CALIFORNIA FISH AND WILDLIFE
STRATEGIC VISION PROJECT

COMMENTS AND SUBMISSIONS FOR REVIEW

Through February 6, 2012

From: Bruce Forman [mailto:BForman@dfg.ca.gov]
Sent: Monday, February 06, 2012 9:03 AM
To: Strategic Vision
Cc: Jordan Traverso
Subject: staff comments

Comments on Strategic Vision Project, 1/9/12
Bruce Forman, Interpretive Services, Region 2

Preliminary Point:
The term "outreach" is widely used by internal and external people and should be defined. It can and has meant different things.

- Public relations
- Media relations
- Services (eg education, recreation, information) conducted in community (not on DFG lands or facilities) such as schools, meetings, presentations, booths at events, Fishing in the City program, etc.)

Table 1 – Communications, Education, Outreach

a. *"Public lacks sufficient understanding of DFG mission, activities, accomplishments."*
True however, for the public to care about DFG, or feel that DFG is relevant to them, they first need to be engaged in and value nature. Many are, and so many more people are not so services are needed to give them a direct experience(s) with nature, and one that they can replicate, on their own, such as attending a fishing clinic and then going fishing, or attending a wildlife tour, and then visiting a site on their own.

DFG needs to have more urban lands and partnership easements with other agencies and organizations and even private landowners to allow public to become connected with nature close to home. This would then necessitate more staff hours to promote use and provide some level of direct (guided) services.
To build trust and awareness of these services, community outreach is critical. This means developing rapport and relationships with various demographics such as and not limited to ethnic groups, people with disabilities, and young adults. This takes planning, time for development, and a long-term commitment. Many more staff hours are needed for this.

b. *"Waste of public time/money in getting information"*
Make website more user friendly. There's been some examples of this being done in past year or two; much more is needed. Front desk seems to be a good method for a main point of contact. IS numbers are given on press releases to get callers to direct office on their first call.

c. *"Some communities (rural, minority) are marginalized."*
To increase and improve outreach, more staff are needed. There's been some marked efforts in region 2 to advance this. Cultural group outreach in urban areas, Nature Bowl in rural counties, booths at community events, and swan tours and new trails-in-the-making in Yuba/Sutter/Butte Counties are a few good examples.

d. "Develop outreach plan"

Planning and developing an outreach plan takes times, especially when integrating community input. And then once a plan is developed, staff time is needed to implement, evaluate/assess, and maintain the services which may include partnership management and community relations. Region 2 has a draft, rough cut of cultural group outreach, and the beginning of a bear safety outreach plan, and services plan for improvements for people with disabilities.

e. "Duplication of efforts with HQ"

There seems to be a lack of communication with select services between OCEO's efforts in the field with Regional Interpretive Services staff. Examples are bear, coyote, mountain lion brochures and other efforts. There is also a gray line of responsibilities for coordinating and conducting activities and booths at community events. HQ seems to have its few favorites – traditional user groups, and not be involved with non-consumptive user groups, cultural outreach, childrens and environmental events.

f. Other Support for Regions

Unlike CA State Parks, DFG does not have HQ speciality support for development of exhibits, trails, landscaping and viewing shelters. The support seems to be of statewide publications and a website. Regions must seek this expertise outside of the agency, and that involves financial abilities. So considerable time is needed to raise funds to advance facility development.

g. Outdoor California

Interpretive Services Unit receives no monthly shipment of this magazine. We glean a dozen or two from the front desk. Recently, I was visiting a local Nature Center which had two boxes (120-160) of the current issue. IS in Region 2 directly services thousands of people each month – at FIC clinics, Nimbus Hatchery visitor center, swan and Table Mountain tours, booths at community events, presentations at meetings and at other seasonal services such as Nature Bowl.

h. "Tap into memberships for messages (on poaching, pollution, sales of parts, habitat restoration, enforcement)

Not only would this take time, it's a bold statement to infuse our agency messages and priorities upon NGOs albeit many (environmental groups) have overlapping messages.

