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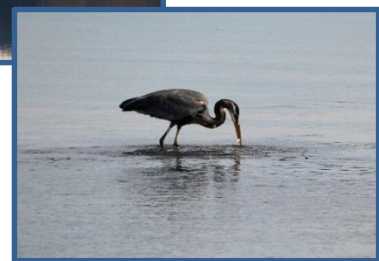
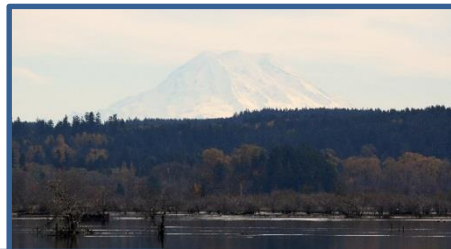
OFFICE OF INSPECTOR GENERAL

Spending Taxpayer Dollars

Northwest Indian Fisheries Commission Complied With Most Federal Requirements but Claimed Some Unallowable Costs

Report No. 17-P-0184

April 24, 2017



Report Contributors:

Angela Bennett
Darren Schorer

Abbreviations

| | |
|-------|--|
| CCMP | Comprehensive Conservation and Management Plan |
| CFR | Code of Federal Regulations |
| CWA | Clean Water Act |
| EPA | U.S. Environmental Protection Agency |
| FY | Fiscal Year |
| NWIFC | Northwest Indian Fisheries Commission |
| OIG | Office of Inspector General |
| OMB | Office of Management and Budget |
| SSIT | Sauk-Suiattle Indian Tribe |

Cover photo: Nisqually Estuary (part of Puget Sound), Billy Frank Jr. Nisqually National Wildlife Refuge, Washington. (EPA OIG photo)

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At a Glance

Why We Did This Audit

The U.S. Environmental Protection Agency (EPA), Office of Inspector General (OIG), conducted this audit to determine whether costs claimed under cooperative agreements PA00J32201 and PA00J91201 were reasonable, allocable and allowable in accordance with applicable laws, regulations and cooperative agreement terms and conditions.

The Northwest Indian Fisheries Commission (NWIFC) was awarded these two cooperative agreements in order to provide sub-awards to federally recognized Puget Sound tribes for projects that protect and restore the estuary in a manner consistent with the Puget Sound Action Agenda.

This report addresses the following EPA goals or cross-agency strategies:

- *Protecting America's waters.*
- *Launching a new era of state, tribal, local and international partnerships.*

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Northwest Indian Fisheries Commission Complied With Most Federal Requirements but Claimed Some Unallowable Costs

What We Found

Of the \$14,706,052 claimed by NWIFC under cooperative agreements PA00J32201 and PA00J91201 through June 29, 2016, more than 99 percent (\$14,618,089) was reasonable, allocable and allowable in accordance with applicable laws, regulations, and cooperative agreement terms and conditions. However, the OIG did question \$87,963 of indirect costs reimbursed by NWIFC to the Sauk-Suiattle Indian Tribe (SSIT). These costs were not in compliance with federal requirements.

The vast majority of costs claimed by NWIFC for cooperative agreements PA00J32201 and PA00J91201 were reasonable, allocable and allowable. Only \$87,963 of indirect costs reimbursed to SSIT was questioned.

The questioned amount comprises the following unallowable and allowable costs:

- \$88,093 of unallowable costs resulting from improper application of SSIT's indirect cost rate.
- A \$130 offset of an allowable cost increase due to a calculation error.

The improper allocation occurred because SSIT and NWIFC personnel did not understand the requirements of 2 CFR Part 225 and the provisions contained in SSIT's indirect cost rate agreements.

Recommendation and Recipient's Response

We recommend that the Regional Administrator, Region 10, disallow and recover ineligible costs of \$87,963 reimbursed to NWIFC for the specified indirect costs claimed by SSIT.

We discussed our finding and recommendation with Region 10 on January 13, 2017, and with NWIFC on February 3, 2017. Region 10 had no questions or comments. NWIFC stated it was discussing the finding with SSIT and attempting to obtain additional documentation.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

April 24, 2017

MEMORANDUM

SUBJECT: Northwest Indian Fisheries Commission Complied With Most Federal Requirements
but Claimed Some Unallowable Costs
Report No. 17-P-0184

FROM: Arthur A. Elkins Jr.

A handwritten signature in black ink, appearing to read "Arthur A. Elkins Jr.", is written over the printed name.

