

May 13, 2020

Dr. Cynthia Decker  
Scientific Integrity Officer  
National Oceanic and Atmospheric Administration  
U.S. Department of Commerce

Dear Dr. Decker,

Thank you for your letter regarding our September 9<sup>th</sup>, 2019 complaint (the Complaint) under the NOAA Scientific Integrity (SI) Policy. By this letter, we provide our comments on the report and the investigation for consideration by you and NOAA Determining Official.

We filed the Complaint because we believe that the SI policy is critical to NOAA's mission. For NOAA to serve the public interest, the public must hear directly from NOAA's scientific experts without censorship, manipulation, or interference with regard to the scientific and technical information they can provide. The public must be able to trust the information it receives so that it can act accordingly. The purpose of the SI policy is to ensure the development and communication of the best possible, trustworthy scientific information in a timely and useful manner. It is through this lens of ensuring that the public good is served by NOAA that we reviewed this investigation into the Complaint.

### **Response Summary**

We examined the process NOAA used to investigate the Complaint and the investigation's findings. The choice of an independent, highly respected external body to investigate our complaint is commendable. The NAPA investigation was professionally and thoughtfully done and provides useful information and recommendations. Unfortunately, however, the investigation was severely limited by a lack of access to relevant documents and key personnel involved in the incident. In addition, despite clear requirements stated in the policy, the investigating panel failed to seek feedback from the Complainants during the investigation. And, given a lack of specific expertise in scientific integrity policies among panel participants, they unfortunately did not consult experts outside of government that could have provided valuable perspective and direction.

We also examined the substance of the report. We disagree with the first NAPA finding. It is not credible that messages directing scientists *not* to communicate with the public or the media were intended to (or able to) shield NOAA scientists from media harassment. We concur with the second and third NAPA findings that several losses of scientific integrity occurred surrounding the September 6 statement. This led to public confusion, caused reputational damage to NOAA and Commerce, and directly constrained the ability of scientists to communicate accurate scientific findings to the public.

We support the NAPA panel recommendations while believing that additional remedies are necessary to directly address the issues raised during the investigation. The recommendations we support include developing more comprehensive formal policy guidance; training for political appointees; and an intra-agency and inter-agency framework for implementing the policy including NOAA, Commerce, other agencies, and the White House.

We take exception to the report's silence on corrective action for those who caused the losses of scientific integrity and damage caused to NOAA's reputation for timely, scientifically accurate information. For the policy to be effective, there must be real consequences for its violation. The purpose of the investigation should not be only to prevent these kinds of actions in the future, but also to address the problem that already occurred. To that end, we suggest NOAA publicly acknowledge and repudiate the misconduct found; publicly reaffirm the right of forecasters to communicate directly with the public; and take appropriate disciplinary action for the misconduct. We hope the detailed analysis below is useful for both NOAA and Commerce to determine its next steps.

### **Strengths and Limitations of the NAPA Process**

We commend NOAA for contracting the non-partisan and highly respected National Academy of Public Administration to conduct the review. Given the seriousness of our allegations and those of the other three

complainants, it was important to engage a neutral, principled outside body to investigate. NAPA panel members were diverse and experienced. The panel appears to have performed a thorough investigation, despite significant inappropriate limitations placed on their work (see below). And the recommendations that they have made are useful and by and large appropriate for agency and Department of Commerce action, though we believe they are incomplete.

Unfortunately, the review panel was severely hampered in its work by NOAA and the Department of Commerce. As noted in section 1.2 of the report, the panel was not allowed access to Department of Commerce employees nor to a significant body of documentary evidence relevant to the investigation. This included text messages between two of the key Respondents as well as unredacted emails and materials gathered by the Commerce Office of Inspector General and the US House of Representatives Committee on Science, Space and Technology. In other words, the investigation was limited to information that was largely already in the public view. Because of these limitations, the investigation could not determine why the September 6<sup>th</sup>, 2019 statement that triggered the complaints, was issued at all, much less why it was unsigned, nor what the involvement was of Department of Commerce and White House staff.

These limitations suggest that NOAA and Commerce must develop mechanisms to enable review panels to compel testimony and access non-publicly available documents if there is to be a thorough and credible investigation. No Complainant and no review panel can be expected to know the extent of the actions that may have led to losses of scientific integrity based solely on publicly available information and subsequent agreed-to interviews. Therefore, we commend NAPA for recommending that NOAA and Commerce establish protocols with the Commerce Inspector General to investigate allegations that involve senior NOAA and Commerce leadership.

Unfortunately, the panel failed to access substantial expertise on scientific integrity which would have allowed them to better assess the extent of the violations. When panelists do not possess significant scientific integrity expertise, they have an obligation to seek out and interview experts to fully understand the complexities involved in developing and implementing SI policies. For example, the panel could have consulted former White House Office of Science and Technology Policy Director John Holdren, who oversaw the development of all governmental scientific integrity policies, or National Academy of Sciences President Marcia McNutt, who oversaw the development of the scientific integrity policy at the U.S. Geological Survey. The panel only consulted the Government Accountability Office, who conducted basic research into whether NOAA's Scientific Integrity Policy was consistent with the 2010 White House memorandum on scientific integrity.

