



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

February 16, 2012

Hon. Scott P. Brown
United States Senator
United States Senate
359 Dirksen Senate Office Building
Washington, DC 20510

Re: Freedom of Information Act Request OIG # 12-040

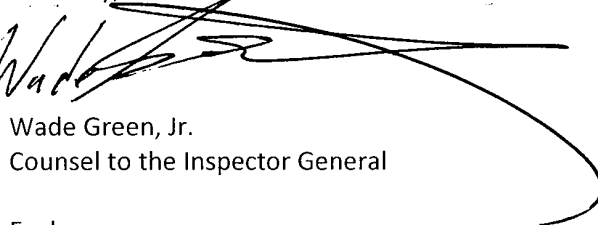
Dear Senator Brown:

This is in response to your Freedom of Information Act (FOIA) request dated February 16, 2012, in which you seek "The Office of Inspector General report of investigation, dated on or about July 1, 2011, regarding alleged improprieties by the National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Office of Law Enforcement (OLE) in relation to the procurement and use of a marine vessel in the OLE Northwest Enforcement Division in or about 2008...." Pursuant to a telephonic conversation with my office your office verbally expanded your FOIA request to include a memorandum from the Office of Inspector General to the Department of Commerce Senior Acquisition Executive regarding irregularities in the procurement of a marine vessel in the National Oceanic and Atmospheric Administration Office of Law Enforcement's Northwest Enforcement Division in or about 2008.

A search of records maintained by the OIG located thirty-six pages that are responsive to your request. These pages have been reviewed under the terms of FOIA, and we have determined that the two pages may be released in full. Copies of these two pages are enclosed. The remaining thirty-four pages must be partially withheld under FOIA exemption (b) (7) (C), which protects information compiled for law enforcement purposes, the disclosure of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. Copies of these thirty-four pages are enclosed, with the relevant redactions noted.

If you have any questions, please contact me at (202) 482-5992.

Sincerely,



Wade Green, Jr.
Counsel to the Inspector General


Enclosures



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

November 4, 2011

MEMORANDUM FOR: Barry E. Berkowitz
Senior Acquisition Executive
and Director of Acquisition Management
U.S. Department of Commerce

FROM: Rick Beitel 
Principal Assistant Inspector General
for Investigations and Whistleblower Protection

SUBJECT: Irregularities in NOAA's \$300,000 Undercover Vessel Procurement

Certain investigations we conduct involve irregularities in Departmental acquisition activities and, as such, warrant our bringing them to your attention in the interest of facilitating the awareness of your office and strengthening program integrity. The case summarized below is one such example of significance.

The above-captioned case involves NOAA's procurement of a vessel for undercover operations, initiated by the Office for Law Enforcement's (OLE) region based in Seattle. The vessel procured was a 35' Boston Whaler cabin boat equipped with three six-cylinder engines, advertised by the manufacturer as "luxurious." It was purchased in 2008 solely with funding from NOAA's Asset Forfeiture Fund (AFF) at a cost of \$300,787. In mid-2010 we initiated investigation of whistleblower allegations concerning the acquisition and use of this vessel.

In brief, as reflected in our July 2011 report to NOAA, we determined that despite Departmental and NOAA internal controls, the Seattle OLE office was able to shop for and select this specific vessel, and then manipulate aspects of the procurement process in furtherance of its purchase. More specifically, we found that an OLE regional official intentionally avoided OLE's best practice of vetting vessel acquisitions through its vessel steering committee, misrepresenting the urgency of the procurement need and the views of the local committee representative to suggest concurrence with selection of the specific vessel. This resulted in OLE headquarters officials foregoing committee review and approving its acquisition—prior to required procurement procedures being applied.

While purchase of the selected vessel ultimately followed a limited competition after Departmental counsel objected to flawed sole-source justification, the OLE officials involved created, at a minimum, the appearance of violating acquisition standards and exposed NOAA to potential liability. Moreover, OLE's then-policy did not include authorization of AFF expenditures for vessel purchases; since that time, in response to our July 2010 report entitled *Review of NOAA Fisheries Enforcement Asset Forfeiture Fund*, NOAA has expressly prohibited use of the AFF for vessel and vehicle acquisitions.

In its September 2011 response to our report on the undercover vessel, NOAA concurred with each of our recommendations, stating it believes “that while the procurement action was arguably legal, it did not meet the spirit of the Competition in Contracting Act or the intent of...the Federal Acquisition Regulation.” NOAA’s actions include discontinuing use of the undercover vessel (which we found had been used minimally for mission operations, at a high relative cost) and dispositioning it in accordance with government guidelines; requiring vessel steering committee review and recommendations in advance of any OLE vessel acquisition; and strengthening acquisition training for OLE personnel.

You may wish to contact NOAA should you desire additional information regarding the acquisition-related issues and resultant actions taken by NOAA concerning this vessel. We note that the above case summary has been prepared to avoid disclosure of any potential privacy-protected information.

If I can answer any questions regarding this or any other OIG investigation involving Departmental acquisition matters, please feel free to contact me at (202) 482-0300.

	<p>OFFICE OF INSPECTOR GENERAL OFFICE OF INVESTIGATIONS</p> <p>REPORT OF INVESTIGATION</p>
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<p>CASE TITLE:</p> <p>Improprieties in Northwest Enforcement Division Office for Law Enforcement National Marine Fisheries Service National Oceanic and Atmospheric Administration Seattle, WA</p>	<p>FILE NUMBER:</p> <p>FOP-WF-10-0210-I</p> <p>TYPE OF REPORT</p> <p><input type="checkbox"/> Interim <input checked="" type="checkbox"/> Final</p>
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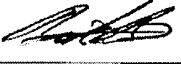

Predication

Our investigation was initiated following receipt of information from confidential sources reporting that an OLE headquarters inspection of NWED conducted in fall 2009 identified suspected improprieties by [REDACTED] involving his summer 2008 use of NWED's undercover (UC) vessel, a 35-foot Boston Whaler Model 345 Conquest cabin boat purchased that year via NOAA's Asset Forfeiture Fund (AFF), and on the part of [REDACTED] concerning her handling of allegations about [REDACTED] use of the vessel. The confidential sources alleged that [REDACTED] apparently failed to report the allegations to headquarters for investigation per OLE policy. OLE headquarters provided us with a copy of the draft inspection report, last revised in December 2009, which [REDACTED] transmitted to the [REDACTED] by memorandum dated February 5, 2010. (Exhibit 1)

Background

NWED is one of OLE's six regions, comprising the states of Washington, Oregon, and Idaho. Organizationally, as of summer 2008, NWED was staffed with a SAC (GS-15 equivalent); two DSACs (GS-14 equivalent)—one overseeing Administration and the other for Operations; two ASACs (GS-13 equivalent); and approximately 15 SAs and 11 support staff.

NWED has responsibility for conducting enforcement operations pursuant to statutes such as the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the Endangered Species Act (ESA), and the Marine Mammal Protection Act (MMPA). Its operations include actions to protect killer whales (known as orcas) from whale-watching vessels in Puget Sound that get too close to and thus endanger these mammals. Until very recently, ESA and MMPA provisions

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Signature of Case Agent:	Date:	Signature of Approving Official:	Date:
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Name/Title:		Name/Title:	
Rick Beitel, Special Agent (Principal Asst. IG for Investigations)		Scott S. Dahl, Deputy Inspector General	

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were considered too broad for NOAA to enforce—absent clear injury or kill—without accompanying regulations. Prior to issuance of an enforceable Final Rule, effective May 16, 2011¹, OLE used voluntary guidelines and outreach efforts to protect whales from harassment (e.g., guidelines recommended that vessels stay at least 100 yards from all whales). The Final Rule requires that vessels stay 200 yards from killer whales and prohibits vessel operators from intercepting the path of the whales.

