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TO: AOOS Board

FROM: Molly McCammon, Director

RE: Review of AOOS Governance Structure

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At the October 2012 Board meeting, I was given direction by the Board to *further evaluate governance and fiscal responsibility options based on the pending NPRB legal evaluation, a new draft fiscal agent agreement with the SeaLife Center, and review of other regional ocean observing systems organized as a 501(c)(3).*

**Background:** AOOS originally organized as a loose consortium under an MOA due to the desire to ensure participation by Federal Agencies on the AOOS board. Federal agency participation is considered important to AOOS' long-term effectiveness. A potential limitation of a 501(c)(3) is that Federal Agency personnel might not be able to serve as board members, although language was inserted in the national Integrated Coastal Ocean Observing System Act legislation in 2009 to clarify that, in fact, federal agencies could participate in all aspects of the regional ocean observing systems, including governance. There continues to be mixed legal interpretation of that language by various federal agency lawyers in different regions of the country. For that reason, stronger language to clarify this is being proposed for consideration as the ICOOS Act is considered for reauthorization this year.

A new concern of the Alaska SeaLife Center (ASLC) appears to center on how staff is legally described in a contract and if there is a clear "firewall" between AOOS established under the MOA and the ASLC. (This issue arose primarily because of issues between the ASLC and the North Pacific Research Board, which has a different relationship established by Congress.) Our goal is to establish clear roles between AOOS and the ASLC in the most effective manner.

**Follow-up actions:**

1. I have initiated discussions with the ASLC to develop a three-year contract engaging their services as fiscal sponsor of AOOS. In the past, this engagement was codified in a letter of agreement between the AOOS Executive Director and the ASLC Executive Director. At this point, there appears to be no reason to wait for conclusion of an ongoing NPRB/ASLC legal evaluation prior to AOOS/ASLC moving forward with a contract. The current letter of agreement between AOOS and ASLC expires June 1. We are working on a draft contract for discussion at the April 25 board meeting.

2. AOOS Board Treasurer Amy Holman and I met at the November IOOS Summit with three Executive Directors of other regional observing systems that are incorporated as private non-profits, all in regions covering multiple states. All three had these observations to make:

- If you aren't having problems with your current structure and don't "need" to change it, consider carefully before doing so.
- Consider the importance of your federal members and the fact that new legal reviews now are very inconsistent in their interpretation of what role federal representatives can have on IOOS boards, even with language in the current ICOOS Act. (Language in the proposed reauthorization of the ICOOS Act is being suggested to clarify this even more.) However, be prepared to have an option whereby federal representatives are "ex-officio" or non-voting.
- In some cases, being a private non-profit can be an advantage in obtaining private foundation funding (although other MOA regions have also received private funding).
- Do not take on your own fiscal agent/administrative responsibilities if you don't have to, because these are very time-consuming, cumbersome and costly for such a small organization.

**Recommendations:**

I recommend that AOOS continue to consider organization as a private non-profit, but wait until further clarification of federal participation occurs in the ICOOS Act Reauthorization. In the meantime, I recommend we move forward on a contract clearly delineating the roles and responsibilities of AOOS and the ASLC in terms of fiscal sponsorship and administrative support activities.