i. Create Stakeholders Advisory Group

As I suggested in far more detail in October (Director's survey), I think it would be beneficial to expand this group. (reps. from a large school district, rural tourism council, friends group such as Friends of Bolsa Chica or Elkhorn Slough Foundation, major ethnic/cultural groups especially with an NGO on Outdoors such as Outdoor Afro, conservation funds such as Watershed Stewardship Council), California With Disabilities Association).

j. Partnerships

It takes considerable amount of effort and time to forge, develop and maintain lasting partnerships. Good examples were the Salmon Festival which collapsed after 12 years due to a collapsed partnership, Fishing in the City with municipal and service club partnerships for now 20 years, and the Nature Bowl, continuing in its 28th year. Most NGOs and local agencies such as City Parks and Recreation and local Park Districts are in survival mode. Staying with long term partnerships are tenuous. Starting up new partnerships are generally impractical until the economy rebounds.

Region 2 IS uses college and university interns on an annual basis. Five new CSU Chico interns will start this month for the Table Mountain program (orientations and tours).

Partnerships have developed with the rice growers near Marysville for the Swan Tour Program.

K. More Interpreters

Yes, more Interpreters are surely needed for many services. Based on current public demand and needs, we could easily have (not in any prioritized order):

1. Interpreter I for swan tours, Table Mtn tours, and partner with CA State Parks for Delta tours.
2. Interpreter I for Nimbus Hatchery (once filled and vacated position was terminated).
3. Cultural Outreach Specialist
4. Interpreter I for Nature Bowl which has expanded to Amador, Calaveras, Tuolumne, and San Joaquin Counties (now total of 11 counties), and include assisting with RCD's annual Environthon (DFG has been invited to participate, just as local RCD's have been invited to help with Nature Bowl but no takers.).
5. Interpreter I to partner with USFWS for Schools Habitat Project
6. Interpreter I to partner with urban municipalities for outreach services on their lands (eg wildlife tours, fishing clinics, junior hunts).
7. Fish Technician for Mobile Fish Exhibit - a traveling aquarium

L. "Bring innovation to schools to study science"

Region 2 is regularly involved with this via Classroom Aquarium Education Program (salmon and trout), Nature Bowl, and intermittently Project Wild.

From: Jay Ziegler [mailto:jay_ziegler@TNC.ORG]
Sent: Sunday, February 05, 2012 5:25 PM
To: Strategic Vision
Subject: minor tweak proposed... p. 17

SAG Members – in the "Fish & Game Qualifications…" I've consulted with a few of you about a matter that I think could be easily fixed and solve an exclusionary qualifications problem for FGC candidates that I don't believe anyone intended...

Current language reads:
F. The diversity of knowledge of natural resource issues including outdoor recreation and related scientific disciplines. (this could be read to imply or mean disciplines exclusively related to visitor usage type disciplines)

This language then, serves to subjugate other important scientific disciplines that I believe most/all of SAG members would support seeing on the Commission – notably "biodiversity, conservation and natural resource management"; so what I"d propose is the following:

F. <u>"The diversity of knowledge of natural resource issues and related scientific disciplines."</u>

This edit is offered in the context of other recommendations that a more general description may be best. Please let me know if you think this is workable. Thanks.

Jay

SUMMARY OF SUGGESTED B.R.C.C. RECOMMENDATIONS FROM RICK FRANK

Based on the written materials staff has provided for our review, the work of the Stakeholders' Advisory Group and public comment the B.R.C.C. has received to date, I offer the following, conceptual recommendations for reforms to the Department of Fish & Game/Fish & Game Commission. (The following recommendations are presented in summary form only; far more detail is warranted, and my hope is that these proposals will benefit from comments and recommendations of my B.R.C.C. colleagues and other interested parties.)

- **Name changes:** I recommend that the titles of both the California Department of Fish & Game and the California Fish & Game Commission be changed to more accurately reflect the scope of both entities' jurisdiction in the 21st century. I suggest that they be re-named the California Department of Fish & Wildlife and the California Fish & Wildlife Commission, respectively.

