined in recent DOC guidance, and our rate has been accepted by the DOC Office of Acquisition Management, Indirect Cost Program. We believe the indirect cost rate as currently being calculated and assessed is reasonable.

The Commission indirect cost rate is supported by the financial data provided in our A-133 annual financial audit. All the subsidiary ledgers were provided at the time of the audit and were attached to the Commission's response to the audit report for an additional review. Since the preliminary rate of 13% was established from the 2008 data, a revised rate of 12.38% was applied based on actual expenditures supported by the financial data presented in our A-133 financial audit.

The report questions an amount of \$12,998 of indirect cost that is in excess of the approved project budget. This cooperative agreement had six amendments for additional funding, carryover requests, and time extensions as summarized in the attached spreadsheet (Attachment 19). The Commission did not exceed the approved budget for indirect cost.

Appendix D:

Schedule 1 – Labor and Fringe Benefits Questioned and Unsupported:

Notes 2a – Questioning \$301,099 of labor that was unsupported or labor associated with a function outside the scope of the award. The labor of \$194,305 that has been identified as unsupported is for the two positions in Oregon and California that provide support under two cooperative agreements. The two Cooperative Agreements identified in this audit report, NA17FN2284 and NA17FN2536 have employees within the states of Oregon and California that job share due to the type of work and location of the work. Much of the work for these two projects is done at various ports along the coastline throughout Oregon, Washington and California. These two projects only need half time positions at the various ports to make assignments to port samplers for NOAA Award NA17FN2284 (PacFIN) and function as a coordinator for NOAA Award NA17FN2536 (WCGOP) to assist National Marine Fisheries Service in achieving coverage goals and coordinate state portside biological sampling activities. To be efficient and cost effective, it was in the best interests of the programs to have a full year, full time person at the various ports but split their efforts between the two projects. A single person can travel to a given port and deal with a variety of outstanding issues as opposed to two people travelling to the same port and costing twice for travel. Also, a single individual knows the fleet better since they are working with them on a variety of related tasks. Our ability to do our work relies on good working relationships with the fishermen and fish buyers. The observers and port samplers often interact, usually on good terms. However sometimes differences of opinions arise on how best to accomplish a given task. Having a single supervisor for both positions allows them to better arrive at mutually agreeable solution more quickly. It allows PSMFC to more efficiently provide support to our Federal cooperators. While we believe that this past charging practice distributed individual effort in an equitable manner to all benefiting federal projects, employees have been instructed to track actual hours allocable to individual projects on daily basis and enter them into the time distribution system accordingly.

The Commission has assigned a Senior Program Manager to the Cooperative Agreements identified in this audit report. The projects he administers for the Commission are all funded by NOAA throughout different awards, and have overlapping tasks which can often make it difficult to delineate his time from one NOAA award to another. Throughout the day he will work on all the NOAA awards. In the past, an amount was budgeted in each of the awards for a portion of his efforts and based on the budget period these funds were used to cover his time that was being posted to a central job number. While we believe that this past charging practice distributed individual effort in an equitable manner to all benefiting federal projects, employees have been instructed to track actual hours allocable to individual projects on daily basis and enter them into the time distribution system accordingly.

In addition to the Senior Program Managers labor and benefits in question, there was labor and benefit for the Groundfish Age Readers time charged to the WCOP agreement that was not originally identified in the budget estimate. However, the work these individuals performed had a direct relation to the observer program and per the NOAA Federal Program Officer we received authorization to use the funds in this award in lieu of the funding from another NOAA award. The age readers determine fish ages by reading fish otoliths (bones in the ears of the fish) for stock assessment analysis based on fish samples collected by port samplers, field biologists, observers, and others. At times the age readers assist in field sample collection to capture otoliths by participating on survey research cruises (non-commercial trips) primarily coordinated by NMFS. Without collections on such trips we would necessarily have a hole in the age structure of the samples.

During the performance of this award, additional needs were addressed with regards to observer data requests or new Magnuson Act mandates requiring assistance to provide spatial analysis data to the Pacific Fishery Management Council to assist in developing an Individual Quota (IQ) system on the West Coast. This additional need was agreed upon with consultation among the cooperators and documented in the performance reports submitted to NOAA Grants Management Division.

