





UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
Washington, D.C. 20230

OFFICE OF THE GENERAL COUNSEL

MAY 23 2013

MEMORANDUM FOR: The Office of Law Enforcement  
National Marine Fisheries Service

FROM: Lois Schiffer   
General Counsel

APPROVED BY: Bruce Buckson   
Director  
Office of Law Enforcement

SUBJECT: Delegation of Summary Settlement Authority

Delegation:

By delegation from the Administrator, the General Counsel of NOAA has the authority to "perform all functions involving activities having recognizable legal attributes under statutes administered by NOAA." (NOAA Delegation Handbook, Transmittal #81). In the exercise of this delegated authority, the NOAA General Counsel may compromise, modify, remit, or mitigate any civil penalty that is assessed or subject to assessment pursuant to 15 C.F.R. § 904.106. The NOAA Administrator has also authorized the NOAA General Counsel to "delegate any authority s/he has to any employee of the NOAA General Counsel's office or any other appropriate NOAA employee with the concurrence of their supervisor subject to such conditions in the exercise of that authority as the NOAA General Counsel may prescribe." (NOAA Delegation Handbook, Transmittal #81).

With the concurrence of the Director of the Office of Law Enforcement (OLE), as reflected by signature above, the NOAA General Counsel hereby delegates to all OLE Special Agents and Enforcement Officers the authority to issue Summary Settlement offers that meet the terms and conditions set forth in the Summary Settlement Section of the Practice Manual of the Enforcement Section of the NOAA Office of the General Counsel (Attachment A). A person to whom authority is delegated here may exercise that authority only after s/he participates in mandatory training provided by the Enforcement Section of the NOAA Office of General Counsel, and receives a certificate of completion. The Director of the Office of Law Enforcement will maintain and provide quarterly to the NOAA General Counsel a current list of certificate holders. The General Counsel, Deputy General Counsel, or Chief of the Enforcement Section may require refresher training for enforcement personnel as necessary.

This Memorandum supersedes and repeals all previous delegations issued by the NOAA General Counsel for issuance of Summary Settlement offers. Summary Settlement offers that were issued prior to the date of this Memorandum are still enforceable and remain in effect. The authority delegated by this Memorandum may not be further delegated.



### III. Summary Settlements

Summary Settlements are one of the tools available for addressing violations of laws that NOAA enforces.<sup>1</sup> Summary Settlements – essentially a form of “traffic ticket” that the NOAA Special Agent or Enforcement Officer issues at the scene or soon thereafter -- are an expeditious means to punish and deter minor violations such as low level recreational, recordkeeping, or reporting violations; and violations that are readily apparent to law enforcement personnel at or near the time of a violation.

Summary Settlements give NOAA the capacity to charge violations that may otherwise go unaddressed because of resource constraints, and give NOAA the opportunity to direct enforcement resources to more serious violations and violators, while at the same time maintaining a presence against less serious violations. Summary Settlements also offer “real time” enforcement that directly links a penalty to a violation, thereby increasing deterrence. At the same time, respondents benefit from Summary Settlements by resolving their cases quickly at an amount lower than one assessed under the Penalty Policy.

To enable Summary Settlements, NOAA’s General Counsel has delegated conditioned authority for their use to NOAA Special Agents and Enforcement Officers. The conditions of that delegation are described in the policies and procedures set forth in this Section, and were developed in consultation with NOAA’s Office of Law Enforcement. This Section repeals and supersedes as of May 23, 2013, all previous policy guidance and delegations of authority issued by the NOAA Office of General Counsel regarding Summary Settlements.

#### A. Authority to Issue Summary Settlements

Summary Settlement offers may be issued only under the authority of the General Counsel, and only for offenses contained in a General Counsel approved Summary Settlement schedule. Under current delegations from the NOAA Administrator to the General Counsel, the General Counsel may delegate Summary Settlement authority “to any employee of the NOAA General Counsel’s Office or any other appropriate NOAA employee with the concurrence of their supervisor subject to such conditions in the exercise of that authority as the NOAA General Counsel may prescribe.” (NOAA Delegation Handbook, Transmittal #81).