- **Changes in Membership and Qualifications of Fish & Game Commissioners:** Currently, the five members of the Fish & Game Commission are required by law to have no particular professional backgrounds or qualifications. Drawing upon the successful experience of other state agencies whose decision-makers are required to reflect diverse and specific areas of expertise, I recommend statutory changes that expand the Commission from five to seven members, and require that individual commissioners reflect particular, diverse professional qualifications. The following breakdown is offered for illustrative purposes:
    - One member with substantial experience in the commercial fishing industry/commercial fisheries;
    - One member with expertise in the sports-fishing industry or sports-fishing recreational groups;
    - One member representing California hunting interests;
    - One member possessing considerable expertise in terrestrial biology and related scientific disciplines;
    - One member possessing considerable expertise in marine biology and related scientific disciplines;
    - One member with substantial experience in the conservation community, and possessing expertise in marine and/or land conservation issues; and
    - One member representing the general public.

- **Realignment of the Powers and Duties of the Department and Commission:** Originally, the mission of both the Department and Commission was to implement, administer and enforce the state's laws governing hunting and fishing. In more recent years, the mission of both entities has expanded dramatically, to include many other functions. The respective powers and duties of the Department and Commission should be modified to reflect this modern reality, and to allocate between the two current legal responsibilities in a manner that is effective and efficient. Specifically, it is proposed that the authority of the Commission should prospectively be focused on the setting of hunting and fishing seasons, bag and catch limits, and related

functions. Other regulatory and land management responsibilities, including the administration of and listing decisions under the California Endangered Species Act, oversight of California's marine protected areas, and administration of the Oil Spill Prevention Act, should be centralized in the Department.

- **Reform and Simplification of Department Funding Programs:** The proliferation of special funds within the Department/Commission structure creates significant administrative burdens and limits the effective use of available resources. (See, for example, Legislative Analyst's Office, *A Review of the Department of Fish and Game* (1991).) There are now literally scores of special funds imposing significant limitations on the Department's ability to manage its fiscal resources effectively. Many of these funds are longstanding, single-focus programs that are outdated and often contrary to sound, state of the art, ecosystem based management practices. To remedy these problems, the number of special funds should be substantially reduced through elimination of particular accounts, consolidation of accounts, or both. In this way, for example, special funds meant for management of game species and hunting and fishing programs could be consolidated into one fund, thereby protecting the integrity of the funds, affording a measure of flexibility, and achieving substantial administrative efficiencies.

- **Encourage Department Partnerships with the Non-Profit Community:** In recent years, General Fund support for the Department and Commission has been reduced and revenues derived from hunting and fishing license fees have steadily declined. Concurrently, the Legislature and courts have imposed significant new mandates upon the Department, many of them unfunded. To address this growing fiscal crisis, increased reliance upon and collaborations with the non-profit community should be encouraged. (This has occurred, and foundation funding has been secured, for some discrete Department and Commission programs, such as those carried out under the Marine Life Protection Act.) The Department should be encouraged to pursue such mutually-beneficial partnerships in the future, and state law should be amended to facilitate such collaborations. (The California Department of Parks & Recreation, which is facing budgetary crises similar to those of the Department and Commission, provides a good model: 2011 legislation [AB 42] was enacted to facilitate DPR-non-profit partnerships, and the California Parks Foundation has been a strong policy and fiscal partner of DPR.)

- **Perform a Comprehensive Review and Updating of the Fish & Game Code and Related Laws:** California statutes affecting the Department and Commission have evolved over 140 years. During that period, new and sometimes inconsistent legal mandates have been imposed via legislation. Testimony received by the B.R.C.C. reveals that a comprehensive review of state statutes, constitutional provisions and regulations concerning the Department and Commission has been undertaken. That review, which should be of a technical, nonpartisan nature, should be initiated without further delay. The independent California Law Revision Commission is an ideal body to undertake the constitutional and statutory review, and to then to make recommendations for curative amendments to the California Legislature for consideration and

enactment. After that process is completed, the Department and Secretary for Natural Resources should undertake a conforming review process of California's regulations implementing those constitutional and statutory mandates.

I welcome the comments of my colleagues and interested parties regarding these conceptual recommendations.

Richard Frank, B.R.C.C. Member

February 2, 2012

From: Dan Connelly
Sent: Thursday, February 02, 2012 12:59 PM
To: Strategic Vision
Cc: Melissa Miller-Henson
Subject: Draft Interim Strategic Vision Plan

To whom it may concern,
I have been reluctant to provide written comments to date, but feel compelled to at this time. While I believe it unlikely that my comments will be seriously considered, I felt it important to have them included in the record.

