



# 2010 Financial Assistance Workshop

NATIONAL MARINE FISHERIES SERVICE  
GRANTS COUNCIL MEETING 2010

**EARMARKS / BROAD AGENCY ANNOUNCEMENT**

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## EARMARKS

- NOAA's appropriation bills and accompanying reports have long included funds earmarked for specific recipients.
- As a result of E.O. 13457 (Jan. 29, 2008), agencies no longer issue awards based on non-statutory Congressional direction (that is, projects described in House, Senate or Conference reports).
- In response, in FY09 and FY10 appropriations bills, Congress listed projects formerly included in reports in the bills themselves.

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### EARMARKS (cont.)

- Here is an example of the wording that does that:
  - *“Provided further, That within the amounts appropriated, \$99,295,000 shall be used for the projects, and in the amounts, specified in the explanatory statement accompanying this Act ...”*  
(From the the Operations , Research, and Facilities section of the FY 2010 NOAA appropriations bill, Pub. L. 111-117)
- This is what DOC and other agencies have called a “hard” earmark. It is a hard earmark because it is the bill in contrast to a “soft” earmark that is listed only in a report.

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### EARMARKS (cont.)

The term “hard earmark” is not defined in any government-wide grant statute or regulation and the term is not commonly used in Comptroller General cases on this topic.

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## EARMARKS (cont.)

- The Government Accountability Office does include “earmarking” in its glossary of budget terms:
  - “Either of the following:
    - (1) Dedicating collections by law for a specific purpose or program. Earmarked collections include trust fund receipts, special fund receipts, intragovernmental receipts, and offsetting collections credited to appropriation accounts. These collections may be classified as budget receipts, proprietary receipts, or reimbursements to appropriations.
    - (2) Designating any portion of a lump-sum amount for particular purposes by means of legislative language. Sometimes, “earmarking” is colloquially used to characterize directions included in congressional committee reports but not in the legislation itself. . . .”

(A Glossary of Terms Used in the Federal Budget Process (Supersedes AFMD-2.1.1) [GAO-05-734SP](#), September 1, 2005, p. 46)
- The GAO definition doesn’t directly deal with earmarked grant awards , but does list characteristics of earmarks being funds authorized for specified purposes. Note the reference to the “colloquial” use of “earmarking” as directions in reports but not bills. This is recognizing the hard/soft distinction.

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## EARMARKS (cont.)

- The Office of Management and Budget defines earmarks as:
  - *“funds provided by the Congress for projects, programs, or grants where the purported congressional direction (whether in statutory text, report language, or other communication) circumvents otherwise applicable merit-based or competitive allocation processes, or specifies the location or recipient, or otherwise curtails the ability of the executive branch to manage its statutory and constitutional responsibilities pertaining to the funds allocation process.”*

(OMB Guidance to Agencies on Definition of Earmarks: [http://earmarks.omb.gov/earmarks\\_definition.html](http://earmarks.omb.gov/earmarks_definition.html))

This definition doesn’t distinguish between hard and soft earmarks and focuses on the absence of merit-based decision making by the executive branch in the decision of how funds are to be awarded.

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## EARMARKS (cont.)

- Other definitions of “hard” and “soft” earmarks are used in the budget office depending on whether or not a project was requested in the President’s budget.

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## EARMARKS (cont.)

- A definition of hard and soft earmarks is in the DOC Grants Manual, which is what will be used in this discussion:
  - 1. Awards Mandated by Statute** These mandatory awards are made to organizations which are specifically named (not just generally described as to type of organization) in a statute and for which funds may be set aside in an appropriations act. The recipient is entitled to the award and has an enforceable right to receive financial assistance. These awards are also referred to as “hard earmarks”. This category does not include projects that are only contained in legislative history, which are referred to as “soft earmarks”. (**Chap. 6, par. B.1.**)
- Under the Grants Manual definition, a hard earmark needs
  - to be in the appropriations act
  - to have a dollar amount listed
  - to have an organization specifically named

### EARMARKS (cont.)

- The Grants Manual definition doesn't include a requirement for a purpose to be specified for the earmark. In the past NOAA has received a few "no purpose" earmarks. These are very rare and there have been none for at least five years.
- All NOAA earmarks for FY 2010 are listed in charts with recipients, dollar amounts, **and** project titles and/or descriptions (an example is in next slide).

