

Organ. Code
AD0000

Issue Date
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NOAA Organization Handbook

DELEGATIONS OF AUTHORITY TO THE GENERAL COUNSEL, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

I. Reorganization Plan No. 4 of 1970, paragraphs 2(e)(1) and (2) (5 U.S.C. App.), established in the National Oceanic and Atmospheric Administration (NOAA) the position of General Counsel. The General Counsel is appointed by the Secretary, subject to approval of the President, and is compensated at a rate provided for level V of the Executive Schedule Pay Rates, 5 U.S.C. 5316. The General Counsel is to "serve as the Legal Officer for all legal matters which may arise in connection with the conduct of the functions of the Administration."

II. The Office of General Counsel is to provide legal advice to the Under Secretary/Administrator and other officers of NOAA and to advocate the policies and practices of the Administration. In carrying out this role, the General Counsel may be required to provide policy advice to the Under Secretary/Administrator and subordinate officers, particularly in cases where policy and legal issues are mixed. In the interest of economy and efficient delivery of legal services throughout the Department of Commerce, the General Counsel of NOAA, with the assent of the Under Secretary/Administrator, has delegated to the Office of General Counsel of the Department of Commerce authority to provide legal advice to the Under Secretary/Administrator and other officers of NOAA, with respect to certain enumerated legal matters that are common to all agencies of the Department of Commerce. These common legal matters include federal procurement law, federal personnel law, government ethics laws and regulations, and the range of legal matters falling under the general category of federal administrative law, to the extent that such legal matters apply generally to all agencies of the Department and do not involve those laws which solely affect the functions of NOAA and no other agencies of the Department of Commerce.

III. Under Department Organization Order 25-5, section 3.03, the General Counsel provides legal services to all components of NOAA, subject to the authority of the Department's Office of General Counsel, as provided in Department Organization Order 10-6. In addition to providing legal advice and counsel to the Under Secretary/Administrator and officers of NOAA, the General Counsel has been delegated authority to perform certain functions vested by statute or by delegation from the Secretary or the Under Secretary/Administrator. These functions, enumerated in sections IV and V of this delegation of authority, involve activities having recognizable legal attributes, such as rendering decisions, recommending decisions on legal issues appealed to the Under Secretary by outside parties, seeking penalties and forfeitures provided by statute, or representing NOAA as the public trustee seeking to recover damages to natural resources.

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IV. Department Organization Order 10-15, section 3.05, provides for redelegations of authority of the Under Secretary/Administrator to any employee of NOAA, subject to such conditions in the exercise of that authority as the Under Secretary may prescribe. The Under Secretary/Administrator has redelegated authority to the General Counsel of NOAA to take such action authorized by statutes administered by NOAA, as is necessary or proper to assess civil money penalties, impose or seek permit or license sanctions, refer cases to the Department of Justice for criminal prosecutions or civil proceedings, seek in rem forfeitures, and perform certain consistency appeal functions.

The delegation of enforcement authority includes, but is not limited to the following actions:

- A. Accepting bonds or other security for seized property.
- B. Accepting payment of civil penalties and title to abandoned or seized property (or the monetary value thereof).
- C. Assessing fees for storage, care and maintenance of seized property.
- D. Compromising, settling, dismissing, or otherwise disposing of cases.
- E. Declining prosecutions for alleged violations.
- F. Issuing interim permit or license suspensions in consultation with the Chief, Ocean Minerals and Energy Division, under the Deep Seabed Hard Minerals Resources Act or the Ocean Thermal Energy Conversion Act of 1980.
- G. Issuing notices of violation and assessment of civil penalty, notices of permit or license sanction, and, except in the case of permits or licenses issued under the Deep Seabed Hard Minerals Resources Act, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Ocean Thermal Energy Conversion Act of 1980, notices of intent to deny permit or license.
- H. Referring cases to the Department of Justice for collection of civil penalties or institution of criminal, civil, forfeiture, and license sanction proceedings.

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- I. Remitting or mitigating civil penalties and forfeitures, including acting on petitions for relief from forfeiture.
- J. Representing NOAA at enforcement hearings.
- K. Requiring submission of information relevant to permit or license sanction proceedings under the Deep Seabed Hard Minerals Resources Act.
- L. Taking actions with respect to administrative forfeitures, including issuing declarations of summary forfeiture.
- M. [see inserted language - TM #72 - JAN 08]
- V. The Under Secretary/Administrator has also redelegated authority to the General Counsel for the following administrative functions:
- A. Authorize and sign:
1. Actual Expense Travel.
 2. Advance of Funds Travel.
 3. Advisory and Assistance Contracts under \$25,000.
 4. Cash Awards up to \$1,500.
 5. Material for publication in the Federal Register and the Code of Federal Regulations.
 6. NAO's on matters within his/her assigned area of responsibility.
 7. Official Travel Orders (Domestic) for the Office of General Counsel, except for Presidential appointees.
- B. Exercise personal leadership in Equal Employment Opportunity and review results of Equal Employment Opportunity Program assessment reports of the Regional Councils.
- ~~C. Perform certain procedural functions required to conduct consistency appeals pursuant to section 307 of the Coastal Zone Management Act of 1972 (CZMA), such as:~~