While I recognize all the hard work and outstanding organization of the various committees and control contacts I think the effort as a whole has entirely missed the mark. I believe the author of the legislation (Huffman) forwarded it out of a very real concern over the inability of the Department of Fish and Game (Department) to adequately deal with the growing complexity of environmental issues it is being asked to deal with by government bodies, the public and numerous interest groups.

In my professional view, much of the inability of the Department to deal with current and future issues can be directly traced back to being asked to do too much with too little. It isn't that you have incompetent people doing the job, quite to the contrary, you have wonderful people given impossible task with the resources they have available to them In a nut shell they are being asked to do an ever expanding job with a shrinking capacity to do that job. After reading the last Draft document I see only additional tasks and responsibilities that the Department is being asked to now take on; this will only make matters worse! Along this line, there is an underlying assumption that additional funding is going to be readily available to do many of these expanded tasks. I believe, as do most credible economists, that for the foreseeable future, funding at both the state and Federal levels will continue to shrink.

What I found most disconcerting with the current approach was a lack of BIG IDEAS. If the Department is to go forward in a meaningful way it needs to transform itself to meet the challenges it currently faces and what lies in the future. To merely kick the can down the road will be a disservice to all involved.

Here are some Big Ideas that will remove some of the burden off the Department to make it more nimble to meet the needs and expectation of the years ahead. These changes will require a real champion and dedication to the concept of making things truly better on a scale which will make a difference.

Sunset all unfunded mandates until such time as funding and personnel authority as made available.
If the money and personnel aren't there to do the job, it is an unreasonable expectation to think the job will get done to the satisfaction of anyone

Require all future mandates include funding and personnel authority for the duration of the mandate

If you are going to require someone to do something you better give them the tools to do it or don't expect any high quality results**.**

Sunset the California Endangered Species Act
The federal ESA provides adequate protection, scientific review, process and resources for listed species protection

Combine Fish and Game with State Parks into California Fish Wildlife and Parks.
The Department is being asked to take on an ever expanding role in land management and public use. These are areas where Parks has a long history and expertise base. Many large states have gone this direction to enhance performance.

Move Wardens into State Police
This would put the warden force where they really belong. Current warder law enforcement has gone way beyond traditional activities. Drug enforcement, warrant service and other dangerous activities make this an overdue move. Wardens will be in a much better position to get the recognition and pay they deserve.

Directly Attach Spending Authority to any funds derived from legislation,federal, non state grants or contracts
This currently is a log jam that does not accomplish anything, other than insuring that nothing gets done.

I respectfully submit these recommendation as a twenty-seven year employee of the department and having had a forty year direct involvement in environmental issues. Sincerely, Daniel P Connelly

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February 1, 2012

Via Electronic Mail

Melissa Miller-Henson
California Fish and Wildlife Strategic Vision Project
California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

Re: Comments on Potential BRCC and SAG Recommendations

Dear Ms. Miller-Henson:

On behalf of Defenders of Wildlife, I am writing to submit specific comments on specific potential recommendations currently under consideration by the Blue Ribbon Citizens Committee (BRCC) and Stakeholder Advisory Group (SAG) for the California Fish and Wildlife Strategic Vision Project. While Defenders was appointed to serve as a member of the SAG, I have not been able to attend the majority of these meetings due to other work obligations and thus need to resort to a letter to convey my comments. I will be at the February 3, 2012, SAG meeting to discuss these issues further, but decided to commit our concerns to writing as well.

Overall, Defenders believes that this effort has produced some very good recommendations and has provided a forum for some diverse interests to discuss important issues facing California's fish and wildlife resources, the California Department of Fish and Game, and California Fish and Game Commission. While the majority of the potential recommendations currently under consideration are strong and valid recommendations, Defenders has serious concerns about two recommendations in particular:

- Potential Statutes and Regulations Recommendation #2: Make Statutory changes to the California Endangered Species Act (CESA) to improve permitting process: Uniformity in permitting process, efficiency in permitting, consistency in the application of CESA standards, and opportunity for applicants to appeal DFG decision.