The NOAA General Counsel, with the concurrence of the Director of the Office of Law Enforcement, has delegated conditioned authority to issue Summary Settlement offers to all sworn NOAA law enforcement personnel through a memorandum dated May 23, 2013 (*see Delegation Memorandum at Attachment 1*).<sup>2</sup> Any NOAA Enforcement Officer or Special Agent who has been authorized to issue Summary Settlements and has completed required training on

<sup>1</sup> NOAA’s Civil Procedures regulations implement NOAA’s statutory authority to bring and to settle civil administrative enforcement cases. 15 CFR Part 904. The regulations provide authority for NOAA to compromise, modify, remit, or mitigate any civil penalty assessed, or civil penalty which is subject to assessment. 15 C.F.R. § 904.106.

<sup>2</sup> Per the terms of the delegation memorandum, those Summary Settlements that were issued prior to the May 23, 2013 delegation memorandum are still enforceable and remain in effect.

the Summary Settlement program will receive a certificate documenting that authority. Enforcement Officers and Special Agents must complete Summary Settlement refresher training on an annual basis to revalidate their certificate. An Enforcement Officer or Special Agent must have a current valid certificate to issue a Summary Settlement.

#### B. Summary Settlement Schedules

The NOAA General Counsel's Office Enforcement Section, with input from the Office of Law Enforcement, relevant program offices, regional stakeholders, and other federal and state law enforcement partners, develops Summary Settlement schedules that assign fixed penalties for violations appropriate for Summary Settlement. To be operative, the Summary Settlement schedule must be approved by the NOAA General Counsel or Deputy General Counsel. OLE and the Enforcement Section make the Summary Settlement schedules available to the public through postings on their websites, found at <http://www.gc.noaa.gov/enforce-office3.html>, and <http://www.nmfs.noaa.gov/ole/>.

The Enforcement Section will review Summary Settlement schedules at least once a year to ensure that they are accurate and current, and may propose revisions as appropriate.

#### C. Summary Settlement Procedures<sup>3</sup>

Violations of NOAA's statutes are investigated by multiple agencies, including OLE, the United States Coast Guard (USCG), and NOAA's state law enforcement partners. Upon determining that a violation has been committed, all investigating agencies must issue the violator(s) an Enforcement Action Report (EAR).<sup>4</sup> The EAR provides notice to the violator(s) of the specific statute(s) and/or regulation(s) alleged to have been violated. The EAR will list all respondents (see section D(5) below for a discussion of joint and several respondents); identify the specific statute(s) or regulation(s) allegedly violated; and state briefly the facts supporting the charged violation. USCG and state partners who issue an EAR forward it to OLE, which determines the appropriate enforcement response.

If an OLE Enforcement Officer or Special Agent concludes that a Summary Settlement offer is the most appropriate enforcement action for cases that they investigated or received from the USCG or state partner, s/he will follow the following procedures:

##### (1) Reviewing the Summary Settlement Schedules

The first step in determining whether a Summary Settlement is appropriate is reviewing the approved Summary Settlement schedules to determine whether the alleged violation(s) is listed. If the violation is not listed on an approved Summary Settlement schedule, then no Summary

<sup>3</sup> As soon as practical, OLE will incorporate the procedures outlined in this sub-part into its NOAA Enforcement Operations Manual (NEOM).

<sup>4</sup> Some state agencies do not use the NOAA EAR, but use equivalent state enforcement reports.

Settlement offer may issue, and OLE must determine whether to refer the case to the Enforcement Section or take other enforcement action.<sup>5</sup> If the violation is listed on an approved Summary Settlement schedule, the OLE Enforcement Officer or Special Agent must determine whether issuance of a Summary Settlement offer is appropriate, taking into consideration the factors listed in Section (2) below.

(2) Determining Whether Aggravating Factors Exist

Even where a violation is listed on a General Counsel approved Summary Settlement schedule, Summary Settlements are not appropriate if the matter involves any the following aggravating factors:

- a. Lack of cooperation by the respondent;
- b. Interference with authorized officers;
- c. Deliberate concealment of evidence;
- d. Failure to provide records or access for determining compliance;
- e. A respondent's significant prior violations;
- f. Significant harm to the resource;
- g. Significant economic benefit to a violator;
- h. Multiple violations, not all of which are included in a Summary Settlement schedule; or
- i. Any other factor that is inconsistent with the purposes of the Summary Settlement Program to expeditiously resolve low level offenses.