TO: Michelle Pirzadeh, Acting Regional Administrator
Region 10

This is our report on the subject audit conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). The project number for this audit was OA-FY16-0176. This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

In accordance with EPA Manual 2750, you are required to provide a written response to this report within 60 calendar days. You should include planned corrective actions and completion dates for all unresolved recommendations. Your response will be posted on the OIG's public website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal along with corresponding justification.

We will post this report to our website at www.epa.gov/oig.

Table of Contents

Chapters

| | | |
|----------|--|----------|
| 1 | Introduction | 1 |
| | Purpose | 1 |
| | Background..... | 1 |
| | Responsible EPA Offices | 3 |
| | Related Audit | 4 |
| | Scope and Methodology | 4 |
| 2 | SSIT Indirect Costs Not Allocated in Compliance With Federal Requirements | 5 |
| | Indirect Costs Allocation Concerns | 5 |
| | Recommendation..... | 7 |
| | Auditee Response..... | 7 |
| | EPA Response and OIG Comment..... | 7 |
| | Status of Recommendations and Potential Monetary Benefits | 8 |

Appendix

| | | |
|----------|---------------------------|----------|
| A | Distribution | 9 |
|----------|---------------------------|----------|

Chapter 1

Introduction

Purpose

The U.S. Environmental Protection Agency (EPA), Office of Inspector General (OIG), conducted this audit to determine whether costs claimed under cooperative agreements PA00J32201 and PA00J91201—which were awarded to the Northwest Indian Fisheries Commission (NWIFC)—were reasonable, allocable and allowable in accordance with applicable laws, regulations, and cooperative agreement terms and conditions.

Background

The EPA National Estuary Program is a non-regulatory program established by Congress and authorized by Section 320 of the Clean Water Act (CWA). Under this program, Puget Sound has been designated as one of 28 estuaries of National Significance. The goal of the National Estuary Program is to attain or maintain water quality in designated estuaries in order to protect public water supplies; protect and enable the propagation of a balanced, indigenous population of shellfish, fish and wildlife; and allow for recreational activities in and on the water. In support of this goal, Section 320 of the CWA requires the development of a comprehensive conservation and management plan (CCMP) that recommends priority corrective actions and compliance schedules addressing point and nonpoint sources of pollution. The CCMP for Puget Sound is the Puget Sound Action Agenda.

NWIFC was awarded two cooperative agreements under Section 320 of the CWA:

1. PA00J32201 for \$15,700,581, covering the period January 1, 2011 through September 30, 2017.
2. PA00J91201 for \$4,980,000, covering the period October 1, 2014 through September 30, 2019.

The purpose of these cooperative agreements is for NWIFC to provide sub-awards¹ to federally recognized Puget Sound tribes for projects to protect and restore the estuary in a manner consistent with the Puget Sound Action Agenda. Implementation of these two cooperative agreements includes the receipt of applications in response to requests for proposal, the review of submitted projects

¹ Title 2 CFR § 200.92 defines a sub-award as “an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity.”

to verify that they meet the funding intent, and the award of the funds. In addition, NWIFC is required to ensure project accountability through appropriate invoicing, financial audits, progress reporting and site visits.

Under these cooperative agreements, NWIFC has provided sub-awards to 21 tribes, including the Sauk-Suiattle Indian Tribe (SSIT). As shown in Table 1, approximately 96 percent of the recorded costs from January 1, 2011, through June 29, 2016, for cooperative agreements PA00J32201 and PA00J91201 are sub-award costs related to the tribes.

Table 1: NWIFC recorded costs

| Cost element | Recorded cost | Percent of total |
|---|---------------------|------------------|
| Tribal sub-award costs | \$14,147,295 | 96.20% |
| Salaries (including benefits) | 362,965 | 2.47 |
| Indirect | 173,131 | 1.18 |
| Other (e.g., travel, postage, supplies) | 22,661 | 0.15 |
| Total | \$14,706,052 | 100.00% |

Source: OIG summary of data from NWIFC accounting records.

Funding and Regulatory Authorities

As explained above, the cooperative agreements were awarded under Section 320 of the CWA. Funding for the cooperative agreements was authorized under the following two regulations:

- Public Law 111-88, Department of the Interior, Environment, and Related Agencies Appropriations Act of 2010.
- Public Law 113-76, Consolidated Appropriations Act 2014.

Title 40 CFR Part 31, *Uniform Administrative Requirements for Grants and Cooperative Agreement to State and Local Governments*, provides regulatory authority for funding awarded under the cooperative agreements prior to December 26, 2014. Regulatory authority for funding awarded on or after December 26, 2014 is at 2 CFR Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, and 2 CFR Part 1500, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (EPA supplement)*. Title 40 CFR Part 35, Subpart P, *Financial Assistance for the National Estuary Program*, provides policies and procedures for funding awarded under the National Estuary Program.