- Potential Statutes and Regulations Recommendation #3: Allow the incidental take of fully protected species following review and under specified circumstances.

Defenders strongly objects to these two recommendations as currently conceived and drafted. These are highly controversial recommendations and as currently written fail to convey the full array of issues and policy considerations involved in rewriting CESA and the Fully Protected Species statutes. There is a long history attached to these two policy issues that goes beyond permitting efficiency. Accordingly, we set forth our concerns and objections below. In addition, we agree

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with all of the concerns raised by the Sierra Club in its e-mail, dated January 26, 2012, which I believe was transmitted to you.

Potential Statutes and Regulations Recommendation #2: Make Statutory changes to the California Endangered Species Act (CESA) to improve permitting process

Under this recommendation, three specific recommendations are currently under consideration: (1) providing DFG with the ability to allow incidental take of threatened species similar to the federal Endangered Species Act (ESA) 4(d) rule and incidental take for candidates; (2) creating an internal appeals process when applicants are in disagreement with DFG on the terms of take permits; and (3) creating an arbitration process for CESA incidental take permits.

All three of these recommendations have serious problems associated with them. The first recommendation regarding creating a similar process to a federal 4(d) rule raises a number of policy issues involving significant differences between the federal and state ESAs. Section 4(d) of the federal ESA authorizes the Services to apply the take prohibition to threatened, rather than endangered, species through administrative rules that incorporate full Section 9 protections under the federal ESA. While the Services do use 4(d) rules for threatened species to arguably provide protections for those species, the California ESA is not currently designed to allow for something like this. In addition to the issues raised by the Sierra Club, another key difference between the California ESA and the federal ESA is the failure of the California ESA to include habitat loss and degradation in its definition of "take." Regulated interests are well aware of this difference and know that any discussion involving changes to the state ESA will invariably lead to this glaring omission in the California ESA. Thus, the seemingly simple recommendation to allow for a 4(d) equivalent in the state ESA is not as innocuous as some might portray. Any discussion of changes to the state ESA must also include a recommendation of fixing this key deficiency in the state ESA.

As for the other two recommendations to create an "appeals process" and an "arbitration process," as aptly discussed by the Sierra Club, such recommendations would be strongly opposed by those organizations in the environmental community that work on ESA issues. Such processes will only create additional costs and delay in permitting decisions and provide regulated interests with even greater unbalanced access to permitting decisions than they currently have under the CESA permitting process. The permitting process is not open to the public and this will only create yet another aspect of this closed process. Moreover, DFG does not have the staff capacity to engage in prolonged appeals and arbitration debates. Right now, all costs associated with CESA permits are paid for through General Fund monies, which continue to decline each year. How does DFG think it will be able to pay for further bureaucratic processes in light of a declining budget?

For the above reasons, Defenders strongly urges that the Recommendation #2 is tabled due to a lack of consensus and failure to consider the serious policy and fiscal implications associated with this recommendation.

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Potential Statutes and Regulations Recommendation #3: Allow the incidental take of fully protected species following review and under specified circumstances.

This recommendation also fails to include the significant policy issues associated with changing the Fully Protected Species Act. The issue of fully protected species and how to deal with this code provision and the long-standing protections to this statutorily created list of species has been debated and discussed between various interests for nearly eight years. There are many issues involved in this debate, not the least of which is the concern that putting these species under CESA would not actually provide additional benefits for the conservation of these species due to limitations within CESA. Further, this recommendation ignores the fact that a specific allowance to allow for take of fully protected species under a Natural Community Conservation Plan was just enacted into law with the passage of Senate Bill (SB) 618. It seems entirely premature to suggest further changes to the fully protected species statute before SB 618's provisions are used. Rather, it would be prudent to see if SB 618 provides a sufficient solution to this issue before launching into yet another change to the fully protected species statute.

For the above reasons, Defenders strongly urges that Recommendation #3 is also tabled due to a lack of consensus and failure to consider the serious policy and fiscal implications associated with this recommendation.

Thank you for your consideration of these views. I will be prepared to discuss them further at Friday's SAG meeting. If you have any questions or comments, please do not hesitate to contact me at (916) 313-5800 ex. 109.