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

Synopsis

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

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

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

- By our calculation, [REDACTED] operated the UC vessel over 100 miles for his three known excursions to restaurants during which the evidence shows that his wife and/or friends were aboard, and at least 60 miles with SA [REDACTED] parents aboard a marked patrol boat—which included whale-watching, traveling to and from a restaurant, and at least one vessel boarding, which is inherently dangerous. We find no reasonable official purpose was served through such operation of these vessels, including when considering the high cost of fuel, personnel time, and potential liability, and the fact that his approximately 40 hours operating the UC vessel were not logged as required. We concluded that rather than use the UC vessel to train and familiarize other OLE agents and partner state enforcement officers, [REDACTED] used the vessel for, as described by one of his non-OLE passengers, “pleasure cruis[ing].”
- When contemporaneously questioned by [REDACTED] in September 2008, and later by OIG for this investigation, [REDACTED] was not candid about unauthorized persons aboard the UC vessel, in violation of agency policy and the Standards of Ethical Conduct. Specifically, he told [REDACTED] in September 2008 that his wife had not been on the UC vessel while it was underway, and told us when we interviewed him that he did not recall her ever being aboard underway. Based on compelling evidence, these assertions are not true. In addition, [REDACTED] was not candid with us about SA [REDACTED] parents being aboard OLE’s marked patrol vessel.
- The evidence shows that [REDACTED] mishandled [REDACTED] alleged misuse of the UC vessel, to include failing to refer the matter to OLE headquarters for investigation in accordance with OLE policy.
- [REDACTED] inappropriately received reimbursement for nearly \$12,000 in UC vessel moorage, fuel, and other vessel costs charged to his personal credit card between July 2008 and August 2009, ostensibly to avoid compromising the vessel’s UC status. Nearly \$9,400 of this amount was reimbursed from the AFF at [REDACTED] instruction, which was not authorized under OLE policy. According to [REDACTED], he used his personal credit card for these charges versus his assigned OLE purchase credit card, because an undercover credit card did not exist at the time and he did not want to risk compromising the vessel’s UC status. [REDACTED] was the approval authority for most of these reimbursement claims. When this practice was discovered and questioned by OLE headquarters in April 2009, [REDACTED] suggested to [REDACTED] that OLE policy be interpreted to allow use of the AFF to pay for UC vessel operational costs. After [REDACTED] rejected such interpretation, [REDACTED] last vouchered UC vessel costs charged against the AFF on April 15, 2009. The balance of his reimbursements from that date forward, until his final voucher in August 2009, were not charged to the AFF. [REDACTED] acknowledged that he may have accrued airline/travel miles in using his personal credit card, but denied that this was ever a motivation for such use.
- We found that [REDACTED] interfered with our investigation. Specifically, at the conclusion of our initial interview of [REDACTED], we specifically requested the following of him:

“Lastly, our request is that...given the sensitivity of the matters that we’re investigating and the need for...operational security, we would like to ask that you not discuss what

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we've addressed with you here today...with anyone in your organization..."

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

- ██████████ October 2007 memorandum of request for AFF-acquisition of the specific UC vessel misrepresented the views of SA ██████████ ██████████ OLE's Vessel Steering Committee, contributing to OLE headquarters foregoing review by the Committee and approving acquisition of that vessel—prior to required procurement procedures being applied. The procurement request originated with ██████████ and was endorsed by ██████████. ██████████, a boat owner and enthusiast, told us he identified the Boston Whaler Model 345 Conquest through undocumented market research, boat shows, and talking to other law enforcement officers. While purchase ultimately followed a limited competition after Departmental counsel objected to sole-source procurement, OLE's actions created, at a minimum, the appearance of violating the Competition in Contracting Act and Federal Acquisition Regulations, and thus exposed NOAA to potential liability. ██████████ the senior Departmental procurement attorney who, at the time, objected to NOAA's sole-source justification, told us his impression was that this was "wired from the start to get that one boat."
- The UC vessel has had minimal operational use. Its logbook shows that just nine law enforcement patrol operations (i.e., whale patrols pursuant to the Marine Mammal Protection Act and Endangered Species Act) have been conducted since the boat was delivered in June 2008 to date. The first such patrol occurred in July 2009—over a year after the vessel was acquired—and the last patrol took place in September 2010. The UC vessel has been operated for a total of just 119 hours through September 20, 2010, the date of the last logbook entry. The logbooks and our interviews reflect that operational time has been limited by numerous maintenance and mechanical problems, including fuel leaks and malfunctioning navigational equipment, as well as based on NWED staffing constraints. As of our initial interview, ██████████ had not seen the UC vessel in-person, despite it being moored less than a half-hour from her office. Due to its size, trailering is not practical and moorage fees alone cost over \$400 per month. Moreover, fuel costs are substantial due to the UC vessel's three large (6 cylinder) engines.

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

Methodology

Our investigation included sworn, audio-recorded interviews of the [REDACTED] and [REDACTED]. We also interviewed other current and former NWED managers and staff, the cognizant NOAA contracting officer, a senior Departmental procurement attorney, and other witnesses. Additionally, we obtained and examined numerous records pertaining to the acquisition and use of the UC vessel, including procurement file documentation, emails, memoranda, and other internal correspondence.

Detailed Findings & Violations Implicated

1. [REDACTED] violated agency policy and ethical standards by operating the UC vessel with his wife and/or friends aboard on three known occasions (workdays) in summer 2008. He further violated agency policy by failing to record his approximately 40 hours of UC vessel operations during that period. He also violated policy and ethical standards by allowing a subordinate agent's parents aboard another OLE vessel while underway.

a. Wife and friend aboard for initial launch, running out of fuel in canal, and trip across Puget Sound to Bremerton restaurant (June 12, 2008).

- According to a sworn affidavit from [REDACTED] Enforcement Technician [REDACTED] on Thursday, June 12, 2008, the date of the UC vessel's initial launch at Canal Boatyard in Seattle, [REDACTED] operated the vessel with his wife, [REDACTED]; their friend, [REDACTED]; and [REDACTED] (who reported to [REDACTED]) aboard while underway (i.e., moving in operation) through the Ballard Locks and across Puget Sound to the dockside Boat Shed restaurant in Bremerton, where they had an early dinner before returning to Seattle. (Exhibit 20)
- [REDACTED] account is supported by the account of Seattle Harbor Patrol Officer [REDACTED], who towed the vessel back to Canal Boatyard when it ran out of fuel shortly after launching. Officer [REDACTED] told us he observed a woman and two men aboard the vessel at that time. (Officer [REDACTED] observation of two men aboard is consistent with the fact that [REDACTED] had not yet come aboard the vessel when it ran out of fuel that morning.) (Exhibits 21, 22)
- [REDACTED] first-hand account of the trip across Puget Sound to Bremerton is also supported by a credit card receipt from the Boat Shed restaurant, which purports to bear the signature of [REDACTED], maiden name of [REDACTED] wife. The receipt contains information on meals served that is consistent with [REDACTED] account of the number of persons aboard the undercover vessel and the time of day. When interviewed, [REDACTED] stated that the signature appeared to be that of his wife, though he said he did not recognize the last four digits of the credit card number as corresponding to credit or debit cards in his or his wife's name. (Exhibits 3, 23)

- [REDACTED] told us he did not recall his wife being aboard during this trip or ever while underway. He further told us that [REDACTED], though a personal acquaintance, was, coincidentally and unbeknownst to him beforehand, employed by either the manufacturer or the marine services company retained by the manufacturer for delivery support, to assist with vessel break-in since he was an experienced captain. Neither the manufacturer, Brunswick, nor marine services firm, Blackfish Marine, had any record or information to confirm [REDACTED] assertion. (Exhibits 3, 19, 24)
- [REDACTED] told us he was aboard the NOAA Boston Whaler just once, assisting with its initial launch and logging some engine time by looping around Bainbridge Island on behalf of [REDACTED] of Blackfish Marine. He did not recall [REDACTED] being aboard. (Exhibit 25)
- [REDACTED] expressed that he considered his use of the UC vessel on this date, and at other times in summer 2008 (addressed below), to be appropriate because he needed to log hours for vessel and engine break-in purposes, which he described as “sea trials.” [REDACTED] further considered restaurant destinations appropriate for the purpose of practicing docking, which he said was essential due to the large size of the UC vessel and because it was equipped with a sensitive bow thruster. While acknowledging that non-OLE persons aboard were personal acquaintances, he considered their presence to be appropriate and permissible under OLE’s policy, although he acknowledged [REDACTED] may not have been aware as required. Further, [REDACTED] told us that he did not believe agency policy required him to make any record, including in the vessel logbook, of trips made for break-in purposes; that the policy only required logging actual patrol operations. (Exhibit 3)
- [REDACTED] told us that to her knowledge, [REDACTED] wife was never aboard the UC vessel. [REDACTED] advised that when she specifically questioned [REDACTED] about this in September 2008, after rumors of unauthorized personnel aboard the boat had surfaced, he denied that she had ever been aboard. [REDACTED] confirmed to us that he previously denied to [REDACTED] that his wife was ever aboard while underway. (Exhibits 3, 4)
- Our investigative results clearly reflect that [REDACTED] wife was aboard the UC vessel with him while underway in summer 2008.
- Our results also clearly reflect that [REDACTED] was neither candid with [REDACTED] when she contemporaneously questioned him, nor when we interviewed him as he repeatedly maintained not recalling whether his wife was ever aboard the UC vessel while underway—notwithstanding the compelling evidence showing she was aboard and underway with him.

b. Trip to Poulsbo restaurant and excursion with friends to Gig Harbor restaurant (August 5, 2008).

