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Financial Management and Budget
Internal Control Review

INTERNAL CONTROL REVIEW: FISHERMEN'S CONTINGENCY FUND PROGRAM

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Fishermen's Contingency Fund Program

U. S. Department of Commerce
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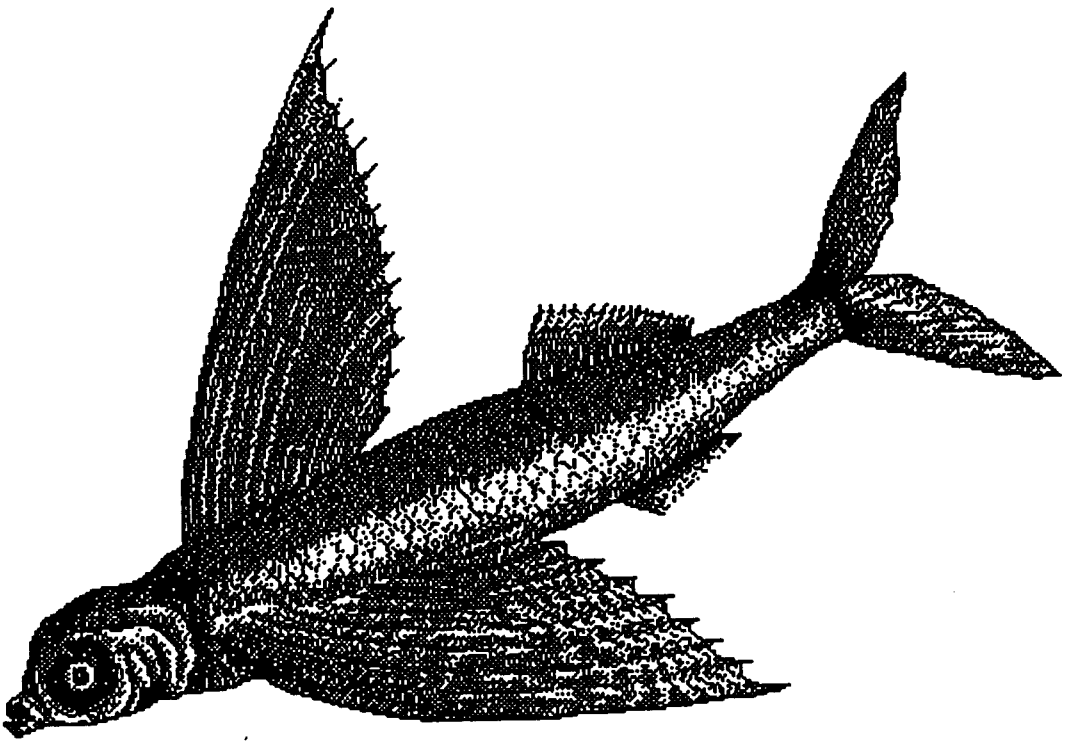

REFERENCES
FCF

1. 43 U.S.C.A. Section 1841 et seq. (Title IV of the Outer Continental Shelf Act as amended in 1978 and 1982.)

2. Fishermen's Contingency Fund Claim Application (and Instructions), NOAA Form 88-164.

3. Fishermen's Contingency Fund 15-Day Report, NOAA Form 88-166.

4. Fishermen's Contingency Fund, brochure prepared by the National Marine Fisheries Service, Financial Services Division, F/TS1, Silver Spring, MD 20910.

5. Federal Register / Volume 47, No. 211 / November 1, 1982. 50 CFR Part 296, Fishermen's Contingency Fund. Final Rule to revise the Fishermen's Contingency Fund regulations to implement the Outer Continental Shelf Lands Act amendments.

6. Federal Register / Volume 50, No. 67 / April 8, 1985. 50 CFR Part 296, Fishermen's Contingency Fund. Final Rule to revise the Fishermen's Contingecy Fund regulations by (1) extending the period for filing claims from 60 to 90 days and (2) increasing compensation for economic loss from 25 to 50 percent.