Sincerely,

Kim Delfino
California Program Director

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Comments from Craig Tucker in BLUE
February 2, 2012

California Fish and Wildlife Strategic Vision

Potential BRCC and SAG Recommendations to Accompany the Interim Strategic Vision

Revised January 31, 2012 (Comments from Craig Tucker in blue)

During the month of January 2012, the California Fish and Wildlife Strategic Vision (CFWSV) Blue Ribbon Citizen Commission (BRCC) and Stakeholder Advisory Group (SAG) met numerous times to discuss six general topics: Common themes, compliance, funding, governance, science, and statues and regulations. Individual BRCC and SAG members, as well as participating California Department of Fish and Game (DFG) and California Fish and Game Commission (F&GC) employees, volunteered to develop and refine text for potential recommendations to be considered by the BRCC and SAG.

This document highlights potential recommendations developed through the discussion topic meetings, a joint BRCC and SAG meeting, and subsequent homework by volunteers and other members the week of January 23 in preparation for meetings on February 3 and 6, 2012. Important notations about changes made to this document:

- Suggested additional text from homework volunteers, individual SAG members, and staff is in blue, underlined text (like this).
- Suggested deletions from homework volunteers, individual SAG members, and staff are in blue, strikethrough text ~~(like this)~~.
- Black, italicized, underlined text in brackets *[like this]* is explanatory text about whether the changes are proposed by homework volunteers or staff.

Potential Common Themes Recommendations

Potential Common Theme #1: Engage in clear and compelling communication, education and outreach, both internally and externally

Implementation recommendations include:

A. Develop a communications plan
   i. Internal
   ii. External
   iii. Identify high-level branding and recognition strategies to enhance recognition of DFG by the general public

   Implementation Assessment

   - Method: ?
   - Timeline: ?

B. Place a communications person in each region. Not only would this person be responsible for generating media stories and answering media calls, but they will also be an "expert" of sorts in the region and know all about projects, programs, etc. This person will communicate regularly with headquarters

Formal and Informal Collaboration and Partnerships Recommendation 1: DFG should strive to create an internal culture that supports partnerships, encourages collaboration, and promotes cooperation.

Implementation Assessment

- Method: ?
- Timeline: ?

Formal and Informal Collaboration and Partnership Recommendation 2: DFG and F&GC should create, foster and actively participate in effective partnerships/collaborations with and among other agencies, federally recognized tribes, and stakeholders to achieve shared goals.

Implementation Assessment

- Method: ?
- Timeline: ?

~~***Potential Partnership Recommendation/Common Theme #2: Actively participate in and create partnerships/collaborations among other agencies, stakeholders and within the organizations [both DFG and F&GC].***~~

~~Implementation recommendations could include:~~

~~A. Create a culture of coordination and collaboration~~

~~Implementation Assessment~~

- ~~Method: ?~~
- ~~Timeline: ?~~

~~B. Reach out to other groups within the department or commission. [an example would include enforcement/biologist interaction]~~

~~Implementation Assessment~~

- ~~Method: ?~~
- ~~Timeline: ?~~

~~C. Those departments with more staff and/or more specific expertise in public works contracts, or that have higher or less stringent delegated authority should coordinate with those who do not.~~

~~Implementation Assessment~~

- ~~Method: ?~~
- ~~Timeline: ?~~

~~D. Partner with and/or enter into agreements with other agencies/organizations, such as for focused species and habitat assessments or work (e.g. vegetation mapping recently or currently done by DFG's Biogeographic Data Branch for California State Parks, San Diego Association of Governments, etc.). This can include pursuing formal agreements with state and federal natural resource management, local agencies, permitting, and action agencies and/or multi-~~

Description: Current processes fall short and result in inefficient or unsatisfactory results. The intent of this action is for DFG and F&GC to support and participate in "targeted" multi-agency collaboratives that will effectively promote IRM among state and federal natural resource permitting, and action agencies and/or multi-agency/user natural resource stakeholder groups to achieve: Improved sharing of data, information, tools and science among agencies; better alignment of planning, policies and regulations across agencies; coordinated and streamlined permitting; regulatory certainty; increased coordination with all levels of government agencies (federal, tribal, state, local), stakeholder groups, private landowners, and others; and increased effectiveness through leveraging of existing networks, relationships, and multi-agency venues.