- Per [REDACTED] affidavit, on Tuesday, August 5, 2008, [REDACTED] and he ran the UC vessel across Puget Sound to Poulsbo, where they docked at the Bayside Broiler restaurant

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and had lunch. Following lunch, they went back across Puget Sound to Seattle and picked up [REDACTED] friend, [REDACTED], a [REDACTED] for [REDACTED] Seattle [REDACTED] television station. [REDACTED] brother accompanied her and they brought a six-pack of beer aboard the UC vessel, which the two drank while underway. Neither [REDACTED] nor [REDACTED] consumed any of the beer. [REDACTED] took them down Puget Sound to Gig Harbor, where they docked at a restaurant and had dinner that evening. After dinner, they motored slowly around Gig Harbor, where a band was playing in the harbor. They returned to Seattle and moored the UC boat around 7:00-8:00 p.m. At no point during this outing did he hear [REDACTED] or [REDACTED] discuss anything about her being aboard the boat regarding a possible news story on orca whales or NOAA. He thought [REDACTED] may also have been aboard that day. (Exhibit 20)

- We interviewed [REDACTED] brother, [REDACTED], who is a special agent with the Department of Defense OIG, [REDACTED] and was visiting his sister at the time. [REDACTED] account of events corroborates [REDACTED] account. [REDACTED] told us that when he went aboard, he had no idea it was a government vessel and assumed [REDACTED] owned it. It was only about three-quarters of the way to Gig Harbor that [REDACTED] told him, as a fellow law enforcement officer, that it was an unmarked NOAA vessel, possibly for undercover purposes. Also aboard was an older man [REDACTED] and a young man [REDACTED]. [REDACTED] sense at the time he learned it was a government vessel was that with so many agencies working under budget constraints, he thought NOAA had "deep pockets to be able to buy such a nice boat." Liability went thru [REDACTED] mind at the time, like what if something like capsizing were to happen since it was a government boat. Upon arrival at Gig Harbor, they had dinner at the Tides Tavern restaurant and [REDACTED] picked up the tab for everyone. He stated, "It was the least I could do" after [REDACTED] took him out for a nice time like that.

[REDACTED] told us he was simply along for the ride, which he described as "every bit a pleasure cruise." He spent more time catching up with his sister in the back of the boat than she did talking to [REDACTED]. He did not recall his sister talking about a news story on NOAA and orcas, but it was possible because she was always checking out potential stories. [REDACTED] recalled looking back at one point and noting that the vessel was moving at a high rate of speed across the water, which was like glass at the time. He told us he had been on many boats, but never one that fast. [REDACTED] did not recall having brought beer aboard, but said it was possible because he often does so while boating. (Exhibit 26)

- We also interviewed [REDACTED], who provided minimal details about this excursion. She described [REDACTED] as an acquaintance and the public relations person for NOAA OLE, whom she would contact if a story involved NOAA in some way. [REDACTED] did not recall whether she was working on a specific story about NOAA and orcas at the time, but could have been because she and her station are always interested in that topic. She did not recall her brother being present and did not recall whether any alcohol was onboard, but stated that she did not have any. (Exhibit 27)
- [REDACTED] told us he considered there to be nothing improper about the trip to Gig Harbor because agency policy allowed for media representatives to be aboard as passengers

and his understanding at the time was that [REDACTED] was working on a story about NOAA and orca patrols. [REDACTED] told us he informed her of the vessel's covert status and insisted that it not be referenced in any news story. [REDACTED] also considered [REDACTED] presence to be appropriate and in keeping with agency policy based on his status as a law enforcement officer. [REDACTED] additionally considered [REDACTED] presence appropriate, because, according to [REDACTED] his services were being provided as part of vessel break-in and he was very experienced. [REDACTED] did not recall anyone bringing beer aboard during this trip. (Exhibit 3)

- [REDACTED] told us she was unaware that [REDACTED] allowed a reporter and the reporter's family member aboard the UC vessel, and she did not recognize the name [REDACTED]. [REDACTED] did not recall [REDACTED] seeking her required approval and said she would have questioned the appropriateness of such use of the UC vessel given its sensitive status. However, [REDACTED] advised that because it may have involved a possible media story on orca protection, that probably would have been something she thought was a good idea and indicated she may have authorized the reporter being aboard yet not recall it; in our view, this latter statement strains credibility. (Exhibit 4)

c. Stranded with wife in Puget Sound enroute to restaurant (August 8, 2008).

- According to [REDACTED] affidavit, and a consistent account in a sworn affidavit provided by his [REDACTED] (CPA with Pricewaterhouse Coopers), [REDACTED] and his wife informed [REDACTED] and [REDACTED] over lunch at Elysian Fields restaurant in Seattle on August 9 or 10, 2008, that they had been stranded very recently one evening on the UC boat in a shipping lane of Puget Sound near Seattle. [REDACTED] advised [REDACTED] and [REDACTED] that the engines had stalled because they did not realize the fuel tanks had to be manually switched and the tank in use had run out of fuel. They may have called the Coast Guard for help, but [REDACTED] ended up calling area boat dealers, learned that the tanks needed to be switched, and was then able to restart them. [REDACTED] were laughing about the situation, but mentioned that it became somewhat dire at one point because they were in the path of a larger vessel. [REDACTED] vaguely recalled that [REDACTED] may have been heading up that evening to the Everett area to meet SA [REDACTED], whom he described as a good friend of [REDACTED]. (Exhibits 20, 28)
- We interviewed SA [REDACTED], who advised that [REDACTED] called him on the evening the UC vessel was stranded and may have asked for his help, but [REDACTED] resolved the issue before SA [REDACTED] could get to his location. SA [REDACTED] vaguely recalled [REDACTED] being underway in the UC vessel at the time enroute to meet him, but said he was not certain. He further stated he did not know whether [REDACTED] was aboard the UC boat that evening or any other time. SA [REDACTED] acknowledged that he and [REDACTED] are friends and advised that their wives socialize regularly. (Exhibit 29)
- We found a 911 emergency call placed from [REDACTED] OLE-issued cell phone on Friday, August 8, 2008, at 7:50 p.m. PDT for over 6 minutes duration, with a corresponding record from the Seattle Police Department (SPD), which transferred the call to the Edmonds, WA, PD, because the call originated from a location closer to Edmonds, which is north of

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

- [REDACTED] acknowledged to us that the incident in question occurred on the evening of Friday, August 8, 2008, and that he did not realize the fuel tanks required manual switching. He advised that he was in a shipping lane in the vicinity of a larger vessel, a tugboat towing a barge, but recalled being stranded just outside Seattle, near Ballard or Shilshole. [REDACTED] recalled being alone on the UC vessel that evening in order to get additional break-in and proficiency time. He told us, "My recollection of that trip, I was by myself, and I was going to go up to Everett, tie up, eat, come back." [REDACTED] did not recall his wife being aboard underway on that occasion or any other time, but, significantly, stated to us the following:

"[E]ven if she was [aboard], it wasn't even -- it wouldn't have been a big deal to me...[p]ersonally it wouldn't have been." [emphasis added] (Exhibit 3)

d. Following UC vessel engine failure enroute to Blaine resort, substitute OLE marked vessel used for whale patrol and trip to Friday Harbor restaurant with subordinate agent's parents aboard (August 23, 2008).

