

**Subject:** Roll Out Strategy for IG Report on Shredding

**From:** Andrew Winer <Andrew.Winer@noaa.gov>

**Date:** Thu, 01 Apr 2010 06:30:23 -0400

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As requested, I am attaching the proposed roll out plan, talking points and Q/As for the rollout relating to the IG's report on shredding and the expected replacement of Dale Jones.

Since we haven't seen the IG's report, this is a work in progress, but I am hoping it serves as the basis for a productive discussion at our 9:00 am meeting today.

Andy

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**Subject:** FINAL AND APPROVED DOCUMENTS FOR IG ROLL OUT

**From:** Andrew Winer <Andrew.Winer@noaa.gov>

**Date:** Thu, 08 Apr 2010 11:12:04 -0400

**To:** "eric.schwaab@noaa.gov" <Eric.Schwaab@noaa.gov>, "john.gray@noaa.gov" <John.Gray@noaa.gov>, "justin.kenney@noaa.gov" <Justin.kenney@noaa.gov>, "amanda.hallberg@noaa.gov" <Amanda.Hallberg@noaa.gov>, "stephanie.hunt@noaa.gov" <Stephanie.Hunt@Noaa.gov>, Laurel Bryant <Laurel.Bryant@noaa.gov>, Mary Glackin <Mary.Glackin@noaa.gov>

**CC:** Lois Schiffer <Lois.Schiffer@noaa.gov>, Margaret Spring <Margaret.Spring@noaa.gov>

I am attaching the final and approved set of documents for the roll out. These include:

1. The roll out plan
2. General talking points
3. Talking points on Alan Risenhoover
4. Q&As

For the Q&As, note that many of the questions from the last set of Q&As have been removed/revised. This is because if we are asked a question about any specific employee and actions related to them, we need to decline to answer the question based on privacy.

I am going to catch a plane in about 30 minutes, so I'll be signing off shortly. If you need to reach me, I'll be available by cell [REDACTED] starting in about 15 minutes.

Exemption  
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Andy

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## Talking Points

### **Why have you now put someone in charge of NOAA Enforcement activities that has no/zero enforcement experience?**

- This is an interim/temporary appointment only. NOAA will immediately (within 30 days) begin the search for a new permanent Director. We anticipate this process will take several months.
- Mr. Risenhoover is an experienced federal manager with 20 years of service within NOAA Fisheries. He has both administrative experience as the agency's Deputy CFO as well as programmatic experience as the Director of the Sustainable Fisheries Office.
- He will have assistance from experienced (yet to be named) deputy and the backing of over 200 experienced law enforcement personnel and staff.
- His focus will be on the implementation of OIG Report recommendations and the proposed NOAA improvements outlined in Dr. Lubchenco's March 18<sup>th</sup> response to the OIG.
- Finally, his oversight during this transition period will encourage a closer link between the Office of Enforcement and other elements of the agency, especially the fisheries management components of the agency. Such a link is important to ensure future regulations are prepared with an eye toward enforceability.

### **What are the goals for this interim period?**

- Begin moving forward on three important components – providing strong leadership, implementing procedural changes, and instituting certain changes in the culture of the program.
- Maintain the health of the organization during the transition – provide day-to-day direction, programmatic oversight, and connectivity to agency and NOAA leadership.
- Ensure effective, fair, and transparent enforcement operations. There will be no lapse in our enforcement operations. The Nation's marine statutes – the Magnuson-Stevens Act, Endangered Species Act, Marine Mammal Protection Act, and Marine Sanctuaries Act, among others – will continue to be fully enforced.
- Substantive, timely response to OIG report findings and implementation of proposed NOAA improvements, including:
  - Enforcement summit
  - Administration of asset/forfeiture fund review
  - Workforce management review and implementation
  - Improved communications and outreach
  - Process for an annual review of the enforcement program
  - Reviewing and revising NOAA law enforcement operations manuals
  - Immediately prioritize and develop a detailed schedule and assignments for meeting the requirements of OIG report and March 18 memo
- Selection of a new Director and transition to new Director and management team.

## Q&A'S RELATED TO IG REPORT ON SHREDDING

**Q: Are any NOAA employees being removed from OLE?**

**A:** Due to privacy issues, NOAA cannot comment on any personnel actions.

**Q: What documents were destroyed and do these destroyed documents impact the IG's ongoing investigation regarding individual cases?**

**A:** The IG could not provide us with an exact number. According to the IG's report, over 140 files from OLE were destroyed, and estimated that 75% to 80% of one individual's files were destroyed. The IG made no findings relating to any impacts on his investigation of individual cases.

