

WPRFMC's Governance of Western Pacific Sustainable Fisheries Fund Awards Was Inadequate

FINAL REPORT NO. OIG-22-004-A

NOVEMBER 10, 2021



U.S. Department of Commerce
Office of Inspector General
Office of Audit and Evaluation



November 10, 2021

Kitty Simonds
Executive Director
Western Pacific Regional Fishery Management Council
1164 Bishop Street, Suite 1400
Honolulu, Hawaii 96813

Dear Executive Director Simonds:

Enclosed is the final audit report concerning the National Oceanic and Atmospheric Administration's (NOAA's) Western Pacific Sustainable Fisheries Fund (WPSFF) financial assistance awards to the Western Pacific Regional Fishery Management Council (WPRFMC).

We evaluated and considered your August 27, 2021, response to the draft report as well as the documentation you provided on August 31, 2021, and September 1, 2021. Your entire response appears in the report as appendix C. A synopsis of your response and our comments have also been included in the report. A public version of this final report will be posted on OIG's website pursuant to sections 4 and 8M of the Inspector General Act of 1978, as amended (5 U.S.C. App., §§ 4 & 8M).

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

Your complete response will be considered by NOAA in arriving at a decision on what actions to take with respect to the findings and recommendations in the audit report. Enclosure I explains the administrative dispute procedures.

Your response to this report must be submitted no later than 30 days from the date of this letter. There will be no extensions to this deadline. If you do not submit a response within the required timeframe, you will have no other opportunity to submit comments, arguments, or documentation before NOAA makes a decision on the audit report.

Please send your response (including documentary evidence) to:

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

Please also send a copy of your response (including any documentary evidence) electronically to Patricia McBarnette, Audit Director, or via mail to:

Patricia McBarnette, Audit Director
U.S. Department of Commerce Office of Inspector General
Room 7077
1401 Constitution Avenue NW
Washington, DC 20230

If you have any questions about the final report or audit process, please contact Patricia McBarnette at (202) 482-3991.

Sincerely,



Richard Bachman
Assistant Inspector General for Audit and Evaluation

Enclosures

cc: Jeffrey Thomas, Director, Acquisition and Grants Office, NOAA
Arlene Porter, Director, Grants Management Division, NOAA
Nadia Musa, Deputy Director, Grants Management Division, NOAA
Michael Tosatto, Regional Administrator, Pacific Islands Regional Office, NOAA
Scott Bloom, Program Officer, Pacific Islands Regional Office, NOAA
Tanisha Bynum-Frazier, Director, Audit and Information Management Office, NOAA
Brian Doss, Alternate Audit Liaison, NOAA
Lisa Lim, Alternate Audit Liaison, NOAA
MaryAnn Mausser, Audit Liaison, Office of the Secretary

NOTICE TO AUDITEES
Financial Assistance Audits

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

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

4. To ensure that audit reports are accurate and reliable, an auditee may have the following opportunities to point out errors (of fact or law) that the auditee believe were made in the audit, to explain other disagreements with audit findings and recommendations, to present evidence that supports the auditee's positions, and to dispute final determinations.
 - *During the audit*, the auditee may bring to the attention of the auditors at any time evidence that the auditee believes affects the auditor's work.
 - *At the completion of the audit on site*, as a matter of courtesy, the auditee is given the opportunity to have an exit conference to discuss preliminary audit findings and recommendations and to present a clear statement of the auditee's position on the significant preliminary findings, including possible cost disallowances.

- *Upon issuance of the draft audit report*, the auditee has the opportunity to comment and submit evidence during the 30-day period after the transmittal of the report. (There are no extensions to this deadline.)
- *Upon issuance of the final audit report*, the auditee is given the opportunity to comment and to present evidence during the 30-day period after the transmittal of the report. (There are no extensions to this deadline.)
- *Upon issuance of the Department's decision* (the "Audit Resolution Determination") on the audit report's findings and recommendations, the auditee has the right to appeal for reconsideration within 30 calendar days after receipt of the determination letter. (There are no extensions to this deadline.) The determination letter will explain the specific appeal procedures to be followed.
- *After an appeal is filed*, or after the opportunity for an appeal has expired, the Department will not accept any further submissions of evidence concerning an auditee's dispute of the Department's decisions on the resolution of the financial assistance audit. If the appeal decision upholds the finding that the auditee owes money or property to the Department as decided in the Audit Resolution Determination, the Department will take appropriate collection action but will not thereafter reconsider the merits of the debt.

There are no other administrative appeals available in the Department.



November 10, 2021

MEMORANDUM FOR: Arlene Porter
Director, Grants Management Division
National Oceanic and Atmospheric Administration

A handwritten signature in blue ink, appearing to be "RB", is written over a horizontal line.

FROM: Richard Bachman
Assistant Inspector General for Audit and Evaluation

SUBJECT: WPRFMC's Governance of Western Pacific Sustainable Fisheries Fund
Awards Was Inadequate
Final Report No. OIG-22-004-A

We are attaching a copy of the subject audit report for your action in accordance with Department Administrative Order (DAO) 213-5, "Audit and Evaluation Resolution and Follow-up." A copy of the report has also been sent to the Western Pacific Regional Fishery Management Council (WPRFMC), which has 30 days from the date of the transmittal to submit comments and supporting documentation to you. A copy of our transmittal letter also is attached.

Our objectives were to determine whether WPRFMC (1) claimed allowable, allocable, and reasonable costs under the financial assistance awards and (2) received the goods and services paid for by the awards.

We have notified WPRFMC that we intend to post a public version of the final report on OIG's website pursuant to sections 4 and 8M of the Inspector General Act of 1978, as amended (5 U.S.C. App., §§ 4 & 8M).

Under DAO 213-5, you have 75 calendar days from the date of this memorandum to reach a decision on the actions that your agency proposes to take on each audit finding and recommendation and to submit an agency resolution proposal to our office. The format for the proposal is Exhibit 3 of the DAO. As applicable, your written proposal must include the rationale and/or legal basis for reinstating any questioned costs in the report and should reference any supporting documentation relied on. Under the DAO, the OIG must concur with your proposal before it can be issued as a final determination and implemented. DAO 213-5 prescribes procedures for handling any disagreements our office may have with your agency's resolution proposal.

Any inquiry regarding this report should be directed to Patricia McBarnette, Audit Director, at (202) 482-3391. All correspondence should refer to the audit report number OIG-22-004-A.

Attachment

cc: Jeffrey Thomas, Director, Acquisition and Grants Office, NOAA
Nadia Musa, Deputy Director, Grants Management Division, NOAA
Michael Tosatto, Regional Administrator, Pacific Islands Regional Office, NOAA
Scott Bloom, Program Officer, Pacific Islands Regional Office, NOAA
Tanisha Bynum-Frazier, Director, Audit and Information Management Office, NOAA
Brian Doss, Alternate Audit Liaison, NOAA
Lisa Lim, Alternate Audit Liaison, NOAA
MaryAnn Mausser, Audit Liaison, Office of the Secretary



Report in Brief

November 10, 2021

Background

The U.S. Pacific Islands of Hawaii, American Samoa, Guam, the Commonwealth of Northern Mariana Islands, and other U.S. Pacific Islands, are home to a diverse population of marine life and robust recreational and commercial fishing industries. In 2015, commercial fishing landed more than 36 million pounds of finfish and shellfish in the Pacific Islands, contributing nearly \$1 billion in sales and 10,000 jobs to the U.S. economy. The Western Pacific Regional Fishery Management Council (the Council) is one of eight regional fishery management councils established in 1976 by the Magnuson-Stevens Fishery Conservation and Management Act. The Council—a non-federal entity comprised of regional representatives and fishery stakeholders—manages fisheries and conservation within the Pacific Islands and the Pacific Islands Regional Exclusive Economic Zone (EEZ). The EEZ accounts for approximately half of the total U.S. EEZ and is comprised of more than 1.7 million square nautical miles, making it the largest managed geographical area within the National Oceanic and Atmospheric Administration (NOAA) fisheries' jurisdiction.

To support the Council's management efforts, Congress created the Western Pacific Sustainable Fisheries Fund (WPSFF). While the WPSFF's function has evolved since its inception, it currently acts as the repository for funds collected from Pacific Insular Area Fishing Agreements, foreign fishing violations, contributions received to support territorial Marine Conservation Plans and arrangements made pursuant to specified fishing agreements with Pacific Islands regional territories.

Why We Did This Review

On August 29, 2019, four members of the U.S. House of Representatives requested that our office, among other things, conduct a detailed audit of WPSFF expenditures. To address this request, our objectives were to determine whether WPRFMC (1) claimed allowable, allocable, and reasonable costs under the financial assistance awards and (2) received the goods and services paid for by the awards.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

WPRFMC'S Governance of Western Pacific Sustainable Fisheries Fund Awards Was Inadequate

OIG-22-004-A

WHAT WE FOUND

We found that the Council and its subrecipients claimed questionable costs of \$1,237,671 in awards WPSFF IV through WPSFF 2019. The Council did not retain adequate support for claimed costs, obtain required approvals from the awarding agency, or properly allocate costs to the WPSFF awards. The subrecipients did not provide adequate documentation to support certain claimed costs and did not spend all federal funds received.

We determined that the Council did not always provide documentation supporting the receipt of goods and services paid for with WPSFF awards. In addition, we identified key areas where the Council's management of WPSFF awards needs improvement.

WHAT WE RECOMMEND

We recommend that the Director of NOAA Grants Management Division do the following:

1. Make a determination on the \$1,237,671 in questioned costs recommended by OIG for recovery.
2. Require the Council to implement internal controls to ensure (a) adequate documentation is retained to support costs claimed, (b) approval from the NOAA Grants Officer, when required, (c) amounts charged to each award directly benefit the award in proportion to the relative benefits received, and (d) payments to subrecipients are based on reimbursement of actual expenses or immediate cash need.
3. Instruct the Council to implement any additional measures necessary to ensure adherence to all applicable financial assistance award requirements.
4. Instruct the Council to retain sufficient evidence to support receipt of deliverables.
5. Require the Council to implement sufficient internal controls to ensure it performs cost or price analysis on procurement contracts, obtains grants officer approval for sole-source contracts where required, and charges reasonable costs to federal awards, both in nature and amount.
6. Instruct the Council to follow all federal requirements when issuing subawards, including reporting requirements, and to avoid making payments on behalf of subrecipients.