EPA Order 5700.5A1, *Policy for Competition of Assistance Agreement*, establishes EPA policy and requirements for the competition of assistance agreements. EPA Order 5700.6A2, Change 2, establishes standards for the oversight, monitoring and closeout of EPA assistance agreements.

Specific Regulatory Authorities for Indirect Costs

Title 40 CFR § 31.22(b) states that “allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs.”

For determining the allowable costs of a state, local or Indian tribal government, 40 CFR § 31.22(b) requires using the principles in Office of Management and Budget (OMB) Circular A-87, previously codified in 2 CFR Part 225.² Appendix E.B of 2 CFR Part 225, *State and Local Indirect Cost Rate Proposals*, provides the following relevant definitions:

2. “Indirect cost rate” is a device for determining in a reasonable manner the proportion of indirect costs each program should bear. It is the ratio (expressed as a percentage) of the indirect costs to a direct cost base.

4. “Base” means the accumulated direct costs (normally either total direct salaries and wages or total direct cost exclusive of any extraordinary or distorting expenditures) used to distribute indirect costs to federal awards.

In addition, Appendix E of 2 CFR Part 225 provides the following guidance:

All department or agencies of the government agency desiring to claim indirect costs under Federal awards must prepare an indirect costs rate proposal and related document to support those costs.
[Appendix E. D. 1.a]

Indirect cost rates be reviewed, negotiated, and approved by the cognizant Federal agency on a timely basis. Once a rate has been agreed upon, it will be accepted and used by all Federal agencies unless prohibited or limited by statute. [Appendix E.E.1]

The terms and conditions of cooperative agreements PA00J32201 and PA00J91201 provide that recipients are entitled to reimbursement of indirect costs if they have a current rate agreement or have submitted an indirect cost rate proposal to their responsible federal agency for review and approval.

Responsible EPA Offices

The Puget Sound Program within EPA Region 10’s Office of Water and Watersheds administers and manages cooperative agreements for tribal implementation projects designed to protect and restore Puget Sound.

² The regulations previously found at 2 CFR Part 225 have been revised and reorganized under 2 CFR Part 200 for funding awarded on or after December 26, 2014.

Related Audit

We performed a concurrent audit relating to cooperative agreement PA00J32201. The scope of the concurrent audit was limited to addressing specific concerns raised by a congressional committee that certain activities and expenditures under PA00J32201 may have improperly funded an advocacy campaign in Washington state called *What's Upstream?*. We issued a report on April 24, 2017, *EPA-Funded 'What's Upstream?' Advocacy Campaign Did Not Violate Lobbying Prohibitions* (Report No. 17-P-0183). We made no recommendations.

Scope and Methodology

We conducted this performance audit from July 2016 to January 2017, 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 objective. In our opinion, the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We performed the following steps:

- Interviewed NWIFC personnel to obtain an understanding of NWIFC's accounting system, internal controls, costs reported, and sub-award monitoring and invoicing procedures.
- Obtained recorded cost expenditures and revenues.
- Selected a judgmental sample and tested seven labor transactions and nine tribal sub-award transactions from eight tribes.
- Selected a judgmental sample of three tribes and conducted site visits to perform cost reviews.

Chapter 2

SSIT Indirect Costs Not Allocated in Compliance With Federal Requirements

The OIG identified \$87,963 of indirect costs reimbursed by NWIFC to SSIT that were not in compliance with federal requirements. The remaining \$14,618,089 claimed by NWIFC from January 1, 2011, through June 29, 2016, under both cooperative agreements—which amounts to more than 99 percent of the total costs—were reasonable, allocable and allowable in accordance with the applicable laws, regulations, and cooperative agreement terms and conditions discussed in the “Background” section of this report.

As shown in Table 2, we questioned \$87,963 of indirect costs claimed by SSIT. These costs were reimbursed by NWIFC to SSIT and subsequently by the EPA to NWIFC. This questioned amount includes an unallowable \$88,093 caused by the improper application of SSIT’s indirect cost rates to its subcontract costs. However, the total unallowable cost is offset by a \$130 allowable cost increase due to a calculation error. The improper allocation occurred because SSIT and NWIFC personnel did not understand the requirements of 2 CFR Part 225 and the provisions contained in SSIT’s indirect cost rate agreements.