We note that the Scientific Integrity Procedural Handbook accompanying NOAA's Administrative Order on Scientific Integrity (NAO 202-735D), requires NOAA to consult with Complainants during the Inquiry phase. The handbook also says the Complainant "must be given an opportunity to provide written testimony to the panel," and that that oral testimony may be requested during the Investigation phase. NAPA combined the Inquiry and Investigation phases into one, yet no consultation occurred. Such consultation would have been helpful to better understanding the nature of both our complaint and the intent and scope of NOAA's scientific integrity policy. It would also have been helpful to identify areas of investigation that go beyond what we were able to allege based on our reading of documents that were public at the time of the complaint. Two of us (Lubchenco and Spinrad) were directly and intimately involved in leading the development of the NOAA SI policy and its implementation. The third (Rosenberg) leads the program at the Union of Concerned Scientists that has led civil society calls for the development and implementation of Scientific Integrity policies in federal agencies for more than 15 years. Suggesting that inviting us to review and respond to the investigation after the NAPA panel had delivered its report does not substitute for the 'opportunity to provide written testimony to the panel' as part of its investigation.

### **The First NAPA Finding is Inconsistent with the SI Policy**

We disagree with the finding for the first allegation. Multiple messages from headquarters forbade scientists from responding to public inquiries about Hurricane Dorian's trajectory. This is unacceptable at any time, but especially during an emergency. The SI policy is clear that no one may interfere with the ability of scientists to communicate scientific and technical information with media and the public. The policy states that "NOAA scientists may freely speak to the media and the public about scientific and technical matters," and that such communications are "not subject to approval." Weather forecasts are clearly scientific products.

The assertion that the guidance was intended to “shield NOAA forecast offices and forecasters from aggressive media reporters-not to prevent scientists from discussing their research with the media” is simply not credible. Scientists and professional staff at NOAA receive training and are experienced in public communication and media interactions. In fact, as NOAA Acting Chief Scientist McLean has confirmed in his testimony, these experts “have the skills to produce conclusions and messages to the public based on technical scientific inputs.” They are experts in risk communication as well as science and have demonstrated so repeatedly in the past. They know the difference between a policy argument and presenting scientific data. Claims that they cannot share basic scientific facts with the public during a national emergency are completely unfounded and dangerous.

This is particularly true of National Weather Service forecasters working on severe weather events. To suppose that all of sudden, for this one event to require “shielding” from the media makes no sense. In fact, the scientific integrity policy itself is intended to shield scientists from political retribution for public dissemination of scientific products, not to prevent them from sharing them in the first place. Moreover, it was *after* the forecast office clarified that Hurricane Dorian did not pose a meaningful threat to Alabama residents that the instructions were issued. The scientists were protecting the public from misinformation, not needing protection from the media.

The message prohibiting experts from communicating via their personal social media accounts also runs contrary to the public interest and the scientific integrity policy. The policy states that “NOAA scientists are free to present viewpoints, for example about policy or management matters, that extend beyond their scientific findings to incorporate their expert or personal opinions, but in doing so they must make clear that they are presenting their individual opinions.” To suggest otherwise directly contravenes both the policy and the scientists’ individual free speech rights.

For all of these reasons, we maintain collectively, these messages clearly constituted scientific misconduct and a loss of scientific integrity for the agency. This is borne out by the confusion that resulted for residents of Alabama and nationally following the incident as well as by the efforts of the Commerce staff to control the media policy and the guidance, overruling NOAA leadership to some extent.

Regarding the first allegation, the NAPA panel recommends developing “formal policy guidelines for the issuance of media guidance to NOAA staff.” These guidelines should apply to NOAA employees and contractors as well as Commerce employees and contractors. We strenuously stress that these guidelines cannot supersede or interfere with the ability of individual experts to share their scientific and technical work without having to seek permission to do so. Any restrictions in these guidelines would directly contravene the spirit, letter, and intent of the NOAA SI policy. Further, such guidance must be consistent with the policy’s requirement that staff are free to share expert or personal opinions in a private capacity.

### **Intentional and Reckless Misconduct Occurred**

We agree with the findings for the other allegations that scientific misconduct and mismanagement occurred by both Dr. Jacobs and Ms. Roberts. We also note that some additional questions raised in the allegations were not addressed, including a full accounting of the involvement of Commerce Department and White House staff, because the panel did not have access to documents or relevant staff during the investigation.