7. Budget Estimates for FY 1992, Sectretarial Submission, Summary of Resource Requirements, Fishermen's Contingency Fund.

8. Memo from F/TS1 - Program Leader to Claims Staff: Subject - Claim Processing Guidelines.

9. Fishing Vessel and Gear Damage Compensation Fund Claim Brief.

INTERNAL CONTROL REVIEW EXECUTIVE SUMMARY
NMFS FISHERMEN'S CONTINGENCY FUND
(CLAIMS REVIEW AND DECISION MAKING PROCEDURES)

I. INTRODUCTION

Title IV of the Outer Continental Shelf Lands Act Amendments of 1978 established the Fishermen's Contingency Fund (FCF) to compensate U.S. fishermen whose vessels or fishing gear have been lost, damaged, or destroyed by oil and gas obstructions on the U.S. Outer Continental Shelf (OCS). Economic, as well as property loss, is included. The FCF is a revolving fund in the Treasury of the United States, and is available without fiscal year limitation. It is funded by fees assessed against oil and gas companies operating on the OCS. Recently, approximately 200 claims totaling $1 million have been paid each year from the FCF.

The FCF program is administered by the Financial Services Division (FSD) of the National Marine Fisheries Service (NMFS). The FSD develops filing and reporting requirements for fishermen, adjusts claims (including the presumption of causation and the burden of proof), and compensates eligible applicants.

Like any government program involving direct financial payments to the public, the FCF program has a significant risk of fraud or misappropriation. The NMFS must ensure that FCF claims are reviewed expeditiously and accurately and that funds are disbursed properly. Accordingly, the FSD has published comprehensive rules and regulations in the Federal Register and has established an extensive system of internal controls.

The Assistant Administrator for Fisheries and the Director, Office of Trade and Industry Services recommended that an Internal Control Review (ICR) be prepared of the Fishermen's Contingency Fund. "Internal controls" are the methods or procedures which management adopts to provide reasonable assurance that obligations and costs comply with applicable law; funds, property, and other assets are protected against waste, loss, or unauthorized use; and personnel properly record and account for revenues and expenditures. The objectives of an ICR are to (1) define the existing management process within an activity, (2) define the existing management

control system, (3) determine if the controls are actually being used, and (4) identify any areas of weakness or over control which requires management's attention.

II. SCOPE OF THE REVIEW

Identification of Event Cycles and Selection of ICR Focus

The FCF program is centralized in Silver Spring, MD with support from Financial Services personnel in the Regions, the NMFS Budget and Planning Office, the National Ocean Service, the Minerals Management Service, and the NOAA Finance Office. One significant activity or "event cycle" involves claims adjusting (obtaining claims from fishermen, reviewing the required information, determining if the claims should be paid, notifying the claimant, and arranging for payment.) Purely staff support functions constitute another event cycle.

Both these event cycles were examined, in order to select the focus of this ICR. (See Appendix A.) The size of the staff and budget and the importance of the task were considered. A small staff in the FSD processes all FCF claims. There are serious risks associated with paying fraudulent claims, which could include employee/claimant collusion. The staff has referred several fraudulent claims to the Inspector General over the past few years. Accordingly, the claims adjusting event cycle was chosen for review. Ancillary administrative tasks were not chosen for review because they generally occur outside the FSD, are routine, and have a low inherent risk.

Selection of ICR Team

The Assessable Unit (AU) Manager who has immediate responsibility for the internal control system in this event cycle is the Lead Claims Examiner, Fishermen's Contingency Fund Program, FSD. The AU Manager selected an ICR Team including the Program Leader, Claims and Capital Construction Programs, FSD (who is familiar with all financial assistance programs in NMFS), the Senior Financial Assistance Specialist, FSD (who is familiar with the event cycle chosen), and the Program Analyst, Policy and Coordination Office (who is also the NMFS ICR Coordinator). (See Appendix B.)