Note 2: Benefit costs that relate to questioned labor costs in note 2a.

Note 3: Questioned unsupported contract costs and fees of \$572,667 as outlined in Schedule 2 from the WCGOP contractor. During the field work, the OIG staff had numerous meetings with the contractor to discuss their questions and findings with regards to fringe benefits, the health trust, salaries and other observer costs. The contractor explained that the insurance coverage for observers is a very complex issue due to PSMFC requirements related to insurance coverage and the provisions of the Magnuson Act. Observers can be compensable under six or seven different jurisdictions depending on who has jurisdiction (i.e. Federal courts system, States, etc.) It became clear that the risk and loss ratio for observers in the WCGOP far exceeds the risks and loss ratio for other parts of the contractor's business. The West Coast loss ratio has historically been almost three times higher than Alaska. Currently the contractor is working on a loss ratio for the west coast of 1.41 and Alaska of .52. The contractor has good cause to believe that over time the ratio will come down, but currently they are on a three year cycle for loss ratio factoring.

During the audit, the inspector general staff disputed the insurance amounts, suggesting that they were duplicative. But in fact, the Alaska portion of the contractor's business was subsidizing the WCGOP portion. Therefore, the amount of total premium dollars should have been split similarly to the current splits, but was not reflected on the invoices to the Commission. The current invoices to the Commission

have been changed. The contractor has changed its process for billing the Commission for these expenses in addition to changing their method in preparing the invoices.

The contractor did an extensive review of their expenses with regards to the fringe benefits and insurance costs for this program. The contractor has refunded to the Commission the amount identified in question during the audit. We are continuing to work with the contractor to reconcile the information provided during the field work by the OIG and the information provided in this audit report.

Note 4: The questioned costs of \$500,575 of administrative assessments and indirect cost has been thoroughly addressed in the Commission's response to the Audit Report of Indirect Cost Plans and Rates, Pacific States Marine Fisheries Commission, Portland, Oregon dated February 22, 2011 (attached). The Commission did prepare and support their indirect cost rate for the years in question 2002-2008. This information was kept on file as required in OMB A-87, Attachment E, Section D.1.b, and also as noted in the Department of Commerce Financial Assistance Standard Terms and Conditions. When we were contacted in April 2008 by our NOAA Federal program Officer that DOC had issued revised guidance for submittal of Indirect Cost Rates, we submitted on May 1, 2008 our certification to the Department of Commerce Office of Acquisition Management, Indirect Cost Program and received a reply on May 8, 2008 that it had been accepted. Each year thereafter, the Commission has submitted a certification as in the revised guidance issued in April 2008. The Commission 2% administrative assessment for pass-thru funds is reduced from the indirect cost activities at the end of each fiscal year. Due to the offset, there is no duplication of the Commission indirect cost recoveries. These indirect cost activities include contracting and accounting services. The Commission has followed the process outlined in recent DOC guidance, and our rate has been accepted by the DOC Office of Acquisition Management, Indirect Cost Program. We believe the indirect cost rate as currently being calculated and assessed is reasonable.

The Commission indirect cost rate is supported by the financial data provided in our A-133 annual financial audit. All the subsidiary ledgers were provided at the time of the audit and are attached to this document for an additional review. Since the preliminary rate of 13% was established from the 2008 data, a revised rate of 12.38% was applied based on actual expenditures supported by the financial data presented in our A-133 financial audit.

Appendix F: Synopses of Recipient Comments and OIG Responses

We received the Commission's comments and supporting documentation, dated April 13, 2011, in response to our draft audit report; we evaluated and considered the Commission's response in preparing this final report. The Commission disagreed with the report and disputed many facts but also stated that it subsequently changed many of its practices. We have synopsized its responses and provided our comments below. The sections are keyed to the report sections and the notes to the appendixes. The full text of the Commission's letter response is included as appendix E. Due to the volume of the 19 attachments to the Commission's response, we have not included them as part of the report but have retained them for review at our office.