For Allegation Two, there is no question that the right of review was not provided for the September 6 statement. This is not just a technical violation of the policy, but one with real consequences causing confusion and mistrust among the professional staff. Clearly, Dr. Jacobs did not understand the basic details of the SI policy, given that he thought the intention was for “a scientist” to review the statement, not those involved in the work. This is inexcusable for the head of the agency. We note that Dr. Jacobs, in testimony before the United States Senate, recently claimed that the SI policy “doesn't address social media, it was mainly geared towards the peer review process.”<sup>1</sup> This is not a proper characterization, as made clear by the NAPA report.

Allegation Three was also clearly both true and damaging to NOAA. In fact, preventing external political pressure from skewing or manipulating scientific information for the public is the core rationale for the SI policy.

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<sup>1</sup> <https://www.commerce.senate.gov/2020/3/cantwell-defends-scientific-integrity-in-nomination-hearing-of-neil-jacobs>

Even though investigator access to Commerce staff directly involved in this misconduct was barred, it is clear that political pressure was driving the development and issuance of the September 6 statement. That is entirely unacceptable and affected the credibility of NOAA scientific forecasts in a time of emergency.

Further, it is clear that Commerce staff avoided record-keeping while the September 6<sup>th</sup>, 2019 statement was in development. Chris Vaccaro testified that “a Commerce official read aloud from his iPad an earlier version of the statement,” and that once he raised objections, “a Commerce official in the conference room received a phone call and requested that the rest of the people in the room leave.” From just this incident, we believe that the recommendations under Finding Three related to Commerce’s role are essential.

### **The NAPA Recommendations are Necessary but Not Sufficient**

The recommendations made by NAPA would strengthen the implementation of the NOAA SI policy in the future. Better training for staff in NOAA and Commerce is clearly necessary. A clearer articulation of protocols for intra- and interagency sharing of scientific products will help, as well as a formal agreement between Commerce and NOAA to guide interactions around scientific products and their communication. For the policy to function in the national interest, all NOAA and the relevant Commerce staff must have a clear understanding of the scientific integrity policy.

From the interviews conducted, it is clear that career staff have received training on the scope of scientific integrity policies. By contrast, in his NAPA interview, Dr. Jacobs claimed that the scientific integrity policy “was written for science and research and not necessarily press purposes.” Taking this comment at face value, a requirement for NOAA and Commerce political staff to undergo scientific integrity policy training is of the utmost urgency. We agree with NAPA recommendations that both civil servants and political appointees undergo scientific integrity training and acknowledge they will comply with and help ensure adherence to the policy and its principles.

The conflict between Commerce and NOAA in this case shines a bright light on the need for both Commerce and NOAA staff to be held to the same high scientific integrity standards. This means bringing Commerce and NOAA scientific integrity policies into harmony to allow for future investigations to be more thorough.

Critically, we also urge you to go beyond the recommendations provided by NAPA that are limited only to “safeguard against future violations of scientific integrity.” NOAA should take specific action to acknowledge, remediate, correct, and make amends for the confirmed violations identified. Therefore, there must be additional recommendations attendant to the following:

- Reassure the NOAA workforce (especially those in the NWS and the Birmingham WFO) that they were well within their rights and authorities to issue the September 1<sup>st</sup>, 2019 tweet.
- Confirm publicly that the September 6<sup>th</sup>, 2019 unsigned memo was a clear violation of NOAA’s SI policy, was ill-advised, and created reputational damage to the professional career staff within NWS and NOAA more broadly.
- Confirm publicly that disciplinary action be taken against those in the bureau (NOAA) and the Department (DoC) found to have been in violation of the NOAA Scientific Integrity policy.
- Confirm publicly that all NOAA employees, including leadership, must formally report violations of the scientific integrity policy.
- Develop procedures for review panels to have sufficient access to NOAA internal correspondence to conduct sufficiently comprehensive investigations.


Finally, all of the recommendations of the report plus those we have added should be implemented under the authority of the most senior career employee in the agency (i.e. the Deputy Undersecretary of Commerce for NOAA). In addition, in the interests of ensuring that the findings and recommendations of this investigation are well-understood throughout the federal scientific community (i.e. all scientific agencies of the Executive Branch), a summary report (including findings, recommendations, and actions taken) should be provided to the White House Office of Science and Technology Policy, and the relevant House and Senate committees. In parallel, the NAPA report and all responses to it (such as this one) should be part of the official public record of this investigation.

Thank you for your attention to this matter and the opportunity to review the report prior to final decision.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Rosenberg". The signature is fluid and cursive, with the first letter being a large, stylized capital 'A'.

Dr. Andrew A Rosenberg, Union of Concerned Scientists

A handwritten signature in blue ink, appearing to read "Jane Lubchenco". The signature is cursive and elegant, with the first letter being a large, stylized capital 'J'.

Dr. Jane Lubchenco, Oregon State University

A handwritten signature in black ink, appearing to read "Richard Spinrad". The signature is cursive and somewhat compact, with the first letter being a large, stylized capital 'R'.

Dr. Richard Spinrad, Marine Technology Society

*Note: Institutional affiliations are for identification purposes only, and do not necessarily reflect the views or opinions of those institutions.*