



August 19, 2011

National Oceanic and Atmospheric Administration
integrity.noaa@noaa.gov

Re: Draft NOAA Scientific Integrity Policy and Procedural Handbook

OMB Watch welcomes the opportunity to comment on the National Oceanic and Atmospheric Administration's (NOAA) draft scientific integrity policy and procedural handbook.

As a nonprofit organization dedicated to open government, accountability, and citizen participation since 1983, OMB Watch has long supported efforts to strengthen scientific integrity in government. Sound, uncensored science is critically important to protecting our health, economy, and environment. Americans should be able to trust that government decision-making is based on the best available scientific and technical information. OMB Watch appreciates the efforts by the Obama administration and NOAA to bolster scientific integrity.

General Comments on NOAA's Policy and Procedures

We applaud NOAA's exemplary openness in developing its scientific integrity policy and procedures, including its decisions to post its draft policy and handbook online, meet with stakeholders, and solicit public comments for 60 days. This openness will strengthen public trust in NOAA's science and, hopefully, strengthen the policy itself. To continue this openness, NOAA should publish the comments it receives as well as a response to significant issues raised in the comments.

In general, NOAA's draft policy and procedures are thoughtful and include strong details that, by ensuring that the policy will be enforceable, are necessary for the policy's success. The draft also reinforces a culture of scientific integrity by envisioning appropriate methods for training employees, contractors, and grantees on the policy (draft Policy, Sections 4.08, 5.02(h), and 10.01).

NOAA's efforts make the agency a leader among the limited number of agencies that have published draft or final policies to date. We further highlight other important aspects of NOAA's draft below and recommend certain aspects of its draft that NOAA should revise.

Recommendations

To further strengthen scientific integrity at NOAA, OMB Watch offers the following recommendations:

1. Retain strong protections to prevent and redress political interference with science;
2. Retain and strengthen protections for the free flow of scientific information;
3. Strengthen protections for personnel who blow the whistle on violations of scientific integrity;
4. Improve the timeliness of investigations of scientific integrity violations;
5. Improve the transparency of investigations of scientific integrity violations;
6. Regularly review the policy and update it as appropriate; and
7. Strengthen scientific integrity in interagency processes.

1. NOAA's draft policy provides strong protections to prevent and redress political interference

NOAA's draft policy rightly defends against political manipulation of science, and OMB Watch urges the agency to retain these provisions. We applaud the clear statement in Section 5.02(d) of the draft policy that “[i]n no circumstance may any NOAA official ask or direct Federal scientists to suppress or alter scientific findings.”

We further applaud the inclusion of a Code of Ethics for Science Supervision and Management in the draft policy, particularly Sections 7.02 and 7.03. Additionally, the Code is made enforceable by Section 8.01 of the draft policy, which is essential to ensuring that scientific integrity is upheld.

2. NOAA's draft policy provides strong protections to preserving the free flow of scientific information

NOAA's draft policy includes multiple provisions to preserve the free flow of scientific information, and OMB Watch believes all of these provisions should be retained. For instance, NOAA's draft contains strong protections in Sections 4.02, 4.03, 5.02(a), 5.02(b), 6.01(b), 6.01(d), 7.01(e), 7.02, and 7.03.

NOAA's draft policy could further protect the free flow of scientific information in the following ways:

Bypass the Department of Commerce’s more-restrictive communications policy (DAO-219-1). OMB Watch would urge that this be accomplished by revising the Commerce policy, as the Union of Concerned Scientists recommends¹, as this would fix the troubling communication policy for all components of the Department. Barring that, Commerce could exempt NOAA from the department-wide policy, as recommended by Public Employees for Environmental Responsibility².

Clearly state that NOAA will indicate when scientific information has or has not been peer reviewed. The peer review process is an important aspect of quality control. However, there can be situations when it is appropriate to disseminate information that has not been peer reviewed. For example, in response to emergencies, such as the BP oil spill, the importance of releasing timely information may demand that NOAA disseminate initial data that has not yet received full peer review. In such situations, however, NOAA should explicitly state that the information has not been peer reviewed.