- On August 18, 2008, [REDACTED] advised [REDACTED] via email that he and SA [REDACTED] assigned to NWED's [REDACTED] post of duty, intended to take the UC vessel the following weekend (August 22-24) to Anacortes, WA, and possibly Friday Harbor, WA, in northern Puget Sound for whale patrols, and would be spending the night aboard the vessel. (Exhibit 33)
- On August 19, 2008, SA [REDACTED] booked a reservation at the Semiahmoo Resort in Blaine, WA (northern Puget Sound) for [REDACTED], himself, and his parents. (Exhibit 34)
- On August 21, 2008, SA [REDACTED] flew to Seattle and on Friday, August 22, 2008, he accompanied [REDACTED] aboard the UC vessel headed to Blaine, WA. While enroute, one of the three engines blew-up in its housing and they proceeded on two engines to Bellingham, WA, where they left the UC vessel for repairs and picked up OLE's 27' SafeBoat marked patrol vessel, which was moored in Bellingham. They moored the marked patrol vessel at Blaine that evening, checking into the adjacent Semiahmoo Resort. SA [REDACTED] parents traveled to the area and stayed with him in his hotel room that Friday and Saturday night. [REDACTED] stayed at the Resort one or both nights. (Exhibits 3, 35, 36)
- Contrary to [REDACTED] email to [REDACTED] SA [REDACTED] told us that he and [REDACTED] intended to stay at the Semiahmoo Resort for the patrol weekend—not berth overnight on the UC vessel. (Exhibit 36)

- On Saturday, August 23, 2008, [REDACTED] allowed SA [REDACTED] parents to ride aboard the marked vessel for a whale patrol. SA [REDACTED] told us the four of them went out that morning into Puget Sound, watched whales, and conducted two or three boardings of vessels they observed being too close to orca pods. After completing the patrol, they took the SafeBoat to Friday Harbor and had lunch at a pizza restaurant near the docks. They then headed back to the Semiahmoo Resort and dropped off SA [REDACTED] parents before going back out to practice maneuvering. SA [REDACTED] recalled having conversation with [REDACTED] prior to that weekend about whether it would be appropriate for family members to be aboard OLE boats, and [REDACTED] expressed to him that it should not be a problem. SA [REDACTED] did not believe [REDACTED] was aware that his parents were aboard the SafeBoat for the patrol, and he did not recall telling anyone that they were aboard because he did not think it was a “big deal” at the time. (Exhibit 36)
- When initially interviewed and questioned about the weekend trip to Semiahmoo Resort and who was aboard the UC vessel and marked patrol boat, [REDACTED] recalled just himself and SA [REDACTED] being aboard either vessel. Shortly following our initial interview, [REDACTED] called and spoke with SA [REDACTED] namely about that weekend and who was aboard. SA [REDACTED] told us that during this conversation, he reminded [REDACTED] that his parents had been aboard. However, during our subsequent interview, [REDACTED] experienced a sudden recollection of this, stating:

“You know, I do remember somebody. I totally forgot. This would be [REDACTED]. He brought his parents down to the boat that morning, and they came on the boat, and I met his parents. You know what? They got underway with us that day...They got underway that day with us. I totally forgot until just now. Just refreshed my memory.” (Exhibits 3, 36)
- [REDACTED] told us that [REDACTED] had designated him as [REDACTED] in her absence over that weekend, and thus he had authority under OLE policy to allow SA [REDACTED] parents to be aboard during the whale patrol. [REDACTED] did not disclose to [REDACTED] that SA [REDACTED] parents were aboard. While [REDACTED] told us she considered this to be inappropriate, she also expressed that the decision appeared to be within [REDACTED] authority because, as she confirmed, he was [REDACTED] that weekend due to her absence. Irrespective, as referenced below, OLE policy states, “OLE vessels will be used only for official business...”, and, in our view, no official business purpose was served by [REDACTED] allowing [REDACTED] parents to be aboard while underway. Moreover, the vessel boarding(s) they carried out with [REDACTED] parents aboard posed inherent risks to the safety of those passengers. (Exhibits 3, 4)
- After OLE staff questioned why fuel for the August 23-24, 2008, patrol had been charged to the Asset Forfeiture Fund (AFF) when there was no record of an OLE policy-required associated incident or investigation to justify AFF expenditure, SA [REDACTED] belatedly prepared an Incident Data Sheet, dated April 13, 2009, reporting a vessel boarding on Saturday, August 23, 2008. We interviewed the captain of the boarded yacht, who largely confirmed SA [REDACTED] written account of events for the boarding, which we note occurred with SA [REDACTED] parents aboard. The vessel’s captain provided us with two photographs

he took of OLE's patrol boat that day, showing [REDACTED] at the helm, along with SA [REDACTED]. (Exhibits 37, 38)

e. Barbecues aboard UC vessel while moored at marina (summer 2008).

- On at least two occasions in summer 2008, [REDACTED] and his wife hosted small-group barbecues aboard the UC vessel while it was moored at the Elliot Bay Marina. For one known occasion, during lunchtime, SA [REDACTED] and SA [REDACTED] told us [REDACTED] grilled hotdogs and hamburgers on the back of the boat using a portable propane grill she and [REDACTED] brought. Reportedly, no alcohol was present at this outdoor barbecue. (Exhibits 39, 40)
- For the second known occasion, SA [REDACTED] told us he joined [REDACTED] and his wife for an evening cook-out of hamburgers and/or hot-dogs, and they drank soda or water. (Exhibit 41)
- [REDACTED] told us he had occasional barbecues aboard the UC vessel during which his wife was present. He told us he saw no impropriety in doing so because the barbecues took place dockside with other SAs and the vessel was not underway, and that [REDACTED] was aware of it. He asserted that such social gatherings helped keep up the vessel's appearance as simply a recreational boat and not an unmarked law enforcement vessel, in keeping with the kind of socializing that regularly occurs at marinas. (Exhibit 3)
- [REDACTED] told us she was unaware of any barbecues on the UC vessel or that [REDACTED] wife had ever been on the UC vessel for any reason. However, she further expressed to us that she likely would not have had a problem with [REDACTED] wife bringing food and eating aboard the UC vessel while it was docked. (Exhibit 4)
- Of note, SA [REDACTED] told us that in about October or November 2008, shortly after he became vessel custodian, [REDACTED] told him if he (SA [REDACTED]) was ever working down at the UC boat and his (SA [REDACTED]) wife wanted to "kick back and watch TV" on the boat while it was docked, it would be okay. [REDACTED] told him it would be different from policy for government-owned vehicles (GOVs), which requires that nobody can be in a GOV unless it is work-related. [REDACTED] explained to him that there was nothing in OLE's policy saying non-government employees cannot be onboard when the boat is just docked. SA [REDACTED] told us this did not feel right to him and he would never have his wife on the boat. (Exhibit 40)

Violations Implicated

- By our calculation, [REDACTED] operated the UC vessel over 100 miles for his three known excursions to restaurants during which the evidence shows that his wife and/or friends were aboard, and at least 60 miles with SA [REDACTED] parents aboard the marked patrol boat—which included whale-watching, traveling to and from a restaurant, and at least one vessel boarding, which is inherently dangerous. We find no reasonable official purpose was served through such operation of these vessels, including when considering the high

cost of fuel, personnel time, and potential liability, and the fact that [REDACTED] 40 hours operating the UC vessel were not logged as required. We conclude that rather than use the UC vessel to train and familiarize other OLE agents and partner state enforcement officers, [REDACTED] used the vessel for, as described by one of his non-OLE passengers, "pleasure cruises" at a high rate of speed. [REDACTED] evident misuse of both the UC vessel and marked patrol vessel implicates violation of NOAA/OLE policy and the Standards of Ethical Conduct for Employees of the Executive Branch:

- NOAA/OLE Enforcement Operations Manual, [REDACTED] Vessel Operations:

- Responsibilities: "[REDACTED] responsible for overseeing vessel operation for [REDACTED]. This includes, but is not limited to: Administering the monthly reporting system..."
- 5.6.4.7 Vessel Captain: "It is the responsibility of each Vessel Captain to assure the agency vessel is operated in a safe and prudent manner...The Vessel Captain shall be responsible for the following: Filing a float plan with the area ASAC prior to departure, Recording entries in the vessel logbook..., recording entries in the vessel's service and maintenance logbook..."
- 5.6.6.1 Authorized Usage (1): "OLE vessels will be used only for official business..."
- 5.6.6.1 Authorized Usage (3): "A float plan will be prepared by the vessel operator and submitted...for approval prior to departure...The float plan will contain the following information...: Operation Objective, Name of operator and crew members, Estimated time of departure, Estimated time of arrival, Destination and proposed routes, Weather information..., Communications plan (method of contacting vessel), Emergency contact information for all persons on board..."
- 5.6.6.2 Limitations on Usage: "Persons other than OLE employees are prohibited from operating or riding in division owned, leased or rented vessels unless the SAC authorizes an exception or they are: other government employees (state, local or federal)..."
- 5.6.12.1 Vessel Logbook: "A vessel logbook is required for all vessels except small boats without enclosed cabins...The vessel operator shall record the following information in the vessel's logbook for each trip: Operator name, Crew members names, Date and time underway, Date and time of arrival, Purpose or objective of the trip...brief synopsis of the activity..."
- 5.6.12.4 Vessel Maintenance & Service Logbook: "Each operator will record the following information in the Vessel Maintenance & Service Logbook: Fuel purchases, including: date, port & starboard [engine] hour meter readings, vendor, gallons purchased, price per gallon, total price...Maintenance performed including: date, person performing maintenance, work performed, hours of work, All service performed by outside sources including: vendor name..."