Table 2: Summary of questioned costs

| Category | PA00J32201 | PA00J91201 | Total |
|-------------------------|-----------------|------------|-----------------|
| Federal Funds Expended | \$13,842,094 | \$863,958 | \$14,706,052 |
| Questioned Unallowable | 88,093 | 0 | 88,093 |
| Additional Allowable | (130) | 0 | (130) |
| Total Questioned | \$87,963 | \$0 | \$87,963 |

Source: The EPA’s Compass Data Warehouse and OIG audit results.

Indirect Costs Allocation Concerns

SSIT improperly calculated its indirect costs for the period of April 2011 through March 2014. SSIT subcontracted work and inappropriately applied its indirect cost rates based on costs incurred by the subcontractor.

The sub-award agreement between NWIFC and SSIT states that indirect costs shall be paid to the tribe by NWIFC at a rate equal to the official negotiated indirect cost rate applicable for the tribe. SSIT had approved indirect cost rate agreements for fiscal year (FY) 2011 through FY 2014. The base used for the calculation of indirect costs in these agreements did not include or allow for the use of subcontractor costs. Per the FY 2011 and FY 2012 agreements, SSIT’s

calculation of indirect costs was to be based on total SSIT direct costs, less capital expenditures and other sub-awards. For FY 2013 and FY 2014, the calculation was to be based on total direct salaries and wages, excluding fringe benefits.

Our review of SSIT's invoices from April 2011 through March 2014 showed that SSIT did not bill for any direct salary costs. The costs billed by SSIT included only subcontractor costs, the indirect costs in question, and minor costs for supplies. Without direct salary costs and with the exclusion of the subcontractor costs, SSIT's base for allocation of indirect costs should have been limited to the costs of the supplies. Instead, SSIT deviated from the approved method stipulated in its indirect cost rate agreements and also included costs incurred by the subcontractor in its calculation. This method resulted in a significant increase in the amount of indirect costs claimed for the period.

This deviation is contrary to the terms and conditions of cooperative agreement PA00J32201. In addition, the deviation was not provided to or approved by SSIT's responsible federal agency.³ SSIT's indirect cost rate agreements for FY 2011 through FY 2014 specifically state that such approval is required:

Changes in organization structure, or changes in methods of accounting for costs that affect the amount of reimbursement resulting from use of the rate in this agreement, require the prior approval of the responsible negotiation agency. Failure to obtain such approval may result in subsequent audit disallowance.

This same audit finding of unallowable costs was included in a May 2013 independent audit contracted by NWIFC. In response to the contracted audit finding, however, SSIT stated that the indirect costs should be allowable because the amount of supervisory and administrative effort required for the subcontracts goes beyond the minimal effort threshold. NWIFC agreed with SSIT's response and did not require reimbursement of the ineligible indirect costs. The OIG disagrees with NWIFC's decision to allow the costs for the reasons discussed above.

In addition to our finding of unallowable costs, we identified additional allowable costs that were not claimed by SSIT. The \$130 offset stems from an error by SSIT in the calculation of indirect costs from July 2014 through September 2014. SSIT calculated total indirect costs of \$1,140. Based on the indirect cost rate for the period, the OIG determined that the costs should have been \$1,270, resulting in additional eligible costs of \$130.

³ SSIT's cognizant federal agency is the U.S. Department of Interior. The U.S. Department of Interior would also be the responsible negotiation agency.

Recommendation

We recommend that the Regional Administrator, Region 10:

1. Disallow and recover ineligible costs of \$87,963 reimbursed to the Northwest Indian Fisheries Commission for the specified indirect costs claimed by the Sauk-Suiattle Indian Tribe.

Auditee Response

We shared our preliminary audit findings in the form of a discussion document with NWIFC. At a meeting on February 3, 2017, an NWIFC representative stated NWIFC was discussing the finding with SSIT and was trying to obtain additional documentation.

EPA Response and OIG Comment

In response to discussion documents we issued to the agency on January 13, 2017, EPA Region 10 provided the following statement:

We have reviewed both documents for factual accuracy and have no comments or questions and do not request a teleconference on either document. We look forward to the finalization and release of the documents.

Based on Region 10's response, the OIG is issuing this final report without further comment.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS

| Rec. No. | Page No. | Subject | Status ¹ | Action Official | Planned Completion Date | Potential Monetary Benefits (in \$000s) |
|----------|----------|---|---------------------|--------------------------------------|-------------------------|---|
| 1 | 7 | Disallow and recover ineligible costs of \$87,963 reimbursed to the Northwest Indian Fisheries Commission for the specified indirect costs claimed by the Sauk-Suiattle Indian Tribe. | U | Regional Administrator, Region 10 | | \$88 |

¹ C = Corrective action completed.

R = Recommendation resolved with corrective action pending.

U = Recommendation unresolved with resolution efforts in progress.

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