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Cover: Herbert C. Hoover Building main entrance at 14th Street Northwest in Washington, DC. Completed in 1932, the building is named after the former Secretary of Commerce and 31st President of the United States.

Introduction

The U.S. Pacific Islands of Hawaii, American Samoa, Guam, the Commonwealth of Northern Mariana Islands (CNMI), and other U.S. Pacific Islands, are home to a diverse population of marine life and robust recreational and commercial fishing industries. In 2015, commercial fishing landed more than 36 million pounds of finfish and shellfish in the Pacific Islands, contributing nearly \$1 billion in sales and 10,000 jobs to the U.S. economy.¹ The Western Pacific Regional Fishery Management Council (the Council) is one of eight regional fishery management councils established in 1976 by the Magnuson-Stevens Fishery Conservation and Management Act (MSA).² The Council—a non-federal entity comprised of regional representatives and fishery stakeholders—manages fisheries and conservation within the Pacific Islands and the Pacific Islands Regional Exclusive Economic Zone (EEZ).³ The EEZ accounts for approximately half of the total U.S. EEZ and is comprised of more than 1.7 million square nautical miles, making it the largest managed geographical area within the National Oceanic and Atmospheric Administration (NOAA) fisheries' jurisdiction.

To support the Council's management efforts, Congress created the Western Pacific Sustainable Fisheries Fund (WPSFF).⁴ While the WPSFF's function has evolved since its inception, it currently acts as the repository for funds collected from Pacific Insular Area Fishing Agreements,⁵ foreign fishing violations, contributions received to support territorial Marine Conservation Plans (MCPs),⁶ and arrangements made pursuant to specified fishing agreements⁷ with Pacific Islands regional territories.

NOAA's National Marine Fisheries Service (NMFS) administers the funds collected to support the WPSFF. When funding becomes available, the Council works with the island territories to develop an application detailing the planned use of the available funding.⁸ Upon issuance of the NOAA grant award or cooperative agreement to the Council, the Council issues contracts and subawards to support the approved projects.

¹ National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Pacific Islands Regional Office. *Pacific Islands* [online]. www.fisheries.noaa.gov/region/pacific-islands (accessed December 10, 2020).

² Magnuson-Stevens Fishery Conservation and Management Act (Pub. L. No. 94-265, as amended).

³ The Council prepares, monitors, and revises fishery management plans within the 200-mile U.S. EEZ in the western and central Pacific Ocean.

⁴ Created under the 1996 MSA reauthorization and codified at 16 U.S.C. § 1824(e)(7).

⁵ Pacific Insular Area Fishing Agreements allow foreign vessels to harvest unused resources within the U.S. EEZ in the U.S. flag territories, U.S. Pacific Remote Island Area, and Hawaii.

⁶ MCPs are fishery management spending plans developed by the territories' governments and approved by the Council and NOAA. MCPs identify major task areas including data collection and monitoring, fishery management, social economic research and assessment, policy development, protected species conservation, public outreach, media activities and products, meeting and event participation, workshops, plans and training, and infrastructure development.

⁷ Specified Fishing Agreements—as identified in 50 C.F.R. § 665.819(c)—are agreements between participating territories and the owner or representative of a fishing vessel or vessels holding a valid permit.

⁸ The MSA requires WPSFF awards to be provided to the Council. See 16 U.S.C. § 1824(e)(7)(A).

Between fiscal years 2010 and 2019, the Council received nine WPSFF grants and two cooperative agreement awards totaling approximately \$7.4 million. Table I summarizes all WPSFF awards to the Council. These funds supported regional and territory-specific projects, such as research and assessment, statistical estimation models, training, education, public outreach, and infrastructure development.

On August 29, 2019, Congress requested that our office,⁹ among other things, conduct a detailed audit of WPSFF expenditures.¹⁰ This report describes the results of our audit.

Table I. Summary of WPSFF Grants and Cooperative Agreements

Award Number	Award Name	Award Period	Award Type	Award Amount ^c
NAI0NMF4410467 ^b	WPSFF	August 1, 2010 – July 31, 2012	Cooperative Agreement ^a	\$883,444
NAI1NMF4410270 ^b	WPSFF II	October 1, 2011 – September 30, 2015	Grant	\$1,000,500
NAI2NMF4410217 ^b	WPSFF III	October 1, 2012 – September 30, 2014	Grant	\$1,029,000
NAI4NMF4520236	WPSFF IV	October 1, 2014 – September 30, 2018	Cooperative Agreement	\$2,340,935
NAI5NMF4410418	WPSFF V	October 1, 2015 – September 30, 2018	Grant	\$175,000
NAI6NMF4410127	WPSFF VI	May 1, 2016 – April 30, 2017	Grant	\$200,000
NAI6NMF4410196	WPSFF VII	July 1, 2016 – June 30, 2019	Grant	\$123,000
NAI7NMF4410065	WPSFF VIII	June 1, 2017 – September 30, 2018	Grant	\$250,000
NAI7NMF4410166	WPSFF IX	October 1, 2017 – September 30, 2020	Grant	\$400,000
NAI8NMF4410307	WPSFF X	October 1, 2018 – September 30, 2021	Grant	\$511,600
NAI9NMF4410269	WPSFF 2019	August 1, 2019 – September 30, 2022	Grant	\$502,000

Source: OIG analysis of approved financial assistance awards

^a Use of a cooperative agreement allows NMFS to have increased involvement in funded activities.

^b Three WPSFF awards were beyond the required record retention period and were not included in this audit.

^c All WPSFF awards are 100 percent federally funded and do not require matching funds from the Council.

⁹ On August, 29, 2019, our office received a letter from four members of Congress: (1) Representative Raul M. Grijalva, Chairman, House Committee on Natural Resources; (2) Representative Jared Huffman, Chairman, Subcommittee on Water, Oceans, and Wildlife, House Committee on Natural Resources; (3) Representative Ed Case; and (4) Delegate Gregorio Kilili Camacho Sablan. The letter requested that our office conduct a detailed audit of WPSFF expenditures, among other things.

¹⁰ *Expenditures* means charges by a non-federal entity to a project or program for which a federal award was received. See 2 C.F.R. § 200.34 (effective December 26, 2014, through February 22, 2021); 2 C.F.R. § 200.1 (effective November 12, 2020, forward).

Objectives, Findings, and Recommendations

The objectives of our audit were to determine whether the Council (1) claimed allowable, allocable, and reasonable costs under the financial assistance awards and (2) received the goods and services paid for by the awards. Appendix A details the objectives, scope, and methodology of our audit.

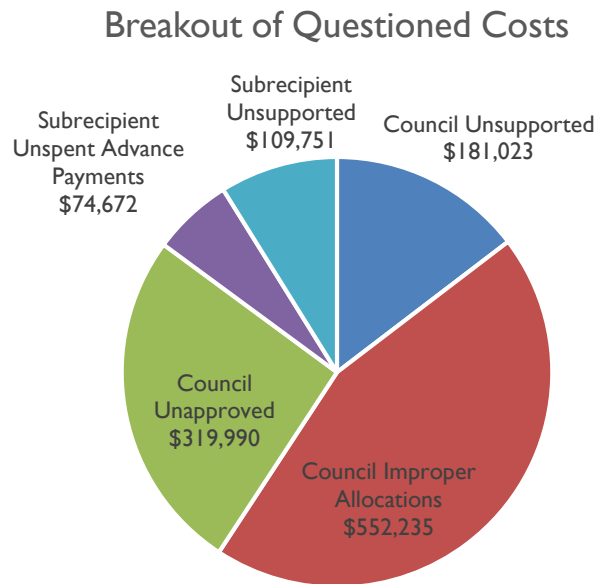
We found that the Council and its subrecipients¹¹ claimed questioned costs of \$1,237,671 in awards WPSFF IV through WPSFF 2019. The Council did not retain adequate support for claimed costs, obtain required approvals from the awarding agency, or properly allocate costs to the WPSFF awards. The subrecipients did not provide adequate documentation to support certain claimed costs and did not spend all federal funds received.

We determined that the Council did not always provide documentation supporting the receipt of goods and services paid for with WPSFF awards. In addition, we identified key areas where the Council's management of WPSFF awards needs improvement.

I. Our Audit Found Questioned Costs of \$1,237,671 in WPSFF Awards

The Office of Management and Budget (OMB) establishes federal cost principles for determining allowable costs for federal awards. We reviewed the Council's financial accounting policies and performed tests to determine whether claimed costs conform to federal cost principles, as well as to the terms and conditions of the WPSFF awards. Overall, we tested \$3,038,496 in claimed costs and found the Council and its subrecipients claimed \$1,237,671 in questioned costs (see figure I and appendix B).

¹¹ *Subrecipient* means a non-federal entity that receives a subaward from a pass-through entity to carry out part of a federal program. See 2 C.F.R. § 200.93 (effective December 26, 2014, through November 11, 2020); 2 C.F.R. § 200.1 (effective November 12, 2020, forward).

Figure 1. Summary of \$1,237,671 in Questioned Costs on WPSFF Awards

Source: OIG analysis of WPSFF costs claimed by the Council

A. The Council claimed \$1,053,248 in questioned costs

Federal cost principles require the Council to adequately document award expenses,¹² obtain approval for certain non-employee participant and pre-award costs,¹³ allocate costs to federal awards according to relative benefits received,¹⁴ and ensure costs are reasonable.¹⁵ We reviewed the Council's accounting records and performed testing to determine whether claimed costs met these requirements. As a result of our work, we question \$1,053,248 in costs claimed by the Council.

- I. The Council claimed costs totaling \$181,023, which were not supported by adequate documentation. Costs claimed on a financial assistance award must be adequately documented to be considered allowable.¹⁶ The Council is required to maintain all financial records, all supporting documents, and all other records relevant to its federal awards for a period of 3 years after submission of the award's final financial

¹² For costs to be allowable, they must be adequately documented. See Office of Management and Budget, May 10, 2004. *Cost Principles for Non-Profit Organizations*, OMB Circular A-122. Washington, DC: OMB, attachment A, sec. A.2.G.; 2 C.F.R. § 200.403(g) (effective December 26, 2014, forward).