- NOAA/OLE Enforcement Operations Manual, Procedure 1.8, Disciplinary System, Appendix 1, including the following:
 - 6. “Unauthorized or Negligent Use of Government [Property]... Use of or allowing the use of Government... watercraft for other than official purposes.”
- Department of Commerce Administrative Order (DAO) 202-751, Discipline, Appendix B, including the following:
 - 22b. Government Property: “Use of or allowing the use of Government... water craft for other than official purposes.”
- The Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR § 2635 et. seq.):
 - 5 CFR § 2635.101(b)(9)

“Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.”
 - 5 CFR § 2635.101(b)(14)

“Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part...”
- Per OLE policy, [REDACTED] bears ultimate responsibility for the evident misuse of the UC vessel, as does [REDACTED] when he served as [REDACTED] during August 23-24, 2008:
- NOAA/OLE Enforcement Operations Manual, [REDACTED] Vessel Operations:
 - [REDACTED] Responsibilities [REDACTED]: “[REDACTED] is responsible for the assignment and proper use of all vessels within [REDACTED]...”

2. When contemporaneously questioned by [REDACTED], and later by OIG, [REDACTED] was not candid about unauthorized persons aboard the UC vessel, in violation of agency policy and the Standards of Ethical Conduct. He also was not candid with OIG about persons aboard OLE’s marked patrol vessel. Additionally, [REDACTED] mishandled [REDACTED] alleged misuse of the UC vessel, to include failing to refer the matter to OLE headquarters for investigation per OLE policy.

- In his sworn affidavit, [REDACTED] stated that in about September 2008, [REDACTED] asked him whether he knew of any misuse of the UC boat or any unauthorized people on it. [REDACTED] told [REDACTED] about [REDACTED] wife being aboard, but did not think he mentioned the outing with [REDACTED], her brother, or the alcohol they brought. Shortly thereafter, [REDACTED] advised [REDACTED] about what [REDACTED] had asked and how

he responded. According to [REDACTED], [REDACTED] was concerned about the alcohol [REDACTED] and her brother brought aboard, but less concerned about his wife being aboard while underway. [REDACTED] seemed to think it was okay [REDACTED] was onboard because [REDACTED] was familiar with her and, as such, [REDACTED] expressed that he could deal with [REDACTED] okay on that issue. Within a couple weeks, [REDACTED] called [REDACTED] into her office and asked whether any unauthorized persons had been on the UC boat. [REDACTED] was certain he told her about [REDACTED] and [REDACTED] having been aboard the boat's first trip in June 2008, but did not remember telling her about [REDACTED] or her brother being aboard, and he did not mention anything about alcohol onboard. [REDACTED] was uncomfortable meeting with [REDACTED], stating as follows:

"I was extremely stressed about being in the middle of this situation, knowing that [REDACTED], who was my boss, would have wanted me to cover for him. I knew he and [REDACTED] had a good working relationship. For those reasons I probably downplayed the situation when talking with [REDACTED]. This was one of the most difficult and stressful times of my life."

[REDACTED] stated that a short while later in September 2008, during a regularly scheduled All-Hands teleconference, [REDACTED] seemed upset and agitated. She referred to the justification memo for the undercover boat and firmly stated she wanted people to know the boat was for sensitive, undercover purposes. She expressed being tired of rumors and gossip about the boat and its use. She was clear that she expected all of the rumors and gossip to stop. (Exhibit 20)

- [REDACTED] told us that in about late August 2008, after hearing rumors of unauthorized people aboard the UC vessel, he asked [REDACTED] whether he was aware of anything inappropriate occurring on the UC vessel. [REDACTED] responded that he was aware of such, namely that he had been present when [REDACTED] wife was aboard. [REDACTED] did not further question [REDACTED] instead bringing the matter to the attention of his supervisor, [REDACTED], who was going to further handle it. [REDACTED] was subsequently called into [REDACTED] office along with [REDACTED] and [REDACTED] where [REDACTED] told him she had talked to [REDACTED] about rumored misuse of the UC vessel and he ([REDACTED]) said nothing inappropriate had occurred. [REDACTED] asked [REDACTED] if he disagreed, and he replied that he did because that was not what [REDACTED] told him. [REDACTED] responded by saying something like, "[REDACTED] tells me you interrogated [REDACTED] and he came up with something to get out of it." [REDACTED] stood up for [REDACTED], saying he believed he was telling the truth. [REDACTED] told us he left [REDACTED] office very upset, feeling his integrity had been attacked and tactics questioned, and was very concerned that [REDACTED] never asked him what [REDACTED] told him. During that meeting, [REDACTED] also informed [REDACTED] that vessel custodian duties were being transferred to him and his staff. (Exhibit 42)
- [REDACTED] largely confirmed [REDACTED] account of events. He told us that [REDACTED] interviewed [REDACTED] by herself and decided not to refer the matter to headquarters. He further told us he thought the matter should have been referred to

headquarters as an OPR (Office of Professional Responsibility) matter, but [REDACTED] made the decision not to do so and he did not pursue the matter because it involved [REDACTED] as [REDACTED] and not a subordinate employee. (Exhibit 43)

- Then [REDACTED] provided us with information regarding these circumstances. He told us that [REDACTED] should have interviewed [REDACTED] about [REDACTED] alleged misuse of the UC vessel, and also should have told [REDACTED] of OLE's OPR. (Exhibit 44)
- [REDACTED] told us the following about when [REDACTED] asked whether his wife had been aboard the UC vessel:

"[M]y exact answer to [REDACTED] was -- I don't know the correct terms, but it was the affirmative that she [REDACTED] had not been underway... And I told [REDACTED], [REDACTED], that she hadn't been underway, and even told [REDACTED] the same thing I've been telling you, I don't remember her ever being underway, and I asked her specifically, Do you have any specific information that she had been underway with me? And she said, No. I said, Good, because that's what my recollection was. And I asked her also, Would you tell me if you had specific information that she had been underway? And [REDACTED] said, I would tell you and I do not have that. She thought that this was rumor and gossip from the office. And it was at that time in the conversation where I told her that I no longer want to be involved with the vessel. It's clear that people are getting the wrong idea of what's going on, because I'm the [REDACTED] and I'm out of the office a lot and I think that now is the appropriate time to turn it [vessel custodian responsibility] over... [to [REDACTED]]" [emphasis added]
(Exhibit 3)

- [REDACTED] told us that when she spoke privately with [REDACTED] he advised her that he was unaware of any unauthorized persons or inappropriate activity aboard the UC vessel. She further told us she may not have made an OPR referral or otherwise informed headquarters because of what both [REDACTED] and [REDACTED] told her, which led her to conclude there had only been rumors about misuse of the UC boat. As such, she also did not make a record of the matter. Significantly, [REDACTED] told us the following regarding her questioning of [REDACTED] about this issue in early September 2008:

"We talked about...if there were any activities that could possibly be misunderstood as misuse of a government vehicle and he explained to me that there had been a lot of problems with the boat, so there were a lot of people coming and going on the boat, fixing the boat, and he thought maybe in any of those instances maybe somebody may have misunderstood that those people shouldn't be on the boat, but he explained to me that everybody was on the boat was there for a business purpose and it was for official purposes and that he was not aware of any inappropriate activity going on on [verbatim quote] the boat.