Implementation Assessment (previous, for overall recommendation)

- Method: DFG, F&GC, and Natural Resources Agency administrative, budgetary
- Timeline: Short-term

Ties to Strategic Plan: Goal 1, Objectives 2 and 9; Goal 2, Objective 2; Goal 3, Objective 1

Potential IRM Recommendation #2: Use more collaborative processes that engage regulatory agencies with landowners, federally recognized tribes, conservation organizations, and local agencies on restoration/enhancement projects.

Implementation recommendations include:

- Example is the conservation assessment partnership between CalTrans and DFG

  Implementation Assessment

  - Method: ?
  - Timeline: ?
- Work with organizations that outreach to landowners to help create stronger relationships with private landowners

  Implementation Assessment

  - Method: ?
  - Timeline: ?
- Variation: work with landowners themselves to provide solutions to common issues [e.g. invasive species]

  Implementation Assessment

  - Method: ?
  - Timeline: ?
- Work with Federally Recognized Tribes to identify restoration priorities and plans

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Potential IRM Recommendation #3: State agencies have specific expertise in some areas but not others, and should utilize each other as resources as needed.

A. Managers and policy-makers use science that employs the standard protocols of the profession (peer review, publication, science review panel, traditional ecological knowledge, etc.).

Implementation Assessment

- Method: ?
- Timeline: ?

B. Decision-making incorporates adaptive management to the extent possible (i.e., outcomes are tracked and new knowledge permits course corrections).

Implementation Assessment

- Method: ?
- Timeline: ?

C. Where the body of legitimate science informing the topic is in disagreement, those uncertainties or differences of opinion are identified, and an explanation is provided for the science selected. Likewise, where the body of science is incomplete to support a necessary decision, standard and transparent means, such as 'expert judgment' are used to advance management.

Implementation Assessment

- Method: ?
- Timeline: ?

D. Scientific professionals in DFG are held to and protected by a DFG Science Quality Assurance and Integrity Policy

Implementation Assessment

- Method: ?
- Timeline: ?

- E. In areas where traditional ecological knowledge still intact and documented, this information will be considered as part of the body of scientific information

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Ties to Strategic Vision

- Goal 1: Strong Relationships with Other Agencies, federally recognized tribes, Organizations and the Public: Objective 6: Share data, processes, tools, knowledge, expertise and information
- Goal 2: Highly Valued Programs and Quality Services Objective 7: Engage in broadly-informed and transparent decision-making (multiple sciences, public attitudes, traditional knowledge, etc.)

"game" with most state resource management agencies having replaced the game with the more inclusive term "wildlife." Potential names that have been suggested include Department of Wildlife Conservation and Management, Department of Fish and Wildlife, Department of Wildlife and Habitat, or Department of Wildlife.

Implementation benefits include:

- Improved alignment between DFG's name and the DFG's current broad range of duties (see above).
- Improved understanding from the wider public of the mission and work of DFG,
- Improved appreciation and increased support for DFG from the public.
- Future financial support (via future bond, sales tax or other funding measure on ballot, etc). Any broad scale funding mechanism will require significant public support. DFG's name (and the impression it gives of DFG's responsibilities being limited to managing hunting and fishing) would be a significant impediment to the success of any future public funding campaign. Polling efforts, leading up to the 21 campaign (November 2012), demonstrated that the term "wildlife" and protection of wildlife attracted wider support from diverse constituency groups than virtually any other term/concept.
- new name creates opportunities for branding in the media

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Implementation drawbacks include:

- Questions whether a name change was necessary or a high priority for the strategic vision process.
- Potential public confusion between DFG and the USFWS if the DFG changed its name to use the term "wildlife".
- Costs involved in making a name change.
- A risk of alienating DFG's hunting constituency if a name change is viewed as agency movement away from the agency's historic support of hunting and fishing.

[SAG member comment: This name change discussion is simply a small band-aid applied to a gaping wound. There is a risk of alienating both hunting and fishing constituencies. The vision process should focus on the core issue: DFG has too many unfunded mandates – what happened to the concept of prioritizing?

- Continuing the on-going mission creep of DFG whose current responsibilities already far outstrip the revenue available.