(3) Checking for Prior Violations

A certified OLE Enforcement Officer or Special Agent must conduct a search for prior violations before issuing a Summary Settlement offer. Summary Settlement schedules list penalty amounts based on the number and type of a violator's prior violations, and where prior violations are numerous or significant, Summary Settlements may not be appropriate (see Section 2(e) above). If the certified OLE Enforcement Officer or Special Agent can check for prior violations at the scene of the violation, and Summary Settlement of the violation is otherwise supported, then s/he may immediately issue a Summary Settlement offer at the scene. If the OLE Enforcement Officer or Special Agent is unable to check for prior violations at the scene of the violation, or when a USCG or a JEA state partner has referred the matter to OLE, the OLE Enforcement Officer or Special Agent will check for prior violations as soon as practicable. In most cases, the check for prior violations should be completed, and the Summary Settlement offer issued, within one week of the date of the violation.

(4) Issuance of Summary Settlement Offers

To issue a Summary Settlement Offer, the OLE Enforcement Officer or Special Agent will complete the attached "Summary Settlement Explanation Sheet" and provide a copy to the violator(s). The Summary Settlement Explanation Sheet will reference the EAR or other approved report of violation issued to the violator(s); state the monetary penalty assessed for the

<sup>5</sup> OLE could dismiss the case, issue a fix-it ticket or written warning, or take other appropriate action.

violation as listed in the OGC-approved Summary Settlement schedule; provide information concerning the respondent's rights upon receipt of the Summary Settlement offer; and advise the respondent of the effect of acceptance of the Summary Settlement offer on future violations. A copy of the EAR or other approved report of violation must be attached to the Summary Settlement Explanation Sheet if the Summary Settlement offer is not issued at the scene.

*(See sample Summary Settlement Explanation Sheet at Attachment 2)*

**(5) Issuance of "Joint and Several" Summary Settlement Offers**

When an alleged violation is committed by more than one person and it is appropriate to assess a penalty jointly and severally (e.g., where there is an owner or permit holder/operator relationship), a joint and several Summary Settlement offer must be issued to all relevant parties following the principles outlined in Section VII of this manual (Charging).

**(6) Issuance of Summary Settlement with Seizure and Abandonment of Property**

Numerous statutes authorize OLE, the Coast Guard, or State partners to seize property, and there may be cases where OLE provides a Summary Settlement offer after a seizure has occurred.<sup>6</sup> In such circumstances, all property owners must voluntarily abandon their interest in the property to be eligible for Summary Settlement of their violation.<sup>7</sup> If anyone with a property interest in seized property chooses not to voluntarily abandon their interest in the property, Summary Settlement is not appropriate, and the issuing OLE Enforcement Officer or Special Agent must forward the complete case investigation report to the Enforcement Section within 7 days of the refusal to sign the forms, so that the Enforcement Section can initiate civil forfeiture proceedings and take other appropriate enforcement action.<sup>8</sup>

In cases involving a seizure of property, the investigating agent or officer must issue a "Notice of Seizure" form to the respondent(s) at the time the property is seized, allowing respondent(s) to voluntarily abandon the seized property by signing the form's "Waiver of Claim and Voluntary Abandonment" clause. The investigating agent or officer must also send the Notice of Seizure form to all individuals with a property interest in the seized property who are known or readily discoverable.

*(See sample Notice of Seizure at Attachment 3).*

<sup>6</sup> For example, under the Magnuson-Stevens Act OLE has statutory authority to "seize any fish (wherever found) taken or retained in violation of any provision" of the Act. 16 USC § 1861(b)(1)(A)(iv).

<sup>7</sup> Respondents have an absolute right to challenge the seizure of their property, but such challenges are not possible within the time constraints of the expedited Summary Settlement process. Where a Respondent wishes to challenge a seizure of property, the investigating officer or agent should forward the matter to the Enforcement Section of the General Counsel's Office for consideration of further enforcement action.

<sup>8</sup> There is a short deadline for the government to act in seizure cases because the government must provide written notice of the intent to seek forfeiture of the property within 60 days of the date of seizure under the Civil Asset Forfeiture Reform Act (CAFRA), 18 U.S.C §983(2)(a).