**Q: Won't the improper destruction of documents taint all of the ongoing cases being handled by GCEL and shouldn't NOAA declare a moratorium on the prosecution of all cases until it has determined whether these actions have prejudiced any fishermen?**

**A:** The IG's report does not recommend suspending prosecution of enforcement actions. As recommended by the IG, NOAA's general counsel office will determine whether the document destruction presents any issues relating to any current discovery order or any active litigation.

**Q: In light of the two recent IG reports, is NOAA going to reopen prior cases and offer compensation to impacted fishermen?**

**A:** The IG has not suggested that NOAA reopen prior cases. NOAA looks forward to receiving the IG's next report which the IG has said will address a small number of individual cases.

**Q: Who is taking over as Director, OLE?**

**A:** Alan Risenhoover, who is currently serving as the Director of NOAA Fisheries Office of Sustainable Fisheries.

**Q: What is Mr. Risenhoover's enforcement background and why do you believe he is qualified to deal with this mess?**

**A:** As Director of NOAA's Office of Sustainable Fisheries, Mr. Risenhoover has had considerable interaction with the Office of Law Enforcement, and he is familiar with the operations of OLE. Mr. Risenhoover has a reputation as a superior



manager, and he is well-qualified to provide steady leadership at OLE on an interim basis.

**Q: Is Dale Jones still working for NOAA and receiving his salary?**

A: Yes.

**Q: Where is Dale Jones working at NOAA?**

A: Due to privacy issues, NOAA cannot comment on any personnel actions.

**Q: Why wasn't Dale Jones simply fired for misconduct as opposed to being reassigned and allowed to continue collecting a hefty paycheck?**

A: Due to privacy issues, NOAA cannot comment on any personnel actions.

**Q: Will Dale Jones be able to keep the perks he had – use of a government car, etc.?**

A: Mr. Jones has the use of official vehicles under the same circumstances as all Federal employees.

**Q: Will NOAA require any employee to repay the agency for foreign travel paid for by the Asset Forfeiture Fund?**

A: The IG is currently auditing the Asset Forfeiture Fund, and NOAA's leadership intends to follow any recommendations made by the IG after it completes the audit.

**Q: Is it expected that any NOAA employee will face criminal prosecution for their role in shredding documents and obstructing the IG's investigation?**

A: By law, that is a decision in the jurisdiction of the IG. The IG did not indicate that he was going to refer this matter to the Department of Justice for criminal prosecution.

**Q: According to the IG report, an employee changed his story at least twice regarding his knowledge of the shredding activities. Do you believe that employee was pressured to change his story and what caused him to recant once he was questioned under oath?**

A: We cannot speculate on what conclusions the IG reached during the course of his investigation.

**Q: According to the IG report, John Oliver learned in December 2009 or January 2010 that OLE had shredded documents during the pendency of the initial IG investigation, but he did not advise anybody above him about this activity. Does NOAA intend to discipline Mr. Oliver or conduct a further review of his negligence in handling this matter?**

**A:** Due to privacy issues, NOAA cannot comment on any personnel actions.

**Q: How will you go about finding a new Director for OLE?**

**A:** NOAA will conduct a full and open competition for this important position. To ensure we have the best pool of applicants possible, we have asked Vince O'Shea, Executive Director of the Atlantic States Marine Fisheries Commission to assist in identifying and encouraging possible candidates to apply. We anticipate a vacancy announcement to be posted in the near future and a new director will be selected as soon as possible.

**Q: Who is Vince O'Shea**

**A:** Besides his current service as Executive Director of the Atlantic States Marine Fisheries Commission, Mr. O'Shea was previously a Captain in the United States Coast Guard. While he served in the Coast Guard, Mr. O'Shea was in Charge of fisheries law enforcement.

**Q: What is NOAA's document retention policy?**

**A:** NOAA is committed to the principles of accountability and transparency. To that end, NOAA has an Administrative Order establishing its Record's Management Program. NOAA's Record Management Program implements the requirements of the Federal Records Act of 1950, as well as subsequent statutes and regulations, which require federal agencies to schedule with the National Archives and Records Administration the retention and disposal of their records. The NOAA Record Management program provides effective control over the creation, organization, maintenance, use and disposition of all NOAA records.

**Q: How is NOAA's document retention policy enforced?**

**A:** NOAA enforces its policy by informing its employees of their obligations regarding records retention, and it intends to do additional training on this subject. The Federal Records Act provides that the Department of Commerce must report any unlawful or accidental removal, defacing, alteration, or destruction of records in the custody of that agency to the National Archives and Records Administration for action.



**Q: Is NOAA going to notify the National Archives and Records Administration that its employees shredded documents?**

**A:** As recommended by the IG, NOAA is reviewing the scope of the document destruction to determine if it is appropriate to notify NARA. If the activities require notice, then NOAA will notify NARA as soon as possible.