So with those two answers I then asked about -- or tell him specifically that there were some allegations that possibly his spouse had been on the boat and he said no, that

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

- [REDACTED] repeatedly told us that he did not recall his wife ever being aboard the UC vessel while underway, but did not make an outright denial as both he and [REDACTED] stated he did to her in early September 2008. As such, his statements to [REDACTED] and us are incompatible. Significantly, he also told us the following:

"[E]ven if she was [aboard], it wasn't even -- it wouldn't have been a big deal to me...[p]ersonally it wouldn't have been." [emphasis added] (Exhibit 3)

- [REDACTED] OLE's OPR function, along with [REDACTED] told us that they were unaware of [REDACTED] alleged misuse of the UC vessel until raised during the OLE headquarters inspection in about late 2009. [REDACTED] advised that [REDACTED] should have, at the time, referred the allegations to him and [REDACTED] for OPR action. [REDACTED] told us he did not recall being informed of [REDACTED] alleged misuse of the UC vessel prior to the inspection. (Exhibits 5, 6, 7)
- When initially interviewed and questioned about the weekend trip to Semiahmoo Resort and who was aboard the UC vessel and marked patrol boat, [REDACTED] recalled just himself and SA [REDACTED] being aboard either vessel. Shortly following our initial interview, [REDACTED] called and spoke with SA [REDACTED], namely about that weekend and who was aboard. SA [REDACTED] told us that during this conversation, he reminded [REDACTED] that his parents had been aboard. However, during our subsequent interview, [REDACTED] experienced a sudden recollection of this, stating:

"You know, I do remember somebody. I totally forgot. This would be [REDACTED]. He brought his parents down to the boat that morning, and they came on the boat, and I met his parents. You know what? They got underway with us that day...They got underway that day with us. I totally forgot until just now. Just refreshed my memory." (Exhibits 3, 36)

Given that [REDACTED] and SA [REDACTED] had spoken about this specific issue approximately two weeks before re-interviewing him about it, we consider [REDACTED] foregoing statement to be disingenuous and not credible.

- [REDACTED] told us that [REDACTED] though a personal acquaintance, was, coincidentally and unbeknownst to him beforehand, employed by either the manufacturer or the marine services firm retained by the manufacturer for delivery support, to assist with vessel break-in

since [REDACTED] was an experienced captain. This assertion was also contained in a document [REDACTED] prepared and provided to [REDACTED] and SA [REDACTED] in September 2008 when UC vessel custodian duties were transferred. [REDACTED] made the following statement in this document: "Knowledge that the vessel is owned by OLE...Blackfish Marine USA Yacht Brokerage – out rigged vessel during commissioning and assisted in vessel break in – was paid by Brunswick Government Sales." Neither Brunswick, nor Blackfish Marine, had any record or knowledge of [REDACTED] or anyone else, assisting with vessel break-in. In fact, Blackfish Marine's invoice to Brunswick shows only service for mounting radar, antennas, props, and batteries, at a cost of \$391.00. Accordingly, [REDACTED] statement to us, and in the above-referenced document he prepared, is not credible and reflects lack of candor. (Exhibits 3, 19, 24)

Violations Implicated

- [REDACTED] evident lack of candor with both [REDACTED] and our office implicates violation of the following, along with potential *Giglio* issues concerning his credibility in representing the agency in enforcement matters:
 - NOAA/OLE Enforcement Operations Manual, Procedure 1.8, Disciplinary System, Appendix 1, including the following offenses:
 - 22. "Dishonest Conduct Prejudicial to the Government"
 - 49. "Conduct Demonstrating Untrustworthiness or Unreliability"
 - The Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR § 2635 et. seq.):
 - 5 CFR § 2635.101(b)(5)

"Employees shall put forth honest effort in the performance of their duties."
 - 5 CFR § 2635.101(b)(14)

"Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part..."
 - Department Administrative Order 207-10, Inspector General Investigations, Cooperation with OIG Investigations:
 - Section 6.02a: "Department officers and employees shall cooperate fully with any OIG investigation; shall not withhold information...from the OIG...and shall answer questions relating to their employment and to matters coming to their attention in their official capacity or by reason of their employment."
 - Section 6.03, Failure to cooperate with OIG investigation: "Department officers and

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employees who refuse to answer questions or otherwise cooperate with an OIG investigation may be disciplined.”

- [REDACTED] failure to notify OLE’s Deputy Director and Director of [REDACTED] alleged misuse of the UC vessel implicates violation of the following:
 - NOAA/OLE Enforcement Operations Manual, [REDACTED] Complaints of Misconduct:
 - [REDACTED] is responsible for documenting all complaints and immediately notifying the [REDACTED] OLE.”

3. In requesting AFF-acquisition of the specific UC vessel, [REDACTED] caused OLE headquarters to bypass an internal review process and approve its acquisition—prior to required procurement procedures being applied. While purchase ultimately followed a limited competition after Departmental counsel objected to sole-source procurement, OLE created, at a minimum, the appearance of violating acquisition standards and exposed NOAA to potential liability.

a. Initial request for undercover vessel not acted on.

- In early 2006, [REDACTED] prepared and, with approval from [REDACTED], submitted a request to OLE headquarters to purchase a Seaswirl Model 2901 Walkaround 27-foot sport fishing vessel for “undercover enforcement operations,” namely for whale patrols in Puget Sound. The procurement request stated that payment in the amount of approximately \$146,000 would be from the AFF and specified the vendor from which the vessel would be purchased. [REDACTED] did not act on this procurement request, for reasons neither he nor others with whom we spoke recalled. (Exhibits 2, 3, 4, 5, 6, 7)
- [REDACTED] told us he proposed vessel purchase because renting vessels and sending agents covertly aboard commercial whale watching vessels, both of which NWED had previously done, was too problematic. He stated that he identified this specific boat by going to boat shows, conducting on-line market research, and talking to other law enforcement personnel from OLE and other federal and state agencies. He advised that he did not document any of the foregoing activities. (Exhibit 3)

b. Subsequent request: larger vessel at double initial proposed cost.

- By a one-page memorandum to [REDACTED] dated October 18, 2007, [REDACTED] again submitted a request to non-competitively purchase, via the AFF, a specific unmarked vessel, this time a 35-foot Boston Whaler Model 345 Conquest equipped with three Mercury Verado six-cylinder engines, for \$300,787—over twice the cost of the vessel he requested in 2006. [REDACTED] memorandum referenced an attached price quotation in that amount from manufacturer-vendor Brunswick Commercial and Government Products, Inc. (Exhibit 8)

- [REDACTED] told us he requested this larger vessel based on recently identified need at the time for off-shore enforcement operations to address illegal recreational halibut fishing, and the need to remain aboard overnight for whale patrols in the San Juan Islands of Puget Sound, where there are not many hotels. He told us he selected the Boston Whaler 345 Conquest based on him again going to boat shows, consulting other law enforcement personnel, conducting on-line market research, and because of NWED's favorable experience with a Boston Whaler marked patrol boat. [REDACTED] further advised that it was his understanding that any boat to be purchased had to be listed on a GSA Schedule, and the Boston Whaler qualified as such. He stated:

"...I remember looking that up and that was a driver because I was told that they had to be listed on a GSA Schedule. Whether that's true or not, I don't know. That's just what I was told. So yeah, I put up the Boston Whaler." (Exhibit 3)

- [REDACTED] transmitted [REDACTED] request to [REDACTED] by a two-page memorandum dated October 26, 2007, captioned, "Asset/Forfeiture Fund Purchase Request – Unmarked Vessel \$300,787.00." [REDACTED] memorandum to [REDACTED] includes the following:

"I concur with the attached justification drafted by [REDACTED]. I would like to reiterate the need to begin the procurement process for this vessel immediately, for deliver [sic] in FY08, so I can develop an effective enforcement program for the spring and summer of 2008 to protect the newly listed southern resident orca population. This specific vessel is available under GSA Schedule per the attached quote from the vendor...

[REDACTED] has reviewed this matter with SA [REDACTED] the [REDACTED] on the [OLE] small boat committee, who has indicated this requested vessel is appropriate for OLE use. If you feel the need to submit my request to the national boat committee I request that it be submitted for review as soon as possible so that if approved I can obtain this vessel by late spring or early summer of 2008..." (Exhibit 8)

- On January 9, 2008, [REDACTED] emailed [REDACTED] a memorandum from [REDACTED] addressing, among several points, potential vessel leasing versus purchase. [REDACTED] email message contains the following:

"Attached is a summary memo that [REDACTED] put together based on the concerns you raised to me yesterday. Even tough [sic] it sounds like renting or leasing a vessel for u/c work might be more effective, efficient and less costly based on [REDACTED] memo I do not think it is a workable options [sic] for us.