¹³ OMB Circular A-122, attachment B.33 and .36; 2 C.F.R. § 200.407 (effective December 26, 2014, forward).

¹⁴ A cost is allocable to a particular cost objective in accordance with relative benefits received. See OMB Circular A-122, attachment A, sect. A.4; 2 C.F.R. § 200.405(a) (effective December 26, 2014, forward).

¹⁵ OMB Circular A-122, attachment A, sect. A.3; 2 C.F.R. § 200.404 (effective December 26, 2014, forward).

¹⁶ OMB Circular A-122, attachment A, sect. A.2.g; 2 C.F.R. § 200.403(g) (effective December 26, 2014, forward).

report to NOAA.¹⁷ However, the Council could not provide adequate documentation to support \$181,023 of claimed costs. The Council either did not maintain the original cost records or was not aware of the supporting details needed to support costs claimed against WPSFF awards. Without adequate supporting documentation, the Council could not demonstrate that claimed costs were allowable, allocable, and reasonable. As a result, we question \$181,023 of claimed costs as unsupported. Specifically:

- \$95,022 for supply costs were transferred from an older award, but the Council did not retain the supporting documentation of the original costs. This transfer also required NOAA's approval to be allowable.¹⁸
 - \$66,001 in claimed costs were not adequately supported; specifically, \$38,938 in travel costs, \$13,063 in administrative costs, \$4,000 in scholarship awards, and \$10,000 to conduct a fishing festival. The Council's supporting records lacked sufficient cost details to determine if the costs met the applicable award terms and conditions. For example, documentation provided for the fishing festival gave a general description of the event, but did not specifically detail what was paid for and at what price. Consequently, the Council could not demonstrate that the costs were allowable.
 - \$20,000 was paid to a contractor by the Council on behalf of a subrecipient;¹⁹ however, the related contract did not include this expenditure made by the Council.
2. *The Council claimed \$319,990 in costs without obtaining the necessary approvals from NOAA. Approval is required for certain expenditures to be considered allowable, such as payments for non-employee travel costs for conferences or training,*²⁰

¹⁷ When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period is 3 years and starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. See 15 C.F.R. § 14.53(b) (rescinded effective December 25, 2014); 2 C.F.R. § 200.333 (effective December 26, 2014, through November 11, 2020); 2 C.F.R. § 200.334 (effective November 12, 2020, forward).

¹⁸ Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions. See OMB Circular A-110, subpart C.25(b); 2 C.F.R. § 200.308(b) (effective December 26, 2014, forward).

¹⁹ Although the Council provided an invoice, at that time there was no basis for the invoice. The expenditure was not included in the subsequently signed contract with the contractor and represents an unsupported overpayment of the contract. Furthermore, the expense is also unallowable since it occurred prior to the allowed period of availability for WPSFF 2019.

²⁰ Participant support costs, such as stipends, are allowable with the prior approval of the awarding agency. See OMB Circular A-122, attachment B.33; 2 C.F.R. § 200.456 (effective December 26, 2014, forward).

payments made to another federal agency,²¹ pre-award costs,²² or deviations from the approved scope or objective of the projects.²³ The Council was not aware that certain expenditures required NOAA's written approval to be allowable expenses for a federal award. As a result, we question \$319,990 of claimed costs. The unapproved payments included the following:

- \$42,966 for non-employee conference participant travel.
 - \$119,357 issued to a federal agency. The Council claimed to have NOAA's pre-approval, but only requested to reprogram funds remaining after the expenditure was made.
 - \$132,612 for costs incurred prior to the start date of the award.
 - \$25,055 for costs outside the scope of the approved award budgets.
3. *The Council claimed costs of \$552,235 that were improperly allocated to WPSFF awards.* To be allowable, costs must be allocated to federal awards in relation to the relative benefits received from the purchased goods and services. If a cost benefits two or more federal awards in proportions that can be determined without undue effort or cost, it must be allocated to the awards based on the proportional benefit.²⁴ In addition, costs allocable to a particular federal award may not be reallocated to another award to overcome fund deficiencies.²⁵ However, the reallocated expenses of \$552,235 were not in the Council's approved WPSFF award budgets, and documentation was not provided establishing the benefit received to the WPSFF awards in relation to the proportion charged to the awards. Further, the Council believed that moving funds between awards was allowable if less than 10 percent of the total award.

We found improperly allocated claimed costs of \$552,235 for administrative costs allocated to WPSFF awards without sufficient basis, including a \$115,000 year-end contribution to employee 401k plans, \$108,341 for office rent, and \$271,121 for employee compensation for the Council. Because the Council did not fully

²¹ U.S. Department of Commerce, April 2019. *Department of Commerce Financial Assistance Standard Terms and Conditions*, G.05.f.2. Washington, DC: DOC. A non-federal entity or its contractor may not issue a subaward, contract, or subcontract of any part of a Department award to any agency or employee of the Department or to other federal employee, department, agency, or instrumentality, without the advance prior written approval of the Department's Grants Officer.

²² Pre-award costs are allowable if they would have been allowable after the date of the award and with the written approval of the awarding agency. See OMB Circular A-122, attachment B.36; 2 C.F.R. § 200.458 (effective December 26, 2014, forward).

²³ For non-construction federal awards, recipients must request prior approval from the federal awarding agency for a change in the scope or objective of the project or program, even if there is no associated budget revision requiring prior written approval. See OMB Circular A-110, subpart C.25(c); 2 C.F.R. § 200.308(c) (effective December 26, 2014, forward).

²⁴ OMB Circular A-122, attachment A, sect. A.4.a; 2 C.F.R. § 200.405(d) (effective December 26, 2014, forward).

²⁵ OMB Circular A-122, attachment A, sect. A.4.b; 2 C.F.R. § 200.405(c) (effective December 26, 2014, forward).

understand the federal requirements, improper cost allocations occurred. As a result, we question \$552,235 in costs improperly allocated to WPSFF awards.

B. Subrecipients claimed \$184,423 in questioned costs

Department of Commerce Financial Assistance Standard Terms and Conditions requires that subrecipients follow the provisions of the award, including applicable cost principles and administrative and audit requirements.²⁶ Specifically, subrecipients should (1) provide OIG with access to records for audit purposes,²⁷ (2) adequately document expenses,²⁸ and (3) limit the use of funds to allowable costs.²⁹ The Council awarded seven subawards to three subrecipients totaling \$1,086,687 in WPSFF awards III through WPSFF 2019. We selected all expenditures from all seven subawards for audit and identified \$184,423 in questioned costs.

1. *One subrecipient did not adequately support costs claimed totaling \$109,751.* CNMI's Department of Land and Natural Resources (DLNR) claimed costs of \$109,751 for one subaward, but did not provide any supporting documentation. As a result, we questioned \$109,751 of claimed costs as unsupported.
2. *Advance payments to subrecipients were not spent timely in accordance with federal requirements.* Advance payments from the federal government to a grantee or subrecipient must be limited to the minimum amounts needed and be timed as close as possible to the actual disbursements.³⁰ However, the Council did not limit advance payments to subrecipients to the immediate cash requirements for carrying out purposes of the program or project. The Council did not understand federal requirements and instead, prioritized quick disbursement of the funds to the subrecipients without documentation of funds actually spent or the immediate need for the funds.

As described in table 2, our analysis found that subrecipients took between an average of 115 to 756 days after receiving funds from the Council to expend the subaward funds. Furthermore, four of the subawards received funds from the Council that were not spent as of the end of the subaward period of performance. In addition, two active subawards received funds that had not been spent as of the time of our audit fieldwork, after being held by the subrecipients for more than

²⁶ *Department of Commerce Financial Assistance Standard Terms and Conditions*, 2014, p. 4. The guidance is consistent in the March 2017 and April 2019 revisions to the *Department of Commerce Financial Standard Terms and Conditions*.

²⁷ 15 C.F.R. § 14.53(b) and (e) (rescinded effective December 25, 2014); 2 C.F.R. § 200.333 and 2 C.F.R. § 200.336 (effective December 26, 2014, through November 11, 2020); 2 C.F.R. § 200.334 and 200.337 (effective November 12, 2020, forward).

²⁸ OMB Circular A-122, attachment A, sect. A.2.g; 2 C.F.R. § 200.403(g) (effective December 26, 2014, forward).

²⁹ OMB Circular A-122 contains basic guidelines for allowable costs, such as necessity, allocability, and reasonableness. As of December 26, 2014, these requirements are in 2 C.F.R. § 200.403.

³⁰ 15 C.F.R. § 14.22(b) (rescinded effective December 25, 2014); 2 C.F.R. § 200.305(b)(1) (effective December 26, 2014, forward).

250 days for one subrecipient and almost 600 days for the other subrecipient.³¹ We therefore question \$74,672 in unspent funds as not necessary for the performance of the award.

Table 2. Summary of Subrecipient Advance Payments and Unspent Funds

Award Name	Subaward Amount	Days Spent Funds Were Held ^a	Subaward End Date	Unspent Funds
WPSFF IV	\$194,000	756	September 30, 2018	\$49,630 ^b
WPSFF IV	\$15,000	—	September 30, 2018	\$15,000 ^b
WPSFF IV	\$121,500	180	September 30, 2017	\$11,749 ^b
WPSFF X	\$250,000	199	June 30, 2021	\$21,304
WPSFF 2019	\$56,187	115	August 15, 2022	\$53,318
WPSFF VI	\$200,000	322	April 30, 2017	—
WPSFF VIII	\$250,000	327	September 30, 2018	\$50
Total	—	—	—	\$151,051
Funds Returned	—	—	—	<\$76,379> ^b
Questioned Costs	—	—	—	\$74,672

Source: OIG analysis of subrecipient data

^a Calculated as the average number of days between funds being paid to subrecipients by the Council and disbursements made by the subrecipients.

^b As a result of the draft audit report, the Council obtained reimbursement from subaward recipients and returned the funds to NOAA (see the summary of auditee response and OIG comments). We have removed the funds returned to NOAA from the questioned costs.

Recommendations

We recommend that the Director of NOAA Grants Management Division do the following:

1. Make a determination on the \$1,237,671 in questioned costs recommended by OIG for recovery.
2. Require the Council to implement internal controls to ensure (a) adequate documentation is retained to support costs claimed, (b) approval from the NOAA Grants Officer, when required, (c) amounts charged to each award directly benefit the award in proportion to the relative benefits received, and (d) payments to subrecipients are based on reimbursement of actual expenses or immediate cash need.