Clearly state that NOAA should not release scientific conclusions without concurrently releasing the underlying methodology. If NOAA is confident enough in a study’s conclusions to release them publicly, then it should be confident enough to release the methodology at the same time.³

Encourage or require NOAA employees, contractors, and grantees to make their peer-reviewed manuscripts publicly available in a manner similar to the National Institutes of Health’s Public Access Policy⁴. Such transparency will strengthen public trust in NOAA science and “contribute to the most effective dissemination of NOAA science” (Section 4.02, draft Policy).

Revise the “Professional courtesy and fairness” component of the draft Code of Scientific Conduct (Section 6.01(c)) to include the responsibility to appropriately share data with other researchers, including public access to the greatest extent possible.

Revise Section 5.02(b) on public access to scientific findings to state that NOAA will, to the greatest extent possible, present scientific findings with significant impacts on public health and the environment to the public in easy-to-understand, plain language.

¹ http://www.ucsusa.org/assets/documents/scientific_integrity/UCS-comments-NOAA-SI-Policy-Compilation.pdf

² http://peer.org/docs/noaa/8_10_11_PEER_Comments_on_NOAA_Draft_Scientific_Integrity_Policy.pdf

³ <http://www.ombwatch.org/node/11387>

⁴ <http://publicaccess.nih.gov/policy.htm>

3. NOAA’s draft policy should strengthen protections for scientific integrity whistleblowers

NOAA’s draft policy makes several references to protections for personnel who blow the whistle on violations of scientific integrity, including Sections 2.04, 5.02(f), 5.04, and 7.01(g). In particular, the 5.04 of the draft policy establishes that:

It is NOAA policy to protect those who uncover and report allegations of scientific and research misconduct ... from prohibited personnel practices (as defined in 5 U.S.C. 2302(b)).

We applaud this clear statement of NOAA policy, which is necessary to ensure that those with knowledge of misconduct can safely come forward to report it. Unfortunately, a statement of policy may not be sufficiently enforceable under existing statutory protections. Specifically, 5 U.S.C. 2302(b)(8) protects disclosures of information reasonably believed to evidence “a violation of any law, rule, or regulation, or; gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.” While the latter category of disclosures could encompass disclosures of scientific integrity violations, their inclusion is not certain. To ensure whistleblowers have legal recourse and for the avoidance of doubt, NOAA should issue its scientific integrity policy as a regulation. Additionally, the NOAA policy should clearly state that any violation of scientific integrity policy represents an abuse of authority and/or gross mismanagement.

4. NOAA’s policy should ensure timely investigations of misconduct

NOAA’s draft procedural handbook provides an extremely lengthy timeframe for resolving allegations of misconduct: up to 370 days from the time an allegation is received until, if confirmed, it begins adjudication. Some stages contain the flexibility of even further extending the timeframe. While some complex allegations may require such a long period of time to resolve, most allegations should not require so much time. Nevertheless, the deadlines in the procedural handbook imply expectations, which may result in lengthy processes.

Timeline to Resolution of Misconduct Allegations under NOAA Draft:

- Section 3.03: 60 days
- Section 5.01(a): 30 days
- Section 5.02(a): 60 days
- Section 5.02(e): 30 days
- Section 5.03(a): 30 days
- Section 5.03(c): 120 days

Section 5.03(g): 30 days

Section 5.03(h): 10 days

The public deserves to know that alleged violations of scientific integrity are being handled in an expeditious fashion; extremely long processes may weaken public trust in NOAA's scientific integrity. We encourage NOAA to carefully review the timelines in the procedural handbook and consider shortening time frames where possible, adding the flexibility of extensions where unusual circumstances may warrant. Additionally, NOAA should consider mechanisms to expedite its procedures in exigent circumstances.

In addition, inappropriately delaying the release of scientific information is itself a violation of scientific integrity. NOAA should consider mechanisms to expedite its procedures to address allegations of inappropriate delays to the release of scientific information. An expedited process should also be used for allegations of misconduct that occur during or in the aftermath of an emergency.

5. NOAA's draft policy should making misconduct investigations transparent

We stated previously that Americans should be able to trust that government decision-making is based on the best available scientific and technical information. By extension, Americans deserve to know when the scientific integrity of a study or decision has been compromised. However, NOAA's draft policy does not give consideration to public reporting of violations of the policy. This public accountability is an important aspect to safeguarding the policy's success.