III. METHODOLOGY

Detailed Planning of the ICR

The ICR Team prepared a detailed work plan for completing the ICR, and this was approved by the AU Manager. (See Appendix C.)

Documentation

The ICR Team reviewed written material describing the FCF program, including: enabling legislation; organization charts; current budgets; planning and policy documents; standard forms such as the Claim Application and the 15-Day Report; NMFS promotional brochures; Federal Register Notices; personnel directives; operating guidance; existing flowcharts; IG reports; workload data; letters from constituents; and position descriptions. In addition, the ICR Team interviewed employees who were responsible for day to day operations and a Special Agent from the Office of the Inspector General who had previously audited the FCF program. (See Appendix D.) This helped judge the accuracy and relevance of written policies and procedures, and to identify important control techniques.

The ICR Team documented the actions associated with the event cycle in a narrative and a flow chart. (See Appendix E and Appendix F.) These represent in words and symbols the sequence of all work that is done. Their accuracy was confirmed by the ICR Team Leader.

Analysis of the General Control Environment

The ICR Team analyzed the general control environment of the claims adjusting event cycle. (See Appendix G.) Because the staff is so small, direct verbal communication and oversight is often a more appropriate method of supervision than written operating procedures. However, position descriptions are current and consistent with functional statements, and program memoranda are often issued to supplement published regulations and to clarify the authorities and responsibilities of the staff. Employees receive periodic performance review and counseling. Employees are primarily trained on the job, but may also receive formal training elsewhere. Budgets are prepared jointly by the Budget and Planning Office and the Office of Trade and Industry Services. Congress has required the FCF program to prepare an annual report of its activities. ADP reports are produced by a LAN system in

Headquarters, which replaced a mainframe system several years ago. The LAN system remains under development, and it is difficult for Examiners to track the processing of claims which can result in occasional delays.

Determination of Risks

Once the claims review and decision making procedures in the event cycle had been described (beginning with the submission of a claim to the FSD and ending with a disbursement request to NOAA Finance), each step in the flow chart was examined. The ICR Team sequentially identified risks (undesirable events or situations) which might occur. (See Appendix H.) These risks focused on what could go wrong if a claim was not processed properly. The AU Manager reviewed and approved the following four risks for review:

1. Ineligible claims may be paid.

2. A non OCS energy-related casualty may be compensated.

3. Funds may be wasted and claimants treated unfairly because a claim is adjusted inadequately or inaccurately.

4. A false or misleading claim may be paid.

Determination of Control Objectives

Claims must be adjusted properly and promptly, in accordance with statutory and administrative guidelines.

The ICR Team assigned each of these risks a corresponding and opposite control objective, which is a condition which the AU Manager wants to occur. (See Appendix H.)

Determination of Existing Control Techniques

These control objectives were used as a point of reference to evaluate control techniques, which are safeguards that managers routinely perform to help assure that waste, fraud, abuse, and inefficiency are eliminated. The ICR Team and the AU Manager identified the control techniques associated with each of these control objectives. This was accomplished by interviewing various staff (in the FSD, the NOAA GC, and the Office of the IG), reviewing

written policies and procedures (especially in the Federal Register), and referring to the narrative and the flow chart. (See Appendix H.)

Testing of Control Techniques

The ICR Team formally determined if each control technique was being used and achieving its objective, by means of structured testing exercises. (See Appendix I.) All of the tests were performed in Headquarters in Silver Spring, MD. The ICR Team examined a random, stratified sample of FCF claims: FY 1989 (10 of 217); FY 1990 (10 of 239); and FY 1991 (10 of 161). (See Appendix K.) Each member of the ICR Team examined all the claims in one of the three years, and interviewed the Claims Examiner as questions arose. They then recorded the results of each test for that year on a computerized spreadsheet and explained any discrepancies or unusual circumstances with footnotes. Although examining thirty entire claim files was time consuming, this was necessary to be reasonably confident that the findings were accurate and representative.