³¹ Calculated as the number of days between funds being paid to subrecipients by the Council and the date of expenditure data provided to OIG by the subrecipients.

3. Instruct the Council to implement any additional measures necessary to ensure adherence to all applicable financial assistance award requirements.

II. Verification and Documentation of Certain Deliverables Was Inadequate

The Council is required to maintain records identifying the application of federally funded activities and assets.³² Furthermore, the Council's *Personnel and Procedures Handbook* states that before payment can be made to a vendor, the Council must have written evidence that the purchased items were received.³³ Throughout our expenditure testing, we requested documentation demonstrating the Council received goods and services paid for with WPSFF funds. We found that despite the Council having a requirement to receive proof of deliverable prior to payment, of the 31 contracts and expenditures for goods and services tested, we identified five totaling \$53,577 where the Council was not able to provide documentation or evidence that the goods purchased were received (see table 3).

Table 3. Summary of Costs Lacking Documentation of Deliverable

Deliverable	Claimed Cost
2015 Lunar Calendars	\$15,969
2017 Lunar Calendars	\$15,277
Report on Exploratory Data Analytics	\$10,525
Seven Custom Fish Sorting Tables	\$8,806
High School Summer Course Supplies	\$3,000

Source: OIG analysis of Council records

Without adequate documentation of certain deliverables, the Council is unable to demonstrate that it received the deliverables paid for, and federal award funds may have paid for deliverables which were not received or satisfactory.

Recommendation

We recommend that the Director of NOAA Grants Management Division do the following:

4. Instruct the Council to retain sufficient evidence to support receipt of deliverables.

³² Records must adequately identify the source and application of funds for federally funded activities. These records must contain information pertaining to federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income, and interest, and also be supported by source documentation. See OMB Circular A-110, subpart C.21(b); 2 C.F.R. § 200.302(b)(3) (effective December 26, 2014, forward).

³³ Western Pacific Regional Fishery Management Council, October 2009. *Personnel and Procedures Handbook*. Honolulu, HI: WPRFMC, sect. 7.1.1.a. The guidance is consistent in the April 2017 revision and April 2019 draft revision to the *Personnel and Procedures Handbook*.

III. Management of WPSFF Awards Needs Improvement

We found that the Council and subrecipients did not follow competitive procedures to ensure contracts and general expenditures did not exceed what would be incurred by a prudent person at the time of the expense. Furthermore, despite the Council reporting the agreements with territories as subawards, the Council improperly treated these agreements as contracts. The Council also paid vendors directly on behalf of subrecipients.

A. *The Council and subrecipients did not follow competitive procurement requirements*

Costs claimed for federal awards must be reasonable in nature and amount, not exceeding what would be incurred by a prudent person at the time of the expense.³⁴ Award terms and conditions require the Council and subrecipients to conduct procurement transactions in a manner that provides full and open competition³⁵ and maintains records detailing the rationale for the procurement method and the basis for the contract price.³⁶ In addition, NOAA must approve contracts in excess of \$100,000 awarded on a noncompetitive basis.³⁷ However, we found the Council and subrecipients did not always establish that the procurement method and costs charged to federal awards were fair and reasonable. Both the Council and two subrecipients did not have an adequate understanding of federal procurement requirements and could not provide documentation demonstrating that certain contracts and general expenditures underwent price analyses, cost comparisons, or faced adequate competition. Specifically:

- The Council awarded four contracts totaling \$185,560 without conducting a price analysis. All of these contracts were awarded noncompetitively (sole-source awards) without satisfying the requirements for noncompetitive procurement.³⁸ For example, a contract totaling \$52,977 was awarded for video monitoring. The Council documented a sole-source justification for selecting the chosen contractor, but the justification did not demonstrate that it met one of the four instances of allowable noncompetitive procurement. The Council also

³⁴ OMB Circular A-122, attachment A, sect. A.3; 2 C.F.R. § 200.404 (effective December 26, 2014, forward).

³⁵ 15 C.F.R. § 14.43 (rescinded effective December 25, 2014); 2 C.F.R. § 200.319(a) (effective December 26, 2014, forward).

³⁶ 15 C.F.R. § 14.46 (rescinded effective December 25, 2014); 2 C.F.R. § 200.318(i) (effective December 26, 2014, and forward).

³⁷ NOAA, August 2010. *NOAA Administrative Standard Award Conditions*. Washington, DC: NOAA, attachment B, p. 17. This document was revised to *NOAA Financial Assistance Administrative Terms* on April 21, 2016, and December 13, 2017.

³⁸ Procurement by noncompetitive proposals may be used only when one or more of the following circumstances apply; (1) the item is available only from a single source; (2) the public exigency or emergency for the requirement will not permit a delay resulting from the competitive solicitation; (3) the federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request; (4) after solicitation of a number of sources, competition is determined inadequate. See 15 C.F.R. § 14.43 (rescinded effective December 25, 2014); 2 C.F.R. § 200.320(f) (effective December 26, 2014, through November 11, 2020); 2 C.F.R. § 200.320(c) (effective November 12, 2020, forward and also adding the circumstance of where the aggregate purchase of property or services does not exceed the micro-purchase threshold).

could not provide evidence that a price comparison or analysis was performed to determine whether the agreed upon price was reasonable.

- The Council charged \$440,382 for goods and services to WPSFF awards, without evidence of the required price competition, bids, or rate quotations.³⁹
- One subrecipient—CNMI's DLNR—awarded a \$354,526 contract on a sole-source basis. The subrecipient identified several potential vendors; however, its sole source justification did not demonstrate it met any of the four instances of allowable noncompetitive procurement. Furthermore, it had not obtained prior approval from NOAA as required for sole-source contracts exceeding \$100,000.
- Two subrecipients executed change orders to existing construction contracts that were outside the scope of the original procured projects. Guam's Department of Agriculture awarded two change orders totaling \$450,000 to an existing construction contract originally totaling \$549,370. CNMI's DLNR also awarded a \$20,840 construction extension as a change order to a construction contract originally totaling \$88,911. In addition, neither subrecipient took steps to determine the reasonableness of the change order amounts.

B. The Council treated subawards improperly

Grantees that pass-through funds to subrecipients must ensure that (1) every subaward is clearly identified as a subaward to the subrecipient and (2) provide available information to describe the federal award and subaward.⁴⁰ The Council labeled agreements with Guam, American Samoa, and CNMI as subawards and reported the agreements to NOAA and Congress as subawards;⁴¹ however, the Council treated the agreements as contracts, not as subawards.^{42,43} The Council did not understand federal guidance for and the distinction between subawards and contracts, leading to the incorrect treatment of subawards and exclusion of required disclosures. We tested seven subawards awarded to three subrecipients and found that:

³⁹ 15 C.F.R. § 14.43–45 (rescinded effective December 26, 2014); 2 C.F.R. § 200.320(b), (c), and (d) (effective December 26, 2014, through November 11, 2020); 2 C.F.R. § 200.320(a) and (b) (effective November 12, 2020, forward).

⁴⁰ *Department of Commerce Financial Assistance Standard Terms and Conditions*, 2013, 1.02; 2 C.F.R. § 200.331(a) (effective December 26, 2014, through November 11, 2020); 2 C.F.R. § 200.332(a) (effective November 12, 2020, forward).

⁴¹ NOAA GMD reviewed the eight agreements labeled by the Council as subawards and deemed seven to be subawards and one to be a contract based on the nature of the agreements.

⁴² A subaward is for the purpose of carrying out a portion of a federal award and creates a federal assistance relationship with the subrecipient. See OMB Circular A-110, appendix A, subpart A(gg); 2 C.F.R. § 200.330(a) (effective December 26, 2014, through November 11, 2020); 2 C.F.R. § 220.331(a) (effective November 12, 2020, forward).

⁴³ A contract is for the purpose of obtaining goods and services for the non-federal entity's own use and creates a procurement relationship with the contractor. See OMB Circular A-110, appendix A, subpart A(h); 2 C.F.R. § 200.330(b) (effective December 26, 2014, through November 11, 2020); 2 C.F.R. § 200.331(b) (effective November 12, 2020, forward).

- The Council made payments to these subrecipients based on contractual benchmarks instead of reimbursing the actual expenses incurred or immediate cash needs.⁴⁴
- All seven subaward agreements did not identify provisions of the federal awards that subrecipients were required to comply with, such as the OMB Uniform Guidance, *DOC Financial Assistance Standard Terms and Conditions*, and *NOAA Administrative Award Conditions*.⁴⁵
- All seven subaward agreements did not require subrecipients to report the subawards in their annual Schedule of Expenditures of Federal Awards (SEFAs) for possible inclusion in audits of federal financial assistance. Consequently, two of the three subrecipients did not include WPSFF subawards in annual SEFAs, resulting in inaccurate SEFA amounts.⁴⁶

C. *The Council paid vendors directly on behalf of subrecipients*

The Council made five payments totaling \$393,347 directly to vendors on behalf of WPSFF subrecipients. We found that the documentation available to support all five payments lacked information describing how making the payment would affect subawards or each entity's responsibility for compliance with applicable terms and conditions.⁴⁷ Making payments on behalf of subrecipients could lead to confusion regarding which entity will ensure compliance with applicable award terms and conditions. For example, in one instance it was unclear whether the Council or the subrecipient was responsible for the procurement process. The Council indicated that payment to the vendor was made to expedite the process and provide the Council's expertise. However, making payments directly to vendors as a third party could put these payments at higher risk of noncompliance with federal award requirements and should be avoided.

Recommendations

We recommend that the Director of NOAA Grants Management Division do the following

5. Require the Council to implement sufficient internal controls to ensure it performs cost or price analysis on procurement contracts, obtains grants officer approval for sole-source contracts where required, and charges reasonable costs to federal awards, both in nature and amount.

⁴⁴ OMB Circular A-110, subpart A, sect. C.22(b); 2 C.F.R. § 200.305(b), (b)(1), (b)(3) (effective December 26, 2014, forward).

⁴⁵ *Department of Commerce Financial Assistance Standard Terms and Conditions*, 2013, 1.02.a. The guidance is consistent with subsequent revisions to the *Department of Commerce Financial Standard Terms and Conditions*.