**Q: What is NOAA doing to make sure that there aren't any future violations of the document retention policy?**

**A:** NOAA condemns any action that violates its document retention policy. Such conduct is simply unacceptable, and NOAA will reinvigorate its efforts to educate its employees to avoid any future violations. These actions will include: (1) immediately informing and reminding all NOAA employees about NOAA's document retention policy through an agency-wide email; (2) reviewing NOAA's policies and procedures manuals to verify that the document retention policy is clearly described as set forth in the IG report; and (3) require all senior level NOAA executives to participate in a training program regarding NOAA's document retention policy.

**Q: What is NOAA's policy regarding employee cooperation with an IG investigation?**

**A:** NOAA policy requires employees to fully cooperate with an IG investigation.

**Q: What is NOAA doing to make sure that its employees cooperate fully with future IG investigations?**

**A:** NOAA's leadership is taking immediate steps to make sure that its employees understand that they need to fully cooperate with any IG investigation. To remind employees of their obligations, NOAA will: (1) immediately send an agency-wide email reminding them of their duty to cooperate; and (2) require all senior level NOAA executives to participate in a training program which describes NOAA's policy regarding cooperation with IG investigations.

**Q: Is NOAA going to review all of its litigation matters, past and present, to determine if the shredding adversely impacted any of these cases?**

**A:** As recommended by the IG, NOAA will review pending enforcement cases before administrative law judges and courts.



## NOAA STATEMENT REGARDING IG REPORT ON SHREDDING

### Talking Points Thursday, April 7:

Fair and effective enforcement is essential to NOAA's efforts to rebuild our fisheries and to sustain the jobs and coastal economies they support, as well as the management of marine resources under our stewardship. That is why Dr. Lubchenco called for a thorough review of NOAA's enforcement program.

That's also why she announced an important set of steps NOAA is taking in response to the Inspector General's January 21 Report. Those steps—some implemented and some in the works—will lead to a strong enforcement program.

Friday we received a second Report from the Inspector General related to the shredding of documents in NOAA. Today, Eric Schwaab, Assistant Administrator, NOAA Fisheries, is taking steps based on his full review of the upper management of the Office of Law Enforcement, including both reports. Eric Schwaab is today announcing:

--effective immediately, Alan Risenhoover will serve as the Interim Director of NOAA Fisheries Office of Law Enforcement. Mr. Risenhoover comes to this position after distinguished service as the Director of NOAA Fisheries Office of Sustainable Fisheries.

-- Vince O'Shea, Executive Director of the Atlantic States Marine Fisheries Commission, will lead a nationwide search to identify superior candidates who can lead the Office of Law Enforcement and implement the actions announced by Dr. Lubchenco in her response to the IG report. Working with Mr. O'Shea, Mr. Schwaab anticipates the vacancy announcement to be posted to USAJOBS.gov within 30 days and to have a new Director of Law Enforcement as soon as possible in accordance with federal hiring practices.

--NOAA also announced that it strongly condemns any actions that violate document retention laws, regulations, or policies, or that involve a lack of full cooperation with an investigation by the IG. Such conduct is simply unacceptable, and NOAA will reinvigorate its efforts to educate its employees on its document retention policy and the requirement to cooperate with an IG investigation to avoid any future violations. These actions will include:

- Immediately informing and reminding all NOAA employees about NOAA's document retention policy as well as their obligation to cooperate with any IG investigation through an agency-wide email.
- Reviewing NOAA's policies and procedures manuals to verify that the document retention policy and is clearly described as set forth in the IG report.

- Requiring all senior level NOAA executives to participate in a training program which describes NOAA's document retention policy as well as the requirement that NOAA employees cooperate with any IG investigation

DRAFT – 04-07-10

**ROLL OUT PLAN**  
Response to IG Document Review

**Event:** NOAA's announcement of actions resulting from IG review of document shredding.

**Date:** Thursday, April 8, 2010 (tentative)

**Contacts:**

- Legislative Affairs – Stephanie Hunt, 2-5597, cell [REDACTED]
- Communications – Justin Kenney, 2-0199
- External Affairs – Andy Winer, 2-4640, cell [REDACTED]
- Fisheries External Affairs – Laurel Bryant, 301-713-1276, cell [REDACTED]
- Fisheries Communications – Monica Allen, 301-713-2370, cell [REDACTED]
- Program Coordination Office - Chris Meaney 2-0955, cell [REDACTED]
- Policy – Kelly Denit 2-1747, cell [REDACTED]
- Office of General Counsel—Cam Kerry 482-4772

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**NOAA Spokespeople:** Eric Schwaab and Lois Schiffer (background relating to response to IG report)

**Audiences:** Congressional Members and staff (especially New England) and key state and local officials, New England media, NOAA employees (Northeast Region and Science Center, nationwide NOAA fisheries law enforcement agents and attorneys)

**Plan Summary:**

- Calls/Meetings with Congressional staff and State elected officials.
- Media statement by Eric Schwaab
- Email message to NMFS employees and GC Enforcement and Litigation attorneys from Eric Schwaab
- Conference call with Eric Schwaab and John Oliver with all OLE agents
- Notice to DoC (Jay Reich, Courtney Gregoire, and Jennifer Costanza)
- Email notice to NOAA employees regarding document retention policy and duty to cooperate with IG investigations.