(7) Service of Summary Settlement Offers and Notice of Seizure

An OLE Enforcement Officer or Special Agent must serve a Summary Settlement offer with specified documents including, if applicable, the Notice of Seizure, upon the respondent(s) by certified mail (return receipt requested), facsimile, electronic transmission, third party commercial carrier, or personal delivery. If mail, facsimile, electronic transmission, or commercial carrier is used, the issuing OLE Enforcement Officer or Special Agent must complete a certificate of service for each person served and place it in the case file. The issuer must also complete proof of service documentation (e.g., certified mailing service cards, facsimile transmission reports, etc.) and place it in the case file. If service of the Summary Settlement offer (and the Notice of Seizure, if applicable) is through personal delivery, the issuer must complete a certificate of personal service for each person served, and place the completed certificate of personal service in the case file.

*(See sample Certificates of Service at Attachment 4).*

(8) Withdrawal and Dismissal of Summary Settlement Offers

If further investigation demonstrates that a violation is more serious than initially suspected, that the respondent has a prior offense that was not discovered at the time of the issuance of a Summary Settlement offer that would have precluded it, or for any other reason, the issuing OLE Enforcement Officer or Special Agent may withdraw the Summary Settlement offer and refer the case to the Enforcement Section for further enforcement action. Such a withdrawal must occur before the respondent accepts the Summary Settlement offer. OLE may also dismiss a case in which a Summary Settlement was offered if it later appears that there is insufficient evidence to prove a violation or continued prosecution is no longer supported by the facts of the case.

(9) Procedures to be followed by OLE Enforcement Officers and Special Agents once a Summary Settlement Offer is Served

A respondent has 30 days from the receipt of a Summary Settlement offer in which to respond. During this time the respondent may accept the Summary Settlement offer as specified, request an extension of time to respond, may reject the offer, or let it lapse.

A respondent accepts a Summary Settlement offer by admitting the violation(s) charged, voluntarily abandoning and waiving any claim against seized property, if applicable, paying the full Summary Settlement amount, and following the additional instructions specified in the Summary Settlement Explanation Sheet. If the respondent accepts the Summary Settlement offer, the Summary Settlement is the final administrative decision against all parties in the matter and NOAA will close the case. Notably, as provided in Section IX of this manual, a joint and several respondent may agree to pay the full assessed penalty without the consent of other joint and several respondents.

A respondent may submit a written request to extend the time to respond to a Summary Settlement offer to the issuing OLE regional office at the address specified in the Summary Settlement Explanation Sheet. OLE will approve any request for extension of time to respond

for no more than 30 days. OLE may, for good cause, grant one additional 30-day extension of time. OLE will confirm all extensions of time in writing to the requesting respondent, indicating the new deadline for responding to the Summary Settlement offer in the response.

A respondent may accept a Summary Settlement offer by paying the NOAA Finance Office in full within 30 days of the date of the Summary Settlement offer, or any extension of that offer. Payment may be made as permitted by the NOAA Finance Office. Time payments are not permitted. Once the NOAA Finance Office has notified OLE that it has received payment, OLE will update their Summary Settlement database and close the case.

OLE Enforcement Officers and Special Agents must promptly refer any matter in which a Summary Settlement offer is rejected or lapses to the Enforcement Section for further action. The issuing OLE Enforcement Officer or Special Agent will notify the respondent(s) that the Summary Settlement offer has expired, and that the case has been referred to the Enforcement Section. It is the general practice of NOAA that if a Summary Settlement offer is issued and declined, further enforcement action is appropriate. Without that approach, incentives by violators to accept Summary Settlement offers are reduced.

(10) Record Keeping Requirements

Each OLE Enforcement Officer and Special Agent will maintain a case file for each Summary Settlement offer, with documentation sufficient to support a prosecution of the underlying violation should the Summary Settlement offer be refused or ignored by the respondent(s). Such case files will be maintained in accordance with applicable NOAA records management disposition schedules. Further, OLE will maintain a national database that promptly records all Summary Settlement offers, whether they are accepted or declined, and when/whether the violator has paid. OLE will develop and submit to the Enforcement Section a monthly report of all Summary Settlements offers issued by region.

D. Review of Use of Summary Settlement Authority

The Chief of the Enforcement Section will meet at least once every six months with the relevant NOAA Deputy General Counsel and the Director of the Office of Law Enforcement to review Summary Settlement offers and dispositions for the previous six month period for compliance with these policies.