⁴⁶ The auditee must prepare a schedule of expenditures of federal awards for the period covered in their financial statements which must include the total federal awards expended as determined in accordance with 2 C.F.R. § 200.502. See OMB Circular A-133, subpart C.310(b); 2 C.F.R. § 200.510(b) (effective December 26, 2014, forward).

⁴⁷ These costs were already questioned in previous findings, due to other issues identified in the payments.

6. Instruct the Council to follow all federal requirements when issuing subawards, including reporting requirements, and to avoid making payments on behalf of subrecipients.

Summary of Auditee Response and OIG Comments

On August 27, 2021, we received the Council's response to our draft report. In addition, on August 31, 2021 and September 1, 2021, the Council provided additional documentation for certain items described in its response.

The Council's response provided explanations and rebuttals for each finding and recommendation included in the draft report, as well as corrective actions planned or taken. However, the response did not always specifically state agreement or disagreement with the findings and recommendations. We have summarized the Council's response and provided our comments within this section of the report, and updated other sections of the report as needed based on the Council's response. Appendix C of this report includes the Council's complete response.

Finding I. The Council and Its Subrecipients Claimed Unallowable Costs of \$1,428,016

The Council requested that claimed costs identified as "unallowable" in finding I be reclassified as "questioned costs." Based on the Council's requests, we modified the title of finding I and subfindings A and B. Costs included in this finding did not meet the requirements for allowability as described in the report; therefore, we are questioning costs.

A. \$1,167,214 in Council unallowable costs

- I. The Council claimed costs totaling \$181,623, which were not supported by adequate documentation

Council comments

The Council provided explanations for each unsupported item noted in this finding and asserted that all costs were appropriate, reasonable, and used for their intended purpose. The Council asserted that invoices supporting \$95,022 that was transferred from an expired award were not retained past the required retention period. In addition, the Council provided additional documentation for \$600 in administrative costs, \$10,000 in fishing festival costs, and \$4,000 in scholarship costs. Further, the Council specifically disagreed that the \$4,000 in scholarship costs were unsupported.

OIG comments

We reviewed the documentation provided by the Council and reduced questioned costs related to administrative costs by \$600. However, the provided documentation related to the fishing festival and scholarship costs lacked sufficient detail to demonstrate costs were used in accordance with award requirements. Additionally, transferring costs to a new award changed the required retention period for the invoices and the Council should have maintained the documentation in accordance with

the new award. No other documentation was provided for other unsupported costs. Thus, we reaffirm the remaining questioned costs of \$181,023.

2. The Council claimed \$433,356 in costs without obtaining the necessary approvals from NOAA

Council comments

The Council requested that costs identified in this section be reclassified as “questioned costs.” The Council stated that changes to internal controls are being made to improve oversight and administration, and that all costs were appropriate and allocable, and would reasonably have been approved by NOAA if asked. The Council did not agree that costs related to WPSFF 2019 fell outside the period of availability and provided a new assertion that the start date of WPSFF 2019 had been changed from October 1, 2019 to August 1, 2019. Further, the Council disagreed with our finding related to costs outside the scope of approved budgets and claimed to have provided documentation demonstrating the costs were allowable, reasonable, and allocable under the WPSFF award and the Council’s 5-year program.

OIG comments

We confirmed that NOAA Grants Management Division (GMD) approved the amended start date for WPSFF 2019 and removed that payment of \$113,366 from the questioned costs. We reaffirm the remaining questioned costs of \$319,990 due to lack of NOAA approval.

3. The Council claimed costs of \$552,235 that were improperly allocated to WPSFF awards

Council comments

The Council again requests that costs identified in this section be reclassified as “questioned costs.” The Council also stated that it had received prior grants management guidance that an appropriate percentage (15 to 25 percent) from additional awards should be allocated to support staff and resources. In addition, the Council’s internal handbook authorized the Council to receive 15 percent of each grant to cover costs associated with administering awards.

OIG comments

As described in the finding, allowable costs should be consistent with those in the approved award budget and must be charged in accordance with the benefit received by the award. The Council did not provide additional documentation demonstrating \$115,000 in year-end contribution to employee 401k plans, \$271,121 for employee compensation, and \$108,341 for office rent met either requirement. Therefore, we reaffirm the questioned costs.

B. Subrecipients claimed \$260,802 in unallowable costs*Council comments*

The Council disagreed with the finding for unsupported costs of \$109,751 and claimed to have provided OIG with sufficient documentation during the audit. The Council agreed that funds related to the WPSFF IV subawards remained unspent and provided documentation demonstrating reimbursement from subaward recipients and payment to NOAA. The Council stated it requested unspent funds be returned for WPSFF VIII. However, the Council did not agree with questioned costs of \$21,304 from WPSFF X and \$53,318 from WPSFF 2019 as both remain open awards extended until September 30, 2021.

OIG comments

While the Council did provide some documentation for the unsupported costs, the documentation did not include vendor invoices supporting the payments questioned. Therefore, we reaffirm our conclusion that claimed costs of \$109,751 are unsupported.

We made changes to the report to reflect the reimbursement of unspent WPSFF IV funds to NOAA. The Council did not provide additional documentation supporting their assertions related to WPSFF X, WPSFF 2019, and WPSFF VIII. As described in the finding, advanced funds should be provided to subrecipients to reimburse expenses made or provide for immediate cash needs. Therefore, we reaffirm the remaining questioned costs and our conclusion that the claimed costs were not necessary for the performance of the award.

Finding II. Verification and Documentation of Certain Deliverables Was Inadequate*Council comments*

The Council agreed that documentation demonstrating receipt of deliverables was not consistent, but disagreed with each instance cited in our report and stated that further documentation had been provided through written, photographic and referenced documentation of project outcomes. The Council also requested that costs associated with the findings be removed as it claimed that deliverables were received and proactive steps are being taken to improve the administrative process for documenting receipts.

OIG comments

Costs for these deliverables are included in the report to provide context, but are not included in questioned costs. The documentation provided by the Council during the audit and in response to the draft report did not clearly evidence that the purchased items were received. Therefore, we reaffirm the finding.

Finding III. Management of WPSFF Awards Needs Improvement*Council comments*

The Council disagrees that it did not follow the competitive procurement requirements for the contracts where sole source justifications were provided. The Council also stated it provided a comparative analysis for vendor selection and vendor selection justification for the sole-source contract by CNMI DLNR. The Council further noted that it provided documentation for all

contracts requested by OIG and that questioned costs for which sole source justifications were used should be removed.

In addition, the Council stated that (1) it is reviewing its Financial Management System Protocols and Guidance procedures, (2) subrecipients will be informed and required to follow relevant OMB, U.S. Department of Commerce (Department), and NOAA guidance, and (3) it has requested NOAA GMD provide training on monitoring awards and projects and participating in joint inspections of subrecipients.

OIG comments

Cost amounts were included in the report for finding III only to provide context and were not included in questioned costs. Further, although the Council provided sole source justifications during the audit, (1) the justifications did not demonstrate that the contracts met one of the four allowable instances of noncompetitive procurement for federal awards and (2) the CNMI DLNR sole-source contract was not approved by NOAA as required. We reaffirm the finding.

Recommendations Related to Findings I, II, and III

Council comments

The Council stated that it will take proactive steps to address our report's findings and recommendations and noted that it operated with integrity to ensure the overall successful outcome for the WPSFF program's projects and activities. The Council also described planned actions to improve internal administration and monitoring of contracts and subawards, including:

- Updating the Council's Financial Management System Protocols and Guidance procedures to address our findings and recommendations.
- Engaging an independent auditor for one year to monitor the Council's administration of awards for compliance with OMB uniform guidance, Department terms and conditions, and NOAA administrative award conditions.
- Informing subrecipients of requirements to follow OMB uniform guidance, Department terms and conditions, and NOAA administrative award conditions.
- Requesting that NOAA GMD host grants training, specifically for Pacific Island Region, and agree to coordinate with the NMFS program officer to monitor awards and projects and participate in joint site inspections to the Pacific Islands regional territories.

OIG comments

We are pleased that the Council plans to take steps to improve its operations of WSPFF awards and monitoring of subrecipients.

Appendix A: Objectives, Scope, and Methodology

In October 2019, we initiated an audit of NOAA financial assistance awards to the Council for the WPSFF. The objectives of the audit were to determine whether the Council (1) claimed costs that were allowable, allocable, and reasonable and (2) received the goods and services paid for by the awards. We also determined whether NOAA provided adequate oversight and monitoring of this program, and will issue a separate memorandum to NOAA.

To accomplish our objectives, we performed the following:

- Reviewed the award-related requirements through the following:
 - Magnuson-Stevens Fishery Conservation and Management Act (MSA), as amended by other laws including the Sustainable Fisheries Act of 1996 (Public Law 104-297)
 - Code of Federal Regulations, Title 2, Part 200, *Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards*
 - Office of Management and Budget, Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*
 - Office of Management and Budget, Circular A-122, *Cost Principles for Non-Profit Organizations*
 - Office of Management and Budget, Circular A-110, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations*
 - Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements
 - Department of Commerce Grants and Cooperative Agreements Manual
 - Department of Commerce Financial Assistance Standard Terms and Conditions
 - Code of Federal Regulations, Title 41, Parts 300-304, *Federal Travel Regulations*
 - Code of Federal Regulations, Title 15, Part 14, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations* (rescinded effective Dec. 25, 2014)
 - Western Pacific Regional Fishery Management Council Personnel and Procedures Handbook
- Accessed the NOAA Grants Online System to obtain and review award applications, including budget narratives and scopes of work, special award terms and conditions, federal financial reports, annual performance reports, and other records in the award files.
- Reviewed transactions recorded in the Council's financial accounting system, staff and contractor timesheets, invoices, proof of payment documentation, and proof of deliverable documents to test for compliance with award terms and conditions.

- Reviewed budget information and the drawdown of funds from NOAA to the Council on provided awards.
- Determined subaward objectives and outcomes by obtaining an understanding of the Council's subrecipient monitoring activities.
- Examined subrecipient data by contacting subrecipient personnel to obtain available financial accounting system data and supporting documentation for expenditures.
- Accessed and reviewed the Council's single audit reports from the Federal Audit Clearinghouse's Image Management System.
- Interviewed Council executive management, key staff, and contractors to gain an understanding of the Council's operations, financial accounting procedures, and oversight of subrecipient costs claimed.
- Interviewed a NOAA grants officer in the NOAA Grants Management Division and program staff at NMFS to gain an understanding of the award recipient responsibilities, the allowability of costs, and NOAA's monitoring of Council operations.