Please review the attached memo as soon as possible so we can chat again about the procurement of this vessel. I would still very much like to initiate the procurement process before next week to ensure receipt of this vessel by the spring of 2008." (Exhibit 9)

- [REDACTED] and [REDACTED] maintained that renting or leasing a vessel for covert purposes was not practical, primarily due to logistical complications such as arranging for one on short-notice. Although OLE headquarters, namely the [REDACTED], considered vessel leasing, OLE did not pursue acquisition of a vessel for covert operations through seized vessel programs of other law enforcement agencies. Interagency transfer of a seized vessel likely would have cost OLE only the cost of transportation and initial maintenance. (Exhibits 3, 4)

c. Procurement request not reviewed by OLE's Vessel Steering Committee.

- Although the requested vessel would have been OLE's most expensive operational boat, [REDACTED] decided not to submit the request to OLE's Vessel Steering Committee, at least in part, as he recalled, because SA [REDACTED], the [REDACTED] on the Committee, was referenced in the memorandum of request as being in favor of it. (Exhibits 7, 8)
- SA [REDACTED] told us he was not aware of the above-referenced memorandum of request until well after the memorandum had been submitted and was surprised that [REDACTED] had identified him as supporting the purchase of this vessel. SA [REDACTED] told us he had misgivings about the boat, including its high cost. SA [REDACTED] told us he had suggested to [REDACTED] that the request for the UC vessel be reviewed by OLE's Vessel Steering Committee, but recalled [REDACTED] saying it was his ([REDACTED]) call and that it did not need to go through the Committee. SA [REDACTED] advised that since there was no official requirement at the time to obtain Committee approval, he did not press the matter. (Exhibit 10)
- OLE's Vessel Steering Committee Chair, [REDACTED], told us he was unaware of the UC vessel until after it had been procured and delivered. Although Committee approval for vessel procurements had not been instituted as a formal OLE policy requirement, other vessels had been vetted with the Committee, including a \$306,000 law enforcement-marked 33' SafeBoat acquired by the NWED in mid-2007 for training purposes at the Federal Law Enforcement Training Center. (Exhibits 5, 11, 12)

d. Approval of procurement of specific UC vessel from specific vendor in absence of policy allowing use of AFF for vessel acquisition.

- On January 14, 2008, [REDACTED] approved the purchase of this vessel by his signature under a line on [REDACTED] request memorandum stating, "Asset forfeiture use approval for this vessel purchase." [REDACTED] approved this \$300,000 acquisition in the absence of OLE policy authorizing AFF expenditures for vessel purchases. (Exhibits 8, 13)
- On January 17, 2008, three days after [REDACTED] approved acquiring the Boston Whaler Model 345 Conquest specified in [REDACTED] and [REDACTED] memoranda of request, the NWED submitted a procurement request for this specific vessel, at the quoted

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

e. NOAA acquisitions office concurrently prepared both sole-source procurement action and "Brand Name or Equal" limited solicitation using specifications from the Boston Whaler 345.

- On January 29, 2008, [REDACTED] Contracting Officer (CO) [REDACTED] sent an email to [REDACTED] the Brunswick sales representative identified in the one-page quotation included with [REDACTED] and [REDACTED] memoranda of request. CO [REDACTED] email states the following:

"[REDACTED] thank you for the quotation for Boston Whaler 345 Conquest with all standard equipment. I'm trying to put together a request for quotation to send out to other potential bidders on GSA schedule. Do you have a list of equipment that's available on the 345 Conquest that you quoted?"

Handwritten atop the contracting office file copy of [REDACTED] above email is the following:

"PR [procurement request] suspended--no spec[ifications]" (Exhibit 8)

- On January 30, 2008, [REDACTED] sent an email to NWED [REDACTED] [REDACTED], as well as [REDACTED], including the following:

"Please see attached requirements for the Boston Whaler Vessel. I have highlighted items that this vessel would be required to have for our operational use. Please note that I have performed a market survey and have not found any other vessel that meet these requirements...[E]very day of delay will put our vessel delivery date back one week and further delays past the above date may cause and [sic] increase in quoted pricing.

This purchase is a high priority for our agency, please work closely with [REDACTED] [REDACTED] to get this order finalized for Brunswick..." (Exhibit 8)

- On February 1, 2008, CO [REDACTED] emailed [REDACTED] and [REDACTED] stating the following:

"...I'm working as quickly as I can on this request...I received your email earlier with the specifications from Boston Whaler's brochure highlighted and that's what I'm sending out to a few potential GSA vendors." (Exhibit 8)

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

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

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

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

f. Departmental procurement attorney objected to proposed sole-source procurement.

- Later that day, February 6, 2008, [REDACTED] emailed CO [REDACTED] as follows:

“I have some problems with the sole source justification:

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

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

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

- On February 8, 2008, [REDACTED] emailed CO [REDACTED] with the following:

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

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

- On February 15, 2008, following [REDACTED] revision to the sole-source justification, [REDACTED] emailed CO [REDACTED] with the following:

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

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

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

g. Contracting officer dropped sole-source action when Departmental procurement attorney objected, selecting Brunswick's Boston Whaler 345 from "Brand Name or Equal" solicitation.

- CO [REDACTED] did not reply to [REDACTED] above email or further communicate with him. Rather, on February 22, 2008, CO [REDACTED] awarded a purchase order for \$300,787.00 to Brunswick for a Boston Whaler 345 Conquest. Brunswick was selected over the bid of another manufacturer-vendor for a comparable vessel (at a cost of \$334,000) in response to the RFQ that CO [REDACTED] previously issued to GSA Schedule vendors on February 1, 2008. (Exhibits 8, 17)
- [REDACTED] told us he was unaware that NOAA had procured the Boston Whaler in question because he never heard back from CO [REDACTED] following his February 15, 2008, email and was left to assume that vessel acquisition did not occur. He was also unaware that NOAA, at the same time he was communicating with CO [REDACTED] and [REDACTED], had solicited bids through an RFQ. [REDACTED] told us that his impression was this was "wired from the start to get that one boat." He further said he considered the originating request from OLE with the vendor's price quote, approving purchase of that specific vessel, along with NOAA's invalid sole-source justification, to violate the Competition in Contracting Act and the Federal Acquisition Regulation. He advised that even though Brunswick was a GSA Schedule vendor, the high dollar amount involved required competition or a valid, approved sole-source justification.

[REDACTED] said it was clear that NOAA improperly took the Boston Whaler specifications and simply made those their own. He stated that because of the "tailoring to that one boat," the Brand Name or Equal RFQ was "phony" and the award thus tainted. [REDACTED] also stated that [REDACTED] made a "big deal" about the Boston Whaler being "unsinkable," but, in his view, that was just "thrown in" to justify the vessel and the point was not made. Even had there been a valid sole-source justification, NOAA's Acquisitions office would still have needed to issue a formal solicitation to the vendor. He stated that the circumstances surrounding this acquisition would not have insulated NOAA against a bid protest or other complaint from a vendor. [REDACTED] noted that he has encountered problems in the past with CO [REDACTED] and NOAA's [REDACTED] office [REDACTED] looking to cut corners. (Exhibit 17)

- CO [REDACTED] told us that [REDACTED] did not approve the sole-source justification, but he did not expect [REDACTED] to do so, which is why he concurrently issued the "Brand Name or Equal" RFQ to potential GSA offerors and properly made the award on that basis. It was not a "Full and Open Competition," but still a competition in how it was advertised and given that quotes from two vendors were received and considered. As such, he did not need

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██████████ review and approval, but added that had ██████████ approved the sole-source request, he would have canceled the solicitation to GSA Schedule vendors. He confirmed that although Brunswick was a GSA Schedule vendor, the high dollar amount involved required competition or an approved sole-source justification.

CO ██████████ noted that ██████████ is a very strict attorney who, in his opinion, seems to overreach with his views and authority. Nonetheless, CO ██████████ told us the way in which OLE submitted the procurement request, with the memorandum approving purchase of the particular boat identified, “jumped the gun” and did not follow proper protocol. CO ██████████ told us that the customer was anxious to get this boat, but he did not like to see it proceed that way because sole-source acquisitions have to be approved following proper procedures. (Exhibit 18)

- ██████████, ██████████, ██████████ oversight of the AFF for OLE and coordinated ██████████ memorandum of request within OLE headquarters; and ██████████ each indicated a level of mistaken understanding that because Brunswick’s Boston Whaler 345 Conquest was listed on the GSA Schedule, it could simply be purchased outright off the Schedule, without competition or involved procedures. (Exhibits 3, 4, 6, 7)
- ██████████ stated the following about procuring vessels:

“I’ve never seen a format for buying vessels in our agency. I’ll tell you, I really wish there was so I could follow it because this isn’t something that I was trained to do... There is no formal training process given to us as employees. The only one is learning how to drive a boat and navigate a boat. I’ve never... been in a position to where I’ve been someone who had to acquire any type of large items. I mean, yeah, maybe I bought a cell phone or something, but [not] anything like this. And I’m not aware of any process in the Office of Law Enforcement.