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1. Determine and notify the Appellant of fee payment requirements, fee payment delinquencies and fee waivers;
2. Establish and notify parties of initial and final briefing schedules;
3. Make procedural decisions necessary during the consistency appeals after a briefing schedule has been established, including the authority for granting extensions of time under the briefing schedule, for granting stays, for providing public notice of the appeal, and for providing Federal Register notices regarding the appeal; and
4. Maintain the administrative record, supervise administrative procedures, prepare all documents necessary for the administration of an appeal, serve as a hearing officer and conduct hearings pursuant to 15 C.F.R. 930.129, review the record of the appeal, and prepare findings.

VI. Reservation of Authority

- A. The Secretary reserves the authority to make findings under subsections 307(c)(3) and 307(d) of the CZMA, and the authority to carry out the mediation function under section 307(h) of the CZMA.
- B. The Under Secretary/Administrator specifically reserves the authority to:
 1. Clear all recommended findings and decisions prepared for the Secretary.
 2. Dismiss a consistency appeal for good cause, pursuant to 15 C.F.R. 930.128.
 3. Order public hearings pursuant to 15 C.F.R. 930.129.
 4. Review and decide appeals of rulings of administrative law judges in civil penalty and permit sanction proceedings, including interlocutory appeals and appeals from initial decisions of administrative law judges.

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- 5. Review interim permit or license suspension orders under the Deep Seabed Hard Minerals Resources Act or the Ocean Thermal Energy Conversion Act of 1980, upon request of the licensee or permittee.
- C. Except where provided in paragraph V (C), the Deputy Under Secretary for Oceans and Atmosphere specifically reserves the authority to:
 - 1. Review and clear all written documents prepared by the General Counsel for the Under Secretary and for the Secretary.
 - 2. Make procedural rulings necessary for the conduct of CZMA section 307 consistency appeals. This reserve delegation includes, but is not limited to, soliciting comments from affected Federal agencies, and granting requests to reopen the record.

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Approved John A. Krauss

Under Secretary/Administrator

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VII. Redelegations to the Assistant General Counsel for Enforcement and Litigation and the Regional Councils are subject to the reservations by the General Counsel, DOC, and the Under Secretary/Administrator in paragraph VI A and B. With the reservations specified in paragraph VII B, the General Counsel has redelegated authorities in paragraph IV above not relating to CZMA section 307 consistency appeals to the Assistant General Counsel for Enforcement and Litigation, the Alaska Regional Counsel, the Northeast Regional Counsel, the Northwest Regional Counsel, the Southeast Regional Counsel, and the Southwest Regional Counsel.

- A. Authority redelegated herein shall be exercised in accordance with the policies and procedures of the NOAA Enforcement Operations Manual (NEOM).
- B. The General Counsel hereby reserves the authority to provide general guidance to, and to consult with, the Assistant General Counsel for Enforcement and Litigation and the Regional Councils, to the extent permitted by law, concerning the authorities delegated herein, and to exercise any of the authorities herein redelegated as to a particular case, upon notice to the Assistant General Counsel for Enforcement and Litigation or the appropriate Regional Counsel.

VIII. The General Counsel has redelegated to the Assistant General Counsel for Ocean Services certain consistency appeal processing authority to:

- A. Establish and notify parties of initial and final briefing schedules.
- B. Grant uncontested requests for extensions of time, stay of appeal, and other uncontested post-briefing-schedule procedural decisions.

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Approved: [Signature]

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DELEGATIONS OF AUTHORITY

Type of action: Add ___ Change ___ Delete ___

Please use this form and fill in ALL blanks with requested information to make changes or to redelegate authority.

Authority delegated to: _____
(Position Title)

Type of delegation: _____
(Administrative, Personnel etc.,)

Source of authority: _____
(United States Code, Executive Order, etc.,)

Authority to do what: _____
(To sign material for publication in the
Federal Register and the Code of Federal
Regulations.)

Reserved authority: _____
(List all Reservations)

Attach copy of source document(s)

Delegated by: _____
(Signature of individual delegating)

Date: _____
(Effective date delegation(s))

Date: _____ Approved _____
Under Secretary/Administrator