Our audit included a judgmental selection of costs claimed on WPSFF awards IV through 2019.⁴⁸ We chose a judgmental sample selection of 10 contracts, 7 subrecipient awards, 22 general journal entries, 21 general expenditures, and 20 travel costs to test for compliance with applicable award terms and conditions.⁴⁹ This represents \$3,038,496 of the \$3,648,450 of costs claimed by the Council for the awards at the time of audit. We chose the sample items based on risk factors such as recipient, payment amount, and description. Documentation for the selected items was requested from the Council and subrecipients.

During our audit, we assessed the Council's internal controls and compliance with laws and regulations significant to our audit objectives. While we identified and reported on internal control deficiencies, no specific instances of fraud, illegal acts, or abuse were detected during our audit.

We did not solely rely on computer-processed data to perform this audit. We assessed the reliability of data by (1) comparing general ledger data provided with source documentation and (2) interviewing personnel knowledgeable about the data. Based on these efforts, we believe the data were sufficiently reliable for this report.

We conducted our audit from October 2019 to April 2021 under the authority of the Inspector General Act of 1978, as amended (5 U.S.C. App.), and Department Organization Order 10-13, dated April 26, 2013, as amended October 21, 2020. We performed our fieldwork at OIG offices in Washington, DC, Denver, and Seattle.

⁴⁸ Congress requested that OIG include WPSFF expenses dating back to 2012. Federal regulations (currently at 2 C.F.R. § 200.334) limit required document retention to 3 years after the date of submission of the final expenditure report for a federal award. Since awards WPSFF through WPSFF III were past the document retention requirements, these were not included within the scope of our audit.

⁴⁹ As we did not statistically sample transactions, the results of our testing should not be used to project to the population of untested transactions.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix B: Potential Monetary Benefits

	Award Number	Award Name	Questioned Costs	Unsupported Costs
Finding I and Recommendation I	NAI4NMF4520236	WPSFF IV	\$839,323.23	\$260,774.20
Finding I and Recommendation I	NAI5NMF4410418	WPSFF V	\$33,800.60	\$10,000.00
Finding I and Recommendation I	NAI6NMF4410127	WPSFF VI	—	—
Finding I and Recommendation I	NAI6NMF4410196	WPSFF VII	—	—
Finding I and Recommendation I	NAI7NMF4410065	WPSFF VIII	\$50.00	—
Finding I and Recommendation I	NAI7NMF4410166	WPSFF IX	\$17,906.00	—
Finding I and Recommendation I	NAI8NMF4410307	WPSFF X	\$160,660.71	\$20,000.00
Finding I and Recommendation I	NAI9NMF4410269	WPSFF 2019	\$185,930.04	—
Totals	—	—	\$1,237,670.58	\$290,774.20

Source: OIG analysis of WPSFF awards to the Council, including approved budgets and claimed costs

Appendix C: Auditee Response



**Western
Pacific
Regional
Fishery
Management
Council**
August 27, 2021

Ms. Patricia McBarnette, Audit Director
U.S. Department of Commerce Office of Inspector General
Room 7077
1401 Constitution Avenue NW
Washington, DC 20230

RE: Response to Draft Audit of the Western Pacific Sustainable Fisheries Fund authorized by the Magnuson-Stevens Act

Dear Ms. McBarnette:

The purpose of this letter is to provide the Western Pacific Regional Fisheries Management Council's ("the Council") response to your draft report and recommendations dated July 30, 2021 ("Draft Report"). The Council appreciates the opportunity to provide the Office of Inspector General ("OIG") with additional information concerning the Draft Report, and hopes that the enclosed information further clarifies the Council's responses to questions posed by OIG concerning the Council's financial management practices.

The Council oversees a territory of over 1.5 million square miles of ocean areas and U.S. territories, which is the size of the continental United States and constitutes about half of the entire U.S. Economic Exclusion Zone ("EEZ"). This area spans both sides of the equator and both sides of the dateline. The WPRFMC also manages domestic fisheries based in the U.S. Pacific Islands that operate on the high seas. Within this area exist many traditional fishing cultures, including American Samoa, Guam, and the Northern Marianas Islands. This broad geographic range and cultural diversity under the Council's jurisdiction raises challenges for administering programs, and insuring consistent record-keeping. Furthermore, many of island communities under Council jurisdiction possess limited access to goods and services. The Council has historically played an important role in assisting these island communities in obtaining services needed to support the commercial fisheries.

Summary of Draft Report and Council Responses

The Draft Report contains the following three preliminary conclusions:

1. The Council and its Sub-recipients claimed unallowable costs of \$1,428,016 of Western Pacific Sustainable Fishery Fund (WPSFF) awards. Of this amount, the Council claimed \$1,167,214 in unallowable costs, and sub-recipients claimed \$260,802 in unallowable costs;

A Council Authorized by the Magnuson-Stevens Fishery Conservation and Management Act of 1976
1164 BISHOP ST • SUITE 1400 • HONOLULU, HI 96813 USA • TEL (808) 522-8220 • FAX (808) 522-8226 • www.wpcouncil.org

2. The Council's verification and documentation of deliverables was inconsistent; and
3. The Council's management of WPSFF awards needs improvement because the Council and subrecipients did not follow competitive procurement requirements, the Council treated subawards improperly, and the Council paid vendors directly on behalf of subrecipients.

The Council has reviewed the Draft Report, and has compared findings contained in the Draft Report to all prior responses provided by the Council to OIG throughout the field work period. **Exhibit A** to this letter provides an analysis of these draft findings and recommendations, and is structured as follows:

1. The Council first identifies the specific audit records referenced in each finding contained in the report;
2. The Council provides a summary of prior Council responses to OIG inquiries, including both written responses and associated supporting documents; and
3. The Council then provides additional responses and supplementary information to each Draft Report finding and recommendation, following each of the Draft Report's three conclusions.

Council Response Based Upon Draft Findings and Recommendations

The Council has carefully reviewed the draft findings and recommendations presented in the Draft Report and have the following observations. First, the Council notes that no instances of fraud, illegal acts, or abuse were identified during the audit by investigators. This conclusion is of utmost importance to the Council and its Members who rely heavily on Council staff to comply with federal laws and requirements during the implementation of their responsibilities and federal grant programs.

Second, the Council believes the Draft Report has identified the need for the Council to proactively implement improvements in its financial recordkeeping, documentation and management controls. To that end, the Council has directed staff to implement the following proactive measures to improve the Council's verification and documentation of federal awards, and to improve the Council's management of these programs:

1. Contract an independent auditor for a period of one year to monitor the Council's administration of awards for compliance with OMB uniform guidance, DOC terms and conditions and NOAA administrative award conditions. This independent, third party auditor will provide quarterly reports to the Council to track compliance with these requirements. The Council will discuss such reports with the NMFS Program Officer on a quarterly basis to increase coordination and information sharing between the parties;

2. The Council has requested that Grants Management Division host grants training specifically for Pacific Island Region participants to address time zone differences between the East Coast and the Mariana Islands. The Council has confirmed agreement with the NMFS Program Officer to coordinate monitoring of awards and projects and to participate in joint site inspections to the Territories;
3. The Council has confirmed with the NMFS Program Officer that an update to the Council's Financial Management System Protocols and Guidance procedures will be implemented to require award sub-recipients to acknowledge OMB uniform guidance, Department of Commerce terms and conditions, and NOAA administrative award conditions.

Summary and Conclusions

The Council appreciated the opportunity to provide the enclosed additional information and declarations to assist OIG in developing its Final Findings and Recommendations. In the interest of continued improvement, the Council has implemented proactive measures to improve its recordkeeping. We request that OIG take note of these proactive measures as the agency completes its final report.

In closing, the Council appreciates the OIG's audit of the Council's practices. The Council recognizes that improvements in its recordkeeping systems are appropriate, and the Council remains committed to undertaking these improvements in coordination with the NOAA GMD Grants Officer, the NMFS Regional Program Officer and other parties.

Please contact the Executive Director at (808) 522-8220 should you have any questions regarding these matters, or the enclosed additional information.

Sincerely,


Kitty M. Simonds, Executive Director


Taofasi Archie Soliai, Council Chair

CC: John E. Gourley, Vice Chair CNMI
Manual P. Duenas II, Vice Chair Guam
Roger Q. Dang, Vice Chair Hawaii
Taulapapa William A. Sword, Vice Chair American Samoa

Exhibit A. Detailed Response to Draft Report

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I. The Council and Its Subrecipients Claimed Unallowable Costs of \$1,428,016
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Council Response: The Council requests that costs identified within this section be reclassified as “Questioned Costs” because these costs were allocable, used for their intended purpose and reasonable in nature. The Council also notes the draft report refers to these costs as “Questioned Costs” in recommendation #1 of this section, and has yet to be determined as “Unallowable”.

A. \$1,167,214 in Council unallowable costs

1) \$181,623 Council Unsupported

OIG Comment: \$95,022 for supply costs were transferred from an older award, but the Council did not retain the supporting documentation of the original costs. This transfer also required NOAA’s approval to be allowable.

Council Response: This was an adjusting general journal entry to move common area supplies. Invoices from the expired award were not retained past the required retention period. All costs were appropriate, reasonable and used for their intended purpose.

OIG Comment: \$66,601 in claimed costs were not adequately supported; specifically, the following costs:

\$38,938 in travel costs:

Council Response: The completeness of documentation of these costs is being called into question and therefore these expenses should not be pre-determined to be “Unallowable.” Although complete expenditure documentation was not available, all travel costs supported approved projects and programs included in the respective awards and Council’s five year program plan.

\$13,663 in administrative costs:

\$600 General Journal Line 8

Council Response: Upon further review of the documentation provided for this audit item, it was determined that four (4) check copies in the amount of \$2,100 each were issued in 2016. Enclosed are the correct check copies (in the amount of \$2,250 each) for the requested period of 2018. This accounts for the \$600 difference in general journal total. Costs were allocated to SFFIV as activity 6.1 supports American Samoa, CNMI and Guam Island Coordinators. Responsive documents for clarification will be provided (see dropbox)

\$4,000 in scholarship awards

OIG Comment: 1. Documentation did not contain sufficient detail to determine allowability (unable to determine what was paid for) 2. No evidence of competitive procurement.