I.A. Financial Management System Needs Improvement

As detailed on page 4 of this report, the Commission's financial management system was not adequate to accurately report the financial results of its awards. In addition, significant deficiencies related to the indirect cost and project cost accounting elements of the Commission's financial management system are detailed in our audit report on the Commissions' indirect cost plans and rates.¹⁸ The Commission responded that it had instructed staff to accurately record time spent on projects in its time distribution system, but it did not provide support for its assertion. However, the manner in which its employees recorded their time in the Commission's time distribution system was not the only issue. A significant problem was the Commission's failure to use the time its staff recorded in the time distribution system as the basis for allocating time to projects. Instead, it used arbitrary budget percentages or made wholesale transfers of employee time from one project to another. For these reasons, we reaffirm our findings.

If implemented, the changes proposed by the Commission should improve a portion, but not all, of the conditions going forward. However, they do not address deficient conditions reported for the period under audit.

The Commission also contended that it had NOAA program officer approval to use WCGOP award funding for the age readers rather than another NOAA award, but it did not provide a copy of an approving e-mail, and performance reports for the other NOAA award did not report changes to the scope of that award or related resources. The work the age readers performed may have assisted the WCGOP; however, this work was not included in the original WCGOP project scope. Instead, it was included in another NOAA award. Regardless of whether there is an associated budget revision, changes to award scope or objectives require the prior written approval of the NOAA Grants Officer.¹⁹

¹⁸ Final Report No. OIG-11-025-A: *Audit of Indirect Cost Plans and Rates*, dated May 19, 2011

¹⁹ Uniform Administrative Requirements, 15 CFR 24.30(d)(1).

I.B. Procurement System Needs Improvement

While the Commission had some written purchasing and contracting procedures to guide its procurement process, in practice its procurement of contracts under the PacFIN and WCGOP awards did not meet the requirements of 15 CFR 24.36. Therefore, we reaffirm our findings.

Our response to the Commission's itemized comments to this section of the report follows:

1. We did not question the Commission's noncompetitive procurement of its contracts with the state fisheries agencies. We did, however, question its noncompetitive procurement of the four successive noncompetitive contracts with its fisheries observer contractor. The 2001 request for proposals, which the Commission cited as the basis for its procurement for observer services, was for a prior observer contract awarded in 2001 and claimed under a previous NOAA cooperative agreement for an amended contract period of July 15, 2001, through July 31, 2002. The NOAA WCGOP cooperative agreement under audit began in June 1, 2002.

The Commission received five proposals in response to the May 2001 request for proposals, indicating that there were multiple firms capable of providing the observer services required.

2. We did not question the Commission's decision to award yearly, standalone contracts. Rather, we provided that information as context for our discussion of procurement deficiencies.
3. The Commission concurred with our finding and continues to work with its contractor to resolve additional cost issues.
4. For the reasons detailed in our report, we continue to question the entire \$300,366 for change order 1.²⁰ The Commission's response did not address the lack of justification for the change order beyond referring to Commission performance reports to NOAA. It also did not address the absence of the required cost analysis beyond asserting that its budget for the continuation award with NOAA included a contractor fee of 7 percent, which the Commission stated is the maximum fee allowed for a for-profit entity. The Commission agreed that there was no change in the contract scope of work or performance period associated with the change order. Therefore, under a cost-plus-fixed-fee contract, no additional fee is allowable.

Contrary to the Commission's contention that the fee for change order 1 was 7.3 percent, contract documents confirm that the fee constituted 8.9 percent of the estimated amendment cost. See schedule 3 on the next page.

²⁰ See page 7 and appendix D, note 3, schedule 2, note 3i.