### EARMARKS (cont.)

National Oceanic and Atmospheric Administration  
Operations, Research and Facilities  
National Marine Fisheries Service  
Congressionally-designated Items  
(\$ in thousands)

Recipient	Project	Amount
NOAA Southeast Science Center, Miami, FL	Turtle Protection Funding/Gulf of Mexico Grouper Fishery	250
NOAA/Fisheries, Honolulu, HI	Hawaii Seafood Safety and Sustainability	1,500
NOAA/Fisheries, Honolulu, HI	Magnuson-Stevens Marine Education and Training	1,000
NOAA/Fisheries, Honolulu, HI	Western and Central Pacific Fisheries Commission (WCPFC) Big Eye Tuna Quotas	3,000
NOAA/Fisheries, Honolulu, HI	Western Pacific Integrated Ecosystem Assessments	500
Oceanic Institute, Waimanalu, HI	Hawaii Fisheries Development	400
Oregon State University, Corvallis, OR	Disease Reduction in Klamath River Salmon	600
Pacific Coast Shellfish Growers Association, Port Townsend, WA	Emergency Plan to Save Oyster Production on the West Coast	500
Partnership for Mid-Atlantic Fisheries Science (PMAFS), Melville, NY	Partnership for Mid-Atlantic Fisheries Science (PMAFS) - Fish stock improvement initiative	1,000
Roger Williams University, Bristol, RI	Narragansett Bay Shellfish Restoration	500
School for Marine Science and Technology (SMAST), New Bedford, MA	New England Multi-Species Surveys and Development	3,000
Society for the Preservation of New Hampshire Forests (SPNHF), Concord, NH	Merrimack River Fish Habitat Conservation	300
State of Alaska, Coastal Alaska, AK	Seal and Steller Sea Lion Biological Research	300
State of Alaska, Statewide, AK	Bering Sea Crab Management and Research	300
State of Alaska, Yukon River, AK	US/Canada Yukon River Salmon Agreement Studies	500
University of Hawaii, Honolulu, HI	Joint Institute of Marine and Atmospheric Research (JIMAR) Pelagic Fisheries Research Program (JFRP)	1,250
University of Maryland Biotechnology Institute, Baltimore, MD	Metagenomic Analysis of Chesapeake Bay	100
University of New Orleans, New Orleans, LA	Pontchartrain Basin Restoration	250
Virginia Institute of Marine Science, Gloucester Point, VA	Virginia TRAWL Survey	300
West Virginia Department of Natural Resources, Charleston, WV	Natural Stream Design and Restoration	1,500
Wildlife Conservation Society, Bronx, NY	Bronx River and South Bronx Waterfront	1,000
Yukon River Drainage Fisheries Association, Anchorage, AK	The Yukon River Drainage Fisheries Association	100

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## EARMARKS (cont.)

- Program authority for the award is the appropriations bill itself.
- A recent Comptroller General case addresses this point:

“It is the specific earmark of funds in an appropriation act for transfer to a third party that creates the authority to make a grant. This includes a grant that would not otherwise be within the grantor agency's statutory competence.” **B- 303927, June 07, 2005, p. 5**

- Therefore, the award notice lists the appropriations bill as the statutory authority. For FY 2010 the citation is Pub. L. 111-117.

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## EARMARK (cont.)

- Program/project titles in the appropriations bill are important: they establish the purpose for which the funds can be used. *A project for scientific equipment should not include a budget item for landscaping, for example.*
- This means the agency has to manage the award. The administrative rules, cost principles, and socio-economic policy requirements all apply to hard earmarks.
- Special award conditions may restrict usage of funds. *In an FY09 hard earmark, the expenditure of funds for construction was restricted until legal access to land could be secured.*

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## EARMARK (cont.)

- Some issues:
- In FY09 activities that previously involved Congress giving some funds for NOAA to spend internally and some to go to recipients all ended up with recipients. It became necessary to find laws that would allow the recipient to transfer some funds back to NOAA for its work on the project.
- In the chart, when NOAA is listed as a recipient, the project is not a hard earmark under the Grants Manual definition because there is no recipient identified. NOAA is required to spend those funds on the activity, but is not directed as to how to do that.
- Generally, all hard earmark funds have to go to the recipient. NOAA can't retain funds to administer the award (no so-called "tax")
- DOC GC has stated that funds can be removed from the award for the Hollings fellowship program and the Small Business Innovative Research (SBIR) program, however, because there are pre-existing statutes for those program's funding.

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## EARMARKS ( cont.)

### QUESTIONS:

Can NOAA require a revised budget from a hard earmark recipient before issuing an award?

Can costs be disallowed on a hard earmark award?

Can a hard earmark be a cooperative agreement?

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## BROAD AGENCY ANNOUNCEMENT

The Broad Agency Announcement (BAA) was developed to deal with proposals that did not fit under ongoing NOAA program competitions, such as support for conferences or publications.

Therefore, applications that could qualify under an announced or anticipated NOAA competition aren't eligible for the BAA.

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## BROAD AGENCY ANNOUNCEMENT (cont.)

The BAA is for financial assistance. If an application proposes to sell goods or services to NOAA, it cannot be processed under the BAA.

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## BROAD AGENCY ANNOUNCEMENT (cont.)

The BAA is not to be used to fund congressionally directed awards. Should soft earmarks appear in future fiscal year appropriations reports, the BAA can't be used as an alternative to issuing a non-competitive award.

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## BROAD AGENCY ANNOUNCEMENT (cont.)

The BAA should not be used to avoid issuing a noncompetitive award.

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