Council Response: The Council disagrees with the draft finding to include these costs as unallowable as the OIG was unable to determine allowability. The Council provided documents demonstrating these costs to be allowable, allocable and reasonable under the WPSFF award. The Council was invited to sponsor and participate in the Aimalama Lunar Conference which directly supported project 5 - American Samoa, Guam, CNMI and Hawaii Lunar Calendar in the SFFIV award. The Council was invited to participate in this conference. Therefore, competitive procurement does not apply. Responsive documents previously provided to OIG included links to the conference, digital graphics of conference sponsors including the Council logo and other event photos.

\$10,000 to conduct a fishing festival.

Council Response: The Council requests that costs identified in this section be reclassified as "Questioned Costs" because these audit items have yet to be determined as unallowable. Additional responsive documents for support of this expenditure will be provided (see dropdown)

- (1) CNMI DLNR subaward agreement with Blue Continent Communications and KKMP Foundation providing \$10,000 toward hosting of the Marianas Trench Fishing and Seafood Festival; and
- (2) Annual Marianas Trench Fishing and Seafood Festival brochure identifying the Council as a sponsor. Competitive procurement for this event was not applicable because the Council was invited to contribute as a sponsor.

\$20,000 was paid to a contractor by the Council on behalf of a subrecipient; however, the related contract did not include this expenditure made by the Council.

Council Response: The Council provided the initial payment of \$20K to secure the vessel lease on behalf of CNMI DLNR. The final lease agreement of \$260K for the balance of the lease was executed by CNMI. CNMI DLNR Secretary provided a declaration to the Council on October 27, 2020 confirming the \$20,000 paid by the Council on behalf of the DLNR is part of and included in the total contract amount of \$280,000. The Council recognizes that improvements can be made to internal controls and procedures. All funds were spent for their intended purpose.

\$433,356 Council Unapproved

Council Response: The Council requests that costs identified in this section be reclassified as "Questioned Costs" because these audit items have yet to be determined to be unallowable. All funds were spent for their intended purpose and were reasonable in nature. Changes to internal controls are being made to improve oversight and administration.

\$42,966 for non-employee conference participant travel.

Council Response: All costs were appropriate and allocable. It is reasonable to assume had we asked, it would have been approved. Grant applications include estimated travel needs within each project necessary to support staff, contractors, participants, experts or guests that will be needed to fulfill the scope of work. For the non-employee participant travel referenced here, the project description narrowly identified travel for “staff”. Travel should have been provided for broader participation.

\$119,357 issued to a federal agency. The Council claimed to have NOAA’s pre-approval, but only requested to reprogram funds remaining after the expenditure was made.

Council Response: The Council acknowledges that the expenditure was made prior to re-programming approval. However, all costs were appropriate and allocable and it is reasonable to assume that had we asked, the reprogramming would have been approved.

\$245,978 for costs incurred prior to the start date of the award.

Council Response: The Council does not agree with this draft finding as the Council confirmed with NOAA the SFFXI start date as August 1, 2019 and not October 1, 2019 as referenced in the OIG draft report. Therefore, the payment of \$113,365.94 was made within the SFFXI award period and not prior to the start date. The Council received email confirmation of the August 1, 2019 award start date from NMFS Program Officer on August 22, 2019. Additional email confirmation from NMFS Program Officer received August 8, 2021 requesting NOAA Grants On-line to correct the page to properly reflect the award start date of August 1, 2019.

\$25,055 for costs outside the scope of the approved award budgets.

Council Response: The Council disagrees with the draft finding and requests that these costs be reclassified as “Questioned Costs.” The Council provided documents demonstrating these costs to be allowable, reasonable and allocable under the WPSFF award and the Council’s 5-year program. The 2017 conference continued the Council’s efforts to formalize a consultation process for indigenous communities to provide input and guidance for the Council’s fishery ecosystem plans and the federal regulatory process. Coordination and hosting of the 2017 event directly supported two projects included in the award.

\$552,235 Council Improper Allocation

Council Response: The Council requests that costs identified in this section be reclassified as “Questioned” costs because these audit items have yet to be identified as “improperly allocated”. The Council provided documents demonstrating these costs to be allowable, reasonable and allocable.

\$115,000 year-end contribution to employee 401k plans; \$271,121 for employee compensation for the Council

Council Response: The Council provided a response to the OIG on August 3, 2020 explaining the Council's practice based on prior grants management guidance that an appropriate percentage (15-25%) from additional awards should be allocated to support staff and resources needed to manage the increased workload.

\$108,341 for office rent

Council Response: The Council's practice is described in Section 7.4(1) of the WPRFMC Internal Handbook, which states, "The Council is authorized to receive 15% of each grant as costs associated with administering the awards."

B. \$260,802 Subrecipient Unallowable Costs

\$109,751 of claimed costs as unsupported. CNMI's Department of Land and Natural Resources (DLNR) claimed costs of \$109,751 for one subaward, but did not provide any supporting documentation.

Council Response: The Council disagrees with the draft finding of \$109,751 as unsupported and requests this audit item be removed from the findings. The Council provided responsive documents in the original release that included the contract, environmental review, NEPA document, invoices, copies of checks, design plans, and reports. Additional documents were sent to OIG on April 5, 2021 that included CNMI general ledger showing two payments of \$84,465.39 and \$25,285.55 for contractor services. The Council requested that the unspent balance of \$11,749.06 be returned for de-obligation to NOAA. A copy of the returned check was provided to OIG.

\$151,051 question on unspent funds:

\$49,630 (\$194,000 SFF IV Subaward)

Council Response: The Council agrees with the draft finding that \$49,630 remained unspent after the American Samoa Port Authority (ASPA) completed the Malaloa Marine Wharf extension design and site feasibility and evaluation. The Council requested and ASPA responded with check #318328 for \$49,630, representing the unused funds. The Council sent check #48341 on July 7, 2021 to the Department of Commerce-NOAA for de-obligation.

\$15,000 (\$15,000 SFF IV Subaward)

Council Response: The Council agrees with the draft finding that \$15,000 remained unspent after the American Samoa Department of Marine and Wildlife Resources (DMWR) completed the installation of the ice machine on the island of Aunu'u. The Council requested and DMWR returned unspent funds to the Council, check # 316546 in the amount of \$15,000. The Council sent check #48158 in the amount of \$47,713.70 (\$15,000 from American Samoa Government and \$32,713.70 from CNMI) on April 22, 2021 to Department of Commerce-NOAA on 4/23/2021 for de-obligation.

\$11,749 (112,500 SFF IV Subaward)

Council Response: The Council agrees with the draft finding that \$11,749.06 remained unspent after the CNMI Department of Lands and Natural Resources (DLNR) completed the Parking Lot Improvements at the Garapan Fishing Base on Saipan. The council requested and the CNMI returned unspent funds to the Council, check #517636 in the amount of \$32,713 (\$11,749.06 from 17-SFF IV-01 and \$20,964.64 from 17-SFF V-01 CNMI Community-Implemented MCP Projects.) The Council sent check #48158 in the amount of \$47,713.70 (\$32,713.70 from the CNMI Government and \$15,000 from American Samoa Government) on April 22, 2021 to the Department of Commerce-NOAA on 4/23/2021 for de-obligation.

\$21,304 (\$250,000 SFF X Subaward)

Council Response: The Council requests the OIG remove this item from the draft finding as the SFFX award and subaward with CNMI DLNR remain open with funds to be expended on the bottomfish fishery development and training program as proposed prior to the closure of the award on September 30, 2021. The DLNR subaward was extended to September 30, 2021 upon request from CNMI DLNR Secretary. Consequently, this is an open award.

\$53,318 (\$56,187 SFF (XI) 2019 Subaward)

Council Response: The Council requests the OIG remove this item from the draft finding as the SFFXI (2019) award and subaward with CNMI DLNR remain open with funds to be expended on the bottomfish fishery development and training program as proposed prior to the closure of the award on July 30, 2022. The DLNR subaward was extended to September 30, 2021 upon request from CNMI DLNR Secretary. This subaward continues support for CNMI DLNR bottomfish fishery development and training program. Consequently, this is an open award.

\$50 (\$250,000 SFF VIII Subaward)

Council Response: The Council requested reimbursement of the unspent funds from the Government of Guam Department of Agriculture.

OIG Recommendations for Category I findings and Council Responses**The Council and its Subrecipients Claimed Unallowable Cost of \$1,428,016 in WPSFF Awards.**

We recommend that the Director of NOAA Grants Management Division do the following:

- 1. Make a determination on the \$1,428,016 in questioned costs recommended by OIG for recovery.**

Council Response: The Council acknowledges the findings and recommendations from the OIG in their review of the WPSFF awards, and will take proactive steps to address these findings and recommendations as outlined in its August 27, 2021 response. The Council reiterates its request that the costs in this section be reclassified from “Unallowable Costs” to “Questioned Costs.” Although the Draft Report questions costs associated with the WPSFF awards, the Council notes that it operated with integrity to ensure the overall outcome of the WPSFF program is the successful completion of projects and activities identified by the Territories through their Marine Conservation Plans.

To improve internal administration and monitoring of contracts and subawards, the Council, in consultation with the NMFS Program Officer, is reviewing the Council’s Financial Management System Protocols and Guidance procedures to address the findings and recommendations from the OIG. The Council has proactively implemented controls to ensure subrecipients will be informed and be required to follow OMB uniform guidance, DOC terms and conditions and NOAA admin award conditions.

The Council will contract an independent auditor to monitor awards and related documentation over an initial one-year period. The auditor will provide quarterly reports to the Council to verify compliance.

To improve NOAA/NMFS coordination and administration of the awards, the Council and the NMFS Program Officer have agreed to regularly monitor awards and projects and to participate in joint site inspections in the Territories. The Council has also requested the Grants Management Division (GMD) to host grants training specifically for Council and Territorial agency staff to address time zone differences between Eastern Standard Time and Mariana Islands time.

2. Require the Council to implement internal controls to ensure (a) adequate documentation is retained to support costs claimed, (b) approval from the NOAA Grants Officer, when required, (c) amounts charged to each award directly benefit the award in proportion to the relative benefits received, and (d) payment to subrecipients are based on reimbursement of actual expenses or immediate cash need.