Schedule 3. Contract 4-23—Fee as a Percent of Total Estimated Costs

	Original Contract	Amendment 1	Total Amended Contract
Total Estimated Cost	\$2,211,621	\$275,809	\$2,487,430
Fee	154,813	24,558	179,371
Cost Plus Fixed Fee Ceiling	\$2,366,434	\$300,367	\$2,666,801
Fee as a Percent of Total Estimated Cost	7.00%	8.90%	7.21%

5. We disagree with the Commission's assertion that its contract administration system is adequate to ensure that work is performed in accordance with the terms and conditions of its contracts. As detailed in schedule 2, note 3, of appendix D, the Commission's deficient contract administration system (described on page 7) resulted in excess payments to contractors totaling \$572,667.
6. We disagree with the Commission's assertion that it properly reconciled contract advances. The Commission issued a series of individual, sequential, and occasionally overlapping cost-plus-fixed-fee contracts, each with a separate fixed fee and cost ceiling. As shown in schedule 2, note 3, of appendix D, the Commission did not ensure that advances were reconciled to actual expenditures by individual contract period, which permitted the contractor to receive payments in excess of contract ceilings in three of four cases.
7. The Commission responded that the contractor appropriately claimed a 7 percent fee on the costs incurred and that our statement that the fee was "fixed" was incorrect. As we reported on page 7, we agree that the contractor billed and received reimbursement for a fee computed as 7 percent of billed costs. As we reported on page 6, the contract reimbursement terms were vague; therefore, we specifically confirmed with both the Commission and the contractor that the observer contract was a cost-plus-fixed-fee contract, and we audited the contract accordingly. Given the Commission's response, the observer contracts would be cost-plus-percentage-of costs contracts, which are unallowable and would thus render the total amount claimed for the observer contracts (\$10,351,851) unallowable. The NOAA Grants Officer should reconfirm the Commission's response regarding the type of compensation method it used for Contractor A and, if appropriate, adjust the amount of federal funds to be recovered.

I.C. Revisions to Project Scope Were Not Approved

We disagree with the Commission's claim that the project scope did not change, and reaffirm our findings. An increase in the level of effort differs from the addition of staff with completely different skill sets. As described on page 8 of the report, we identified several categories of personnel included in Commission claims for the WCGOP and PacFIN award that were not budgeted for in this project, but were funded under several other NOAA awards to the

Commission. While their services may have been compatible with PacFIN and WCGOP objectives, they were not included in the approved scopes of work or identified in performance reports (see page 8). Rather, while these individuals were working on other NOAA awards the Commission either directed or retroactively transferred the charges to the WCGOP award to ensure that it fully expended all federal funds available under the award. To illustrate, the Commission annotated the personnel files of certain individuals directing that the employee's time be applied to the WCGOP award until its funds were exhausted or the award period ended. Once the award ended, the employee would then revert to the original project.

The WCGOP award ended in August 2007. When the Commission prepared the final financial status report in November 2007, it also prepared two journal entries. The first entry moved a fisheries biologist's time into the WCGOP award. The second moved just enough of the WCGOP staff time and expenses charged to the overlapping follow-on WCGOP award back into the expired award to ensure that the Commission recovered all federal funds available under the expired award.²¹

I.D. Performance and Financial Reporting Was Incomplete and Inaccurate

The Commission may have filed required performance and financial reports; however, as we discussed on page 8, those reports did not fully disclose information necessary for NOAA to make informed management decisions. In addition, we disagree that the Commission's performance reports and staff interaction with federal program personnel ensured sufficient information to manage the awards. As we reported, the performance reports did not always clearly identify who was charging time to the projects. We reaffirm our findings.

The Commission operates many projects on NOAA's behalf, and many involve similar objectives and staff, as well as overlapping time periods. Therefore, it is imperative that the Commission clearly report the status of each of its awards to enable NOAA to know exactly where and how its funding is applied. If a change in the type of staffing is required or awards or award periods overlap, the Commission must work with NOAA program personnel and the Grants Officer to ensure that changes are carefully documented in an award amendment and that performance reports document the application of those changes.

Appendix C, Notes 2-5

Changes asserted by the Commission, if implemented, may improve conditions going forward but do not address deficient conditions reported for the period under audit. We therefore reaffirm our findings.

²¹ NOAA awarded the follow-on WCGOP cooperative agreement (NA06NMF4370253) to the Commission on September 1, 2006. The follow-on award period overlapped the final 13 months of a no-cost time extension of the WCGOP award under audit. The amended scope for the extension stated that there would be no overlap of funding or duplication of tasks.