Accordingly, we echo the recommendation of the Union of Concerned Scientists that NOAA should revise the draft policy to provide for regular public reporting of the aggregate number of misconduct allegations and the details of confirmed allegations.

Similarly, we echo the concerns of Public Employees for Environmental Responsibility regarding the responsibility of complainants to "maintain confidentiality" (draft Procedural Handbook, Section 4.01). While we understand the potential impact of a misconduct allegation on a respondent's career, a blanket requirement of confidentiality may not be the proper way to manage those impacts. NOAA should revise its policy, seeking a solution that is fair and sensitive to respondents without such universal restrictions on a complainant's ability to speak publicly about troubling allegations.

6. NOAA should regularly review its policy and revise it as appropriate

While NOAA’s draft appears strong, it can be difficult to predict how a policy will perform in reality, especially a wholly new and untested policy. In addition, even the best policy can be hamstrung if it is not wisely and consistently implemented. For these reasons, OMB Watch recommends NOAA establish a regular process to review the policy’s effectiveness and the agency’s performance under the policy. This process should lead NOAA to adopt revisions to the policy or its management practices as circumstances warrant in pursuit of continually improving the agency’s scientific integrity.

We refer NOAA to the U.S. Environmental Protection Agency’s (EPA) draft policy⁵ in this regard. The EPA policy would establish a Scientific Integrity Committee within the agency and charge the committee to “generate and make publicly available an annual report on the status of scientific integrity within the Agency.” The committee would also be tasked with reviewing the policy every two years “to ensure its effectiveness” and to recommend revisions to the policy. We recommend that NOAA, in its final policy, adopt similar practices.

7. Scientific integrity at NOAA depends on strong protections in interagency processes

Strong scientific integrity protections at NOAA alone are not sufficient to fully protect the integrity of NOAA science. Because NOAA is sometimes party to interagency processes, NOAA science may be weakened if similarly strong scientific integrity protections are not in place at other agencies. OMB Watch has long pointed out that interagency processes are often vulnerable to political manipulation and encourages NOAA and the administration to explore ways to ensure that interagency processes do not result in the loss of scientific integrity.

We note the particular example of the worst-case models prepared by NOAA in the wake of the April 2010 BP oil spill. The National Commission on the BP Deepwater Horizon Oil Spill raised troubling allegations that the White House Office of Management and Budget (OMB) interfered with NOAA’s disclosure of those models to the public. While OMB has denied that its involvement was improper, questions remain about the exact nature of OMB’s role. In similar, future situations, Americans should be able to trust that every actor involved – whether NOAA, OMB, or any other agency – is acting with integrity. Consequently, while NOAA has done its duty to develop strong scientific integrity protections, the task of fully securing NOAA science will not be complete until other agencies do so as well, particularly OMB and other White House offices.

⁵ <http://www.epa.gov/stpc/pdfs/draft-scientific-integrity-policy-aug2011.pdf>

As a result, it is unclear how NOAA's strong commitment to prevent political manipulation will be resolved with the possibility of interference during interagency reviews. While NOAA's authority in such situation is limited, NOAA should empower its personnel to protect the scientific integrity of their work to the greatest extent possible. We encourage NOAA to add a statement that authorizes its personnel to object to interagency actions that they feel would damage the scientific integrity of their work and to bring such situations to their supervisor's attention.

In addition, NOAA should act to the greatest extent of its authority to preserve the free flow of scientific information in interagency processes. Where interagency review may lead to lengthy delays in releasing information, NOAA should consider publishing a draft. Furthermore, we encourage NOAA to consider the Union of Concerned Scientists' recommendation to publish drafts of all information submitted to other agencies for review recommendation as a way to deter political manipulation in interagency processes.

Conclusion

OMB Watch appreciates the opportunity to comment on NOAA's draft scientific integrity policy and procedural handbook. We hope you take our recommendations into consideration. If you have questions about our comments or want to discuss the issues further, please feel free to contact us.

Sincerely,



Sean Moulton
Director, Federal Information Policy
OMB Watch



Gavin Baker
Federal Information Policy Analyst
OMB Watch