My basic understanding, at the time... is that basically we make the suggestion and then it goes out of our hands to another office to actually procure it and make sure it’s done in the appropriate manner. And I was never given the impression at any time that I was the deciding official at all, just that I was just someone who’s going to give a suggestion.” (Exhibit 3)

- Upon NOAA’s purchase, Brunswick delivered the vessel to Canal Boatyard in Seattle on June 3, 2008, for bottom painting and other preparations. ██████████, who handled the sale for Brunswick, told us that to his knowledge, this was the only Boston Whaler 345 Conquest ever sold to a government agency, and that boats Brunswick sells to agencies typically range from 15’-27’. He also told us that ██████████ “ram-rodged” the acquisition because the boat was important to him and his agency. (Exhibit 19)

Violations Implicated

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

In the limited competition that resulted in the procurement of the \$300,787 Brunswick Boston Whaler 345 Conquest, [REDACTED] justification for the Brand Name or Equal RFQ appeared to have been tailored to the specifications of the Boston Whaler. In our judgment, there is no indication that this particular Boston Whaler was "essential" to NOAA OLE's law enforcement program as required by FAR which states that agency requirements shall not be written so as to require a particular brand name "...unless the particular brand name, product, or feature is *essential* to the Government's requirements..." See FAR 8.405-6(b)(1), 11-105(a)(1). Based on the foregoing, the actions of [REDACTED], [REDACTED], and [REDACTED] were contrary to the following FAR guiding principles with respect to performance standards:

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

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

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

- 5 CFR § 2635.101(b)(8)

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

- 5 CFR § 2635.101(b)(14)

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

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

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

4. Other Relevant Findings:

a. Inappropriate use of personal credit card for nearly \$12,000 in vessel operating costs. Nearly \$9,400 of these costs were charged to the AFF, which was not authorized by OLE policy.

- Over a period of 12 months, ██████████ received reimbursement for nearly \$12,000 in UC vessel moorage, fuel, cleaning, and maintenance costs that he charged to his personal credit card between July 2008 and August 2009, ostensibly to maintain the vessel’s UC status. ██████████ told us he used his personal credit card for these charges, versus his assigned OLE credit card, because an NWED undercover credit card did not exist at the time and he did not want to risk compromising the vessel’s UC identity. He acknowledged that he may have accrued airline/travel miles by virtue of using his personal credit card, but denied that this was ever a motivation for such use. ██████████ approved most of these reimbursement claims, following what ██████████ asserted was an NWED management team decision authorizing him to use his personal credit card on an interim basis for such charges and file claims for reimbursement. Nonetheless, we conclude that ██████████ year-long use of his personal credit card for such costs was inappropriate given that NWED could readily have obtained an undercover credit or debit card. (Exhibits 3, 4, 45)
- Nearly \$9,400 of the above amount for which ██████████ received reimbursement was charged to the AFF. When discovered by OLE headquarters in April 2009, ██████████ budget officer, included the following in an email reply to OLE headquarters analyst ██████████:

“... ██████████ has been using his personal credit card to pay vendors for the undercover vessel expenses as he is concerned about maintaining the covert nature of that vessel. When we received delivery from the manufacturer, he specifically told me not to obtain a government fleet [credit] card for that reason...” (Exhibit 46)
- OLE ██████████ subsequently addressed this issue with ██████████ including the following in an email to ██████████ and ██████████ dated April 23, 2009:

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

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

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

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

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

- [REDACTED] last vouchered UC vessel costs charged against the AFF on April 15, 2009. The balance of his reimbursements from that date forward, until his final voucher in August 2009, were not charged to the AFF. (Exhibit 45)
- [REDACTED] told us that [REDACTED] his supervisor, directed that the AFF be charged for UC vessel moorage and other costs. [REDACTED] did not believe that Directive 91 prohibited such charges and felt that since the UC vessel was purchased using the AFF, associated operational costs should similarly be charged to the AFF. (Exhibit 47)

Violations Implicated

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

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“...The [Magnuson-Stevens Act] language requires reimbursement for expenditures directly related to investigations. As a matter general policy, OLE does not consider routine patrols as “directly related to investigations” therefore, they are not [AF] fundable. Travel to respond to complaints, allegations, or intelligence reports MAY be charged to the [AF] Fund. If a routine patrol results in a specific violation which requires further travel expenditures these expenses are [AF] fundable...” (Exhibit 13)

- OLE National Directive No. 53, entitled “Asset Forfeiture Fund--Preapprovals,” which lists 43 categories of items approved for AFF expenditure, does not include authorization for any vessel costs. (Exhibit 13)

b. Interference with OIG investigation.

- At the conclusion of our initial interview of [REDACTED] we specifically requested the following of him:

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

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

Violations Implicated

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

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

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

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

Violation Implicated

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

d. Minimal operational use of UC vessel to date.

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

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

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

Prosecutorial Determination

On May 31, 2011, the U.S. Attorney's Office for the District of Maryland declined criminal prosecution of [REDACTED] in favor of administrative remedies. AUSA [REDACTED] specifically recommended administrative action be pursued against [REDACTED] and that the Government be made whole for the cost of fuel and time attributable to [REDACTED] reported misconduct involving the UC vessel. (Exhibit 52)

Index of Exhibits

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

20. Affidavit of [REDACTED]: 5/27/10.
21. Seattle Harbor Patrol activity log for 6/12/08.
22. Interview of Officer [REDACTED] Seattle Harbor Patrol: 6/2/10.
23. Receipt provided by Boat Shed restaurant, Bremerton, WA, dated 6/12/08.
24. Interview of [REDACTED] Blackfish Marine: 5/14/10, with Blackfish Marine invoice to Brunswick dated 6/30/08.
25. Interview of [REDACTED] 5/7/10.
26. Interview of [REDACTED] 5/25/10.
27. Interview of [REDACTED] 5/25/10.
28. Affidavit of [REDACTED] 5/24/10.
29. Interview of SA [REDACTED] 5/21/10.
30. Call detail record for [REDACTED] assigned cell phone for the period 7/25/08-8/24/08.
31. Seattle Police Department 911 call summary for 8/8/08.
32. Coast Guard Seattle activity log for 8/8/08.
33. Email from [REDACTED] to [REDACTED] on 8/18/08.
34. Reservation record of Semiahmoo Resort for activity between 8/19/08 and 8/24/08.
35. Travel voucher for SA [REDACTED] for travel between 8/21/08 and 8/26/08.
36. Interview of SA [REDACTED]: 5/18/10.
37. OLE Incident Data Sheet for 8/23/08 vessel boarding, documented on 4/13/09.
38. Interview of [REDACTED] with accompanying photographs: 6/3/10.
39. Interview of SA [REDACTED]: 5/19/10.
40. Interview of then-SA [REDACTED]: 5/24/10.
41. Interview of SA [REDACTED]: 5/18/10.

42. Interview of [REDACTED]: 5/3/10
43. Interview of [REDACTED]: 5/7/10.
44. Interview of then-[REDACTED]: 5/18/10.
45. Form 1164 reimbursements to [REDACTED] for the period 7/08-8/09, with accompanying breakdown of charges prepared by OIG.
46. Email exchange between [REDACTED] and [REDACTED] on 4/9/09, and between [REDACTED] and [REDACTED] on 4/23/09.
47. Interview of [REDACTED]: 5/13/11.
48. Memorandum of Agreement between OLE/NWED and the Whatcom County Sheriff's Office, dated June 2008.
49. Vessel operations logbook for NWED UC vessel, initiated on 4/27/09.
50. OIG photographs of UC vessel: 5/4/10.
51. Interview of [REDACTED] Clearwater Marine: 5/12/10.
52. Prosecutorial declination, U.S. Attorney's Office for the District of Maryland: 5/31/11.