IV. FINDINGS AND CONCLUSIONS

Evaluation of Internal Controls

The ICR Team examined the results of each test to determine if the control techniques were meeting the associated control objective, and prepared findings and conclusions. (See Appendix J and Appendix K.)

The AU Manager then determined if the control system complied with the six specific standards established by the General Accounting Office which are:

1. Documentation

   Completion of this ICR will meet some of the requirements for documentation of this event cycle. Risks, control objectives, control techniques, and work-flow procedures are now identified and in writing.

All transactions and other significant events are well documented and readily accessible to FSD staff and fishermen. The regulations governing the FCF program are published in detail in the Code of Federal Regulations and most procedures are described on the FCF Claim Application form itself. The FSD has also prepared an informational brochure which summarizes what a fisherman must do to submit a claim.

The FSD has received and is aware of written guidance on how to protect the confidentiality of data supplied by individual claimants.

Software documentation on the automated claims tracking system (Fisheries Compensation Management System or FCMS) is available and accessible to the FSD.

The procedures which the FSD uses to reduce the risk that a false or misleading claim will be paid have not been well documented. The claim characteristics which have typically been associated with fraud are generally understood by the FSD staff, but should be clearly documented as well. Such a "fraud indicator checklist" would be a convenient reference for Examiners as they process new claims.

2. Recording of Transactions and Events

The FCMS provides some information about the status of claims as they are being processed; however, these records are not sufficiently up-to-date to permit continuous monitoring and scheduling by the FAS or the Program Leader. Rather than having one person enter all the information at a later date, each Claims Examiner should record the current status of his own claims on the FCMS.

The claim briefs are logically organized by category of required information. This facilitates review by the Examiner and his (her) supervisor. The Examiner's telephone conversations with claimants to request or receive information (such as witness statements) are not always recorded, however. The Examiner should record all conversations concerning required information in the file. Similarly, the Examiner's rationale for making certain judgements (such as evaluating previous claim experience, confirming the validity of trip tickets and purchase

receipts, basing economic loss on crew settlement sheets, accepting a claim application with an illegible postmark, or approving a claim within 1/4 mile of a charted obstruction) may not be apparent to others. The Examiner should record in the file any critical analysis he makes. The Examiner investigates suspicious claims, but this is not always recorded. Whenever such an investigation occurs, it should be recorded in the file. Use of the "fraud indicator checklist" discussed above would encourage consistent recording and analysis of claims with suspicious characteristics.

An automated spreadsheet is used to compute the compensation for each claim. It ensures that these calculations are made accurately, and also records how compensation was determined and what is included.

3. Execution of Transactions and Events

Written delegations have been followed which specify who has the authority to recommend and approve claim determinations and disbursements. The initial determination and the final determination for every claim in the sample had been signed off properly. NOAA Finance will not process disbursements bearing a signature differing from actual signatures on file with the delegations.

4. Separation of Duties

Claim determinations are always recommended and approved by different individuals in the FSD, i.e. one individual cannot both recommend and approve a claim payment. This control applies to all key transactions in the FSD.

5. Supervision

The FCF program is administered in one location and the staff is very small. Therefore the assignment, review, and approval of the staff's work are necessarily direct and personal.

In about one-third of the claims sampled, initial determinations were completed at least several days late. Sometimes telephone conversations between the Examiner and the claimant were not recorded, making it difficult for the supervisor to determine when a claim was completed and when

the initial determination was required after sixty days. Additional staff may be needed, because the existing staff was not able to cope with sudden increases in workload.

Larger claims receive higher level review, as appropriate. The sample indicates that claims are always routed properly, i.e. the Program Leader reviews claim determinations of more than $10,000, and the Senior Financial Assistance Specialist reviews claim determinations of less than $10,000.