Appendix C, Note 6

We reaffirm our findings and recommendations regarding administrative fees and indirect cost. We also direct readers to our final report on the Commission's indirect cost plans and rates.²² That report presents detailed results of our audit of administrative fees and indirect costs, questions all indirect cost rate proposals and claims and administrative assessments for the period 2002 through 2008, and advises the NOAA Grants Officer not to accept indirect cost claims subsequent to 2008 until the Commission corrects the deficiencies described in the report. The indirect cost report also includes an appendix with our response to the Commission's comments on that report—many of which it repeats here.

The PacFIN award period extended from February 1, 2002, through June 30, 2006, a period prior to the approval the Commission refers to. The Commission responded that it provided its indirect cost rate proposal for its fiscal year ending July 1, 2008, to the Department of Commerce on May 1, 2008, which is long after the PacFIN award period ended. Contrary to the Commission's assertion, the Department's letter dated May 8, 2008, did not address approval of either the Commission's indirect cost rate proposal or its administrative fee. The Commission did not provide documentation in support of its assertion that NOAA had approved a reprogramming of the PacFIN budget and NOAA grants management personnel have not been able to locate either the Commission's request or NOAA's approval of the request. Changes asserted by the Commission, if implemented, may improve conditions going forward but do not address deficient conditions reported for the period under audit.

Appendix D, Note 2

Changes asserted by the Commission with regard to its time distribution system, if implemented, may improve conditions going forward but do not address deficient conditions reported for the period under audit. We reaffirm our findings.

Age reader and spatial analyst efforts, which were not envisioned in the original WCGOP award, constitute changes to the WCGOP scope of work. While the Commission stated that it had the approval of the federal program officer, it provided no support for its statement. In addition, performance reports for the actual NOAA age reader award made no mention of a change in the scope or the additional resources applied to the WCGOP award. Furthermore, Uniform Administrative Requirements provide that changes to the scope of work must receive prior approval, and in the Department such changes may only be authorized by the Grants Officer via award amendment. This requirement also applies to changes made for additional observers and the addition of a spatial analyst.

The Commission did not respond to labor and fringe benefits costs questioned for the research biologist.

²² Final Report No. OIG-11-025-A: *Audit of Indirect Cost Plans and Rates*, dated May 19, 2011.

Appendix D, Note 3

We had extensive discussions with the Commission's contractor and the contractor's private accountant and provided copies of our worksheet analysis. Our discussions were intended to facilitate an understanding of the amounts the contractor had invoiced and been paid under each of its four contracts, as well as the reasons for our questioning costs. Contrary to the Commission's assertions, we did not question the contractor's observer insurance coverage or splits between its business segments. We did obtain explanations from the contractor about the insurance for this high-risk business, and we questioned costs that were unsupported, fees that were billed in excess of the amount fixed by the Commission's contracts, and costs and fees that were billed in excess of the contract ceilings. We questioned a related change order, not because of deficiencies on the contractor's part, but due to procurement deficiencies on the part of the Commission. Again, we reaffirm our findings.

The contractor's changed billing practices and insurance splits, if implemented, may improve conditions going forward but do not address deficient conditions reported for the period under audit.

Appendix D, Note 4

We reaffirm our findings and recommendations regarding administrative fees and indirect cost in this report. For more information, we also direct readers to our final report on the Commission's indirect cost plans and rates. That report presents the detailed results of our audit of administrative fees and indirect costs and questions indirect cost rate proposals and claims and administrative assessments for the period 2002 through 2008.

Among other comments, the Commission responded that it provided its indirect cost rate proposal for fiscal year ending July 1, 2008, to the Department on May 1, 2008., which is long after the WCGOP award period ended. The WCGOP award period extended from June 1, 2002, through August 31, 2007. In addition, contrary to the Commission's assertion, the Department's letter of May 8, 2008, did not address approval of either the Commission's indirect cost rate proposal or its administrative fee. As a result, the Commission's 2008 and 2009 indirect cost rates are not applicable to WCGOP award that is the subject of this audit.

The Commission did not respond to indirect cost also questioned as exceeding the approved WCGOP award budget line for indirect cost.

(OAE-19467-2)