**Materials:**

- Talking Points. (*Winer*)
- Q/As. (*Winer*)
- News release. (*Kenney*)
- Email message from Schwaab to employees (*NMFS//Bryant*)

**Timeline:**

**1-2 days before release**



- Notify DoC of pending roll out

### **Tuesday, April 6, 2010**

- Draft talking points regarding inquiry on status of release of IG report and disseminate to leadership (*Winer*)
- Receive and review IG report on shredding (*Schwaab, Schiffer, Winer*)
- Evaluate IG report legal implications (*DoC General Counsel's Office*)
- Provide IG report to DOC/GC for legal analysis regarding release (*Schiffer*)
- Determine strategy/advisability/legality of releasing IG report and sending all hands message regarding document retention (*Schwaab, Schiffer, and Winer*)
- Schedule meeting of all interested roll out personnel to finalize roll out strategy (*Winer*)
- Revise Talking Points and Q/As based on review of IG report (*Winer*)
- Draft media statement for Eric Schwaab (*Kenney/Smullen*)
- Draft email message to NOAA Fisheries headquarters, Northeast Region, Northeast Science Center, all OLE agents and GC Enforcement and Litigation attorneys (*Smullen*)
- Work on logistics of Schwaab/Oliver phone call to OLE agents (*Allen*)
- Justin Kenney and Stephanie Hunt designated as spokespersons on inquiries regarding report
- Notify Reich, Gregoire and Costanza about IG findings and Dale Jones status (*Winer*)
- Notify Cam Kerry regarding IG findings and Dale Jones status (*Schiffer*)

### **Wednesday, April 7, 2010**

- Discuss strategy for release of IG report with NOAA leadership and finalize roll out planning (*Schwaab, Schiffer, and Winer*)
- Finalize Talking Points, Q/As, media advisory, and email message to staff (*Winer, Kinney, Smullen, and Allen*)
- Draft email to staff regarding document retention and cooperation with IG investigations (*Glackin*)
- Consult with DoC regarding potential notice to National Archives and Record Administration regarding document destruction (*Glackin/Schiffer*)
- Set up Member calls for Thursday (*Hunt*)
- Review roll out plan, talking points and Q&As

### **Thursday, April 8, 2010**

- Eric Schwaab to call Snowe, Kerry, Reed, Frank, Tierney, and Kucinich to inform of results of IG review and NOAA response. (*Hunt*)
- Legislative Affairs to call staff of House Natural Resources Committee, Senate Commerce Committee, House Oversight Committee to inform of results of IG review and NOAA response. (*Hunt*)
- Legislative Affairs calls to additional Congressional staff and other elected officials to inform of results of IG review and NOAA response. (*Hunt/Belton*)
  - Senators Collins, Whitehouse, Hagan, Burr, Begich, Inouye, Cantwell

- Approps Committee staff (Jer Weirich, Margaret Cummisky, Lila Helms, Adrienne Simonson) *(Hallberg)*
- Representatives Pingree, Delahunt, Shea-Porter, McIntyre, Cassidy, Jones *(Hunt)*
- Governor Patrick, Gloucester Mayor Kirk, New Bedford Mayor Lang *(Belton)*
- Legislative Affairs to inform Kenney/Winer that Hill calls are complete *(Hunt)*

**11:00 a.m. (following notification from Legislative Affairs)**

- Eric Schwaab media statement released with IG report (TBD) *(Kenney/Smullen)*
- Eric Schwaab email to NMFS and GCEL personnel nationwide. *(Kinney/Allen/Bryant)*
- All Hands email regarding NOAA document retention policy and cooperation with IG investigations *(Glackin)*
- Eric Schwaab and John Oliver conference call with OLE staff *(Allen)*
- Constituent calls:
  - NGOs: Lee Crockett (Pew), Don Barry (EDF), and Ellen Bolen (Ocean Conservancy) *(Kenney/Schiffer/Winer)*
  - State Marine Fish Directors(s) George Lapointe, Paul Diodoti *(Schwaab)*
  - NE Fishery Management Council Paul Howard and John Pappalardo *(Schwaab)*
  - Commercial Fishing Industry: Andrew Minkiewicz and Bud Walsh *(Winer)*
- Time set aside for principals (Eric Schwaab/Lois Schiffer) to return calls from reporters.