Council Response: The Council is reviewing with the NMFS Program Officer the Council's Financial Management System Protocols and Guidance procedures that include controls for consulting with NOAA GMD/or NMFS Program Officer on contractual and subaward procurement standards and requirements. Subrecipients will be informed and be required to follow OMB uniform guidance, DOC terms and conditions and NOAA admin award conditions.

The Council has also requested GMD to host grants training specifically for Council and Territorial agency staff. There is a 14 hour time difference between Eastern Standard Time (EST) and the Mariana Islands (ChST) (6:00 am Monday HI, 12:00pm Monday DC, 2:00am Tuesday SP). The Council confirmed agreement with NMFS Program Officer to coordinate monitoring of awards and projects and to participate in joint site inspections to the Territories.

Finally, the Council will use cost-reimbursable contracts/subawards and avoid making payments directly to vendors on behalf of subrecipients to minimize confusion and ensure compliance with award requirements. In the event exigent circumstances arise, the Council will consult with the Program Officer prior to releasing any funds directly to vendors.

3. Instruct the Council to implement any additional measures necessary to ensure adherence to all applicable financial assistance award requirements.

Council Response: To improve internal administration and monitoring of contracts and subawards, the Council, in consultation with the NMFS Program Officer, reviewed and updated the Council's Financial Management System Protocols and Guidance procedures to address the findings and recommendations from the OIG.

In addition, the Council will engage an independent auditor for one year to monitor the Council's administration of awards for compliance with OMB uniform guidance, DOC terms and conditions and NOAA administrative award conditions.

Finally, controls have been adopted to ensure subrecipients will be informed and be required to follow OMB uniform guidance, DOC terms and conditions and NOAA administrative award conditions.

II. Verification and Documentation of Deliverable was Inconsistent**A. \$53,577 in Costs Lacking Documentation of Deliverable**

Council Response: The Council agrees that documentation of the receipt of deliverables may not have been consistent. However, further documentation of vendor deliverables have been provided to the OIG through follow up with written, photo and referenced documentation of project outcomes. Therefore, the Council requests that costs associated with these draft findings be removed as the deliverables for these activities were clearly received and proactive steps are being taken to improve the administrative process for documenting receipts.

\$15,969 - 2015 Lunar Calendars

Council Response: The Council disagrees with this draft finding as proof of publication of 2015 lunar calendars provided to OIG via email to OIG July 8, 2020 with links to web-published calendars. The Council requests this finding be removed as appropriate.

\$15,277 - 2017 Lunar Calendars

Council Response: The Council disagrees with this draft finding as proof of publication of 2015 lunar calendars provided to OIG via email to OIG July 8, 2020 with links to web-published calendars. The Council requests this finding be removed as appropriate.

\$10,525 - Report on Exploratory Data Analytics

Council Response: The Council disagrees with this draft finding as payment for delivery of report on Exploratory Data Analysis was provided to the Council and included within invoice #1805 dated May 15, 2018. This was included within the final report provided in DOC018 (pages 46, 75-105) in the initial release emailed to the OIG on July 9, 2020. Responsive documents for clarification will be provided (see dropbox). The Council requests this finding be removed as appropriate.

\$8,806 - Seven Custom Fish Sorting Tables

Council Response: The Council disagrees with this draft finding as photos of available tables and impacted fish vendors post Typhoon Yutu were provided to the OIG on July 8, 2020.

\$3,000 - High School Summer Course Supplies

Council Response: Additional support material (course program, student release forms and attendance) for High School Course will be provided (see dropbox).

OIG Recommendations for Category II findings and Council Response**II. Verification and Documentation of Deliverables was Inconsistent.**

We recommend that the Director of NOAA Grants Management Division do the following:

4. Instruct the Council to retain sufficient evidence to support receipt of deliverables.

Council Response: The Council is reviewing with the NMFS Program Officer the Council's Financial Management System Protocols and Guidance procedures that include controls for documenting receipt of deliverables as a condition for meeting procurement obligations. In addition, the Council will engage an independent auditor for one year to monitor the Council's administration of awards for compliance with OMB uniform guidance, DOC terms and conditions and NOAA administrative award conditions.

The Council will contract an independent auditor to monitor awards and related documentation over a one-year period. The auditor will provide quarterly reports to the Council to verify compliance.

III. Management of WPSFF Awards Needs Improvement

A. The Council and subrecipients did not follow competitive procurement requirements.

Council Response: The Council disagrees with the draft finding that the Council did not follow the competitive procurement requirements for the contracts where sole source justifications were provided. Documentation of the Council's procurement record was provided for all contracts requested by the OIG. The Council included sole source justifications for all vendors were included for contracts requiring unique skillsets, specialized services and/or experiences. Questioned costs for which sole source justifications were used should be removed.

The Council will continue to work with its subrecipients and staff to ensure competitive procurement process is followed as required in 2CFR200.

1) \$185,560 in Contracts awarded noncompetitively (sole sourced)

\$52,977 Evaluating Ko'a Resources using structured video surveys

Council Response: The contract and sole source justification and additional rationale for vendor selection were provided to the OIG in July 9, 2020. This contractor was immediately available and possessed specialized knowledge, experience and skills that made this vendor uniquely qualified to complete this project. Unique skills included proprietary hardware and software designs and fabrication of underwater camera systems to support 360 degree video recording, directional and geo-referenced underwater recording of multiple systems, certified SCUBA diver with video and photography experience and ability to work with traditional Hawaiian fishing community. The study relied on accessing generational fish houses or "koas", which are site specific and linked to a specific Hawaiian family. Due to the proprietary nature of this project, this vendor was the only available vendor with the skills, knowledge and relationships to complete the work as required.

2) \$440,382 charged for goods and services to WPSFF awards

Council Response: The Council is reviewing with the NMFS Program Officer the Council's Financial Management System Protocols and Guidance procedures that include controls for consulting with NOAA GMD on contractual and subaward procurement standards and requirements. Subrecipients will be informed and be required to follow OMB uniform guidance, DOC terms and conditions and NOAA admin award conditions. The Council has also requested GMD to host grants training specifically for Pacific Island Region participants to address time zone differences between EST and the Mariana Islands. The Council and the NMFS Program Officer agree to coordinate the monitoring of awards and projects and to participate in joint site inspections in the Territories.

3) One subrecipient, CNMI's DLNR, awarded a \$354,526 contract on a sole-source basis.

Council Response: The Council provided the OIG the comparative analysis of several potential vendors evaluated by the subrecipient in their procurement and vendor selection process. The subrecipient's justification for vendor selection was prepared to supplement their local procurement requirements. The Council is reviewing with the NMFS Program Officer the Council's Financial Management System Protocols and Guidance procedures that include controls for consulting with NOAA GMD on contractual and subaward procurement standards and requirements. Subrecipients will be informed and be required to follow OMB uniform guidance, DOC terms and conditions and NOAA admin award conditions.

The Council has requested GMD to host grants training specifically for Pacific Island Region participants to address time zone differences between EST and the Mariana Islands. The Council confirmed agreement with NMFS Program Officer to coordinate monitoring of awards and projects and to participate in joint site inspections to the Territories.

4) Two subrecipients executed change orders to existing construction contracts that were outside the scope of the original procured projects.

Council Response: The Council is reviewing with the NMFS Program Officer the Council's Financial Management System Protocols and Guidance procedures that include controls for consulting with NOAA GMD on contractual and subaward procurement standards and requirements. Subrecipients will be informed and be required to follow OMB uniform guidance, DOC terms and conditions and NOAA admin award conditions.

The Council has requested GMD to host grants training specifically for Pacific Island Region participants to address time zone differences between EST and the Mariana Islands. The Council confirmed agreement with NMFS Program Officer to coordinate monitoring of awards and projects and to participate in joint site inspections to the Territories.

B. The Council Treated subawards improperly

Council Response: The Council is reviewing with the NMFS Program Officer the Council's Financial Management System Protocols and Guidance procedures that include controls for consulting with NOAA GMD on contractual and subaward procurement standards and requirements.

The Council will contract an independent auditor to monitor awards and related documentation over a one-year period. The auditor will provide quarterly reports to the Council to verify compliance.

C. The Council paid vendors directly on behalf of subrecipients

Council Response: The Council will not make payments directly to vendors on behalf of subrecipients to minimize confusion and ensure compliance with award requirements. In the event that exigent circumstances arise indicating the need for such payments, the Council will coordinate directly with the NMFS Program Officer prior to releasing funds directly to vendors.

OIG Recommendations for Category III findings and Council Responses**III. Management of WPSFF Awards Needs Improvement**

We recommend that the Director of NOAA Grants Management Division do the following:

- 5. Require the Council to implement sufficient internal controls to ensure it performs cost or price analysis on procurement contracts, obtains grants officer approval for sole source contracts where required, and charges reasonable costs to federal awards, both in nature and amount.**

Council Response: The Council is reviewing with the NMFS Program Officer the Council's Financial Management System Protocols and Guidance procedures that include controls for consulting with NOAA GMD on contractual and subaward procurement standards and requirements.

The Council will contract an independent auditor to monitor awards and related documentation over a one-year period. The auditor will provide quarterly reports to the Council to verify compliance.

- 6. Instruct the Council to follow all federal requirements when issuing subawards, including reporting requirements, and to avoid making payments on behalf of subrecipients.**

Council Response: The Council is reviewing with the NMFS Program Officer the Council's Financial Management System Protocols and Guidance procedures that include controls for consulting with the both the NMFS Program Officer and the NOAA GMD on contractual and subaward procurement standards and requirements.

Subrecipients will be informed and be required to follow OMB uniform guidance, DOC terms and conditions and NOAA admin award conditions. The Council has also requested GMD to host grants training specifically for Pacific Island Region participant to address time zone differences between Eastern Time and the Mariana Islands. The Council confirmed agreement with NMFS Program Officer to coordinate monitoring of awards and projects and to participate in joint site inspections to the Territories. Finally, the Council will avoid making payments directly to vendors on behalf of subrecipients to minimize confusion and ensure compliance with award requirements.

The Council will contract an independent auditor to monitor awards and related documentation over a one-year period. The auditor will provide quarterly reports to the Council to verify compliance.

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