6. Access to and Accountability for Resources

Access to claim information in computer files is adequately restricted to authorized individuals by password protection. Access to hard copy data on claims and claimants is also restricted by a locked file room or locked file cabinets. As discussed above, written instructions protect the confidentiality of information on individual claimants.

In conclusion, the ICR Team had reasonable assurance that when the following recommendations are implemented, controls will be in place and operating effectively.

V. RECOMMENDATIONS

Reporting of Internal Controls

The ICR Team made twelve recommendations to improve the internal controls associated with the four objectives. The Responsible Official and Completion Date are indicated for each recommendation. (See Appendix K.)

1. Only eligible claims are paid.

- The Examiner should record in the file the extenuating circumstances which allow late filing (i.e. more than 90 days after the casualty discovery date) if that claim is approved.
  RESPONSIBLE OFFICIAL: Senior FAS
  COMPLETION DATE: September 1992

- When postmarks are illegible, the Examiner should check the Financial Service Division's date received stamp to see if the claim arrived within the 90 day period. The Examiner should accept the claim if the received date is just beyond the 90th day and the claim could possibly have been postmarked within the 90 days.
  RESPONSIBLE OFFICIAL: Senior FAS
  COMPLETION DATE: September 1992

- The Examiner should record in the file any instance where the casualty occurred within a 1/4 mile radius of a charted obstruction, whether or not there are other reasons which make the claim eligible. The Examiner should also describe those other reasons in the file.
  RESPONSIBLE OFFICIAL: Senior FAS
  COMPLETION DATE: September 1992

- The wording of the Claim Brief should be revised to clarify that a casualty can occur in an area affected by OCS energy activities and nonetheless not be caused by OCS energy activities.
  RESPONSIBLE OFFICIAL: Senior FAS
  COMPLETION DATE: September 1992

- The FSD should prepare a legislative proposal to modify the FCF program to provide that the subrogation agreement is signed as part of the original claim application rather than after the claim has been processed.
  RESPONSIBLE OFFICIAL: Senior FAS
  COMPLETION DATE: March 1993

2. Only OCS energy-related casualties are compensated.

- The Examiner should include a note in the file whenever a correction is made to the claim file.
  RESPONSIBLE OFFICIAL: Senior FAS
  COMPLETION DATE: September 1992

3. Funds are not wasted and claimants are treated fairly.

- The Examiner should always place copies of the automated spreadsheets and supporting documents in the case file.
  RESPONSIBLE OFFICIAL: Senior FAS
  COMPLETION DATE: September 1992

- The Examiner should record in the case file the reasons why an initial determination was late.
  RESPONSIBLE OFFICIAL: Senior FAS
  COMPLETION DATE: September 1992

4. Only legitimate claims are paid.

- Whenever they are available, statements from all listed witnesses should be included in the file; if they are not available, the Examiner should include in the file a written explanation of why they could not be obtained.
  RESPONSIBLE OFFICIAL: Senior FAS
  COMPLETION DATE: September 1992

- The Examiner should complete and include a comprehensive Fraud Indicator Checklist in each case file.
  RESPONSIBLE OFFICIAL: Senior FAS
  COMPLETION DATE: September 1992

- The Examiner should record in the case file all verbal communications with fishermen, fish houses, gear suppliers or vessel repair facilities, witnesses, etc. which occurred in connection with any investigation of suspected fraud.
  RESPONSIBLE OFFICIAL: Senior FAS
  COMPLETION DATE: September 1992

- The Examiner should base economic loss compensation only on trip tickets recording the sale of catch to a fish house, unless the fisherman acts as his own distributor or broker and this is recorded in the file. The Examiner should <u>not</u> accept the vessel's crew settlement sheets for this purpose without recording the reasons in the file.
  RESPONSIBLE OFFICIAL: Senior FAS
  COMPLETION DATE: September 1992