[SAG member comment: Suggest adding this bullet about mission creep because the assumption of the need for a name change is based on continuing mission creep for a department that is already saddled with a list of pages of unfunded mandates. There is no need for a name change. There is a need to throttle-back on the mission creep to get "back to basics".]

- Method: Administrative, regulatory, statutory
- Timeline: Medium-term/long-term

Ties to Strategic Vision: Goal 3, objectives 1 and 3

Potential Statutes and Regulations Recommendation #2: ~~Make~~Evaluate potential statutory changes to the California Endangered Species Act (CESA) to improve the permitting process: Uniformity in permitting process, efficiency in permitting, consistency in the application of CESA standards, and opportunity for applicants to appeal DFG decisions.

[SAG member comment: I don't think there is agreement that all of these things [in recommendation #2] should proceed or at least there is concern about the 'details' of implementation. I think members of the SAG as a whole would be more comfortable with a recommendation to evaluate such changes than a recommendation to MAKE them.]

Implementation recommendations include:

- Provide the ability for DFG to allow incidental take for threatened species through regulations (as opposed to individual permits), similar to federal 4(d) rule and incidental take for candidates.
- This sounds to me like we are watering down CESA at a time when the numbers of threatened, endangered, and extinct species is climbing

  [Homework discussion: Suggest holding as high priority for discussion during third phase.]

  Implementation Assessment

  - Method: ?
  - Timeline: ?

- Create an internal appeals process that an applicant can invoke when unable to reach agreement on terms for an incidental take permit.
- This sounds to me like we are watering down CESA at a time when the numbers of threatened, endangered, and extinct species is climbing
-

  [Homework discussion: Suggest including with recommendation #2 now.]

  Implementation Assessment

  - Method: ?
  - Timeline: ?

- Allow arbitration similar to 1600 arbitration for incidental take permits issued under CESA (consistency of application of standards).
- This sounds to me like we are watering down CESA at a time when the numbers of threatened, endangered, and extinct species is climbing

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- *[Homework discussion: Suggest holding as high priority for discussion during third phase.]*

  Implementation Assessment

  - Method: ?
  - Timeline: ?

Potential Statutes and Regulations Recommendation #3: Allow the incidental take of fully protected species following review and under specified circumstances.

[Homework discussion: Suggest holding recommendation #3 as high priority for discussion during third phase.]

Implementation recommendations include:

- Only allow take for defined restoration projects or agreed upon beneficial projects. I agree with this…

  [Proposed change from individual SAG member]

- Reviewing status of fully protected species to determine the need for protection.

  [SAG member comment: This is not necessarily needed. If we create a take process for fully protected species it would be done on a case by case basis. Main concern is recommending something that will be costly and time intensive.]

- Eliminate fully protected status or alternatively list under CESA depending on status review.

  [SAG member comment: Elimination is controversial and I don't necessarily see a lot of support for it.]

Description: The fully protected species statute is outdated and needs addressing. Until the statutory change made in 2011, there was no way to allow for take of fully protected species. This caused challenges for projects throughout California and deterred habitat improvement projects that could benefit fully protected species because of the risk of take during the restoration project. While some would support abolishing the fully protected species statutes completely, broader support could be gained by moving species needing protection to CESA and eliminating it for those that don't ~~need~~warrant protection. However, DFG has stated that its workload would be significantly less it would be much easier for DFG if the statutes were eliminated, rather than requiring the review and listing of current fully protected species.

[Suggested edits in description paragraph from homework volunteers.]

[SAG member comment on original language: I don't agree with the last two sentences of the description.]

Implementation Assessment

- Method: Statutory and possibly administrative

- Timeline: Mid-term / long-term

Ties to Strategic Vision: Goal 3, Objective 3; Goal 4, Objective 2

Potential Statutes and Regulations Recommendation #4: All DFG policies are in writing and employees are trained in the proper implementation of policies.

Implementation recommendations include:

- Identify all unwritten policies
- Formalize all policies in writing.
- Make written policies accessible to the public, including posting to the Internet and allowing for public comment during policy development.

Description: Currently there seems to be significant differences between regions on permitting standards. There are also instances of policies changing seemingly overnight when employees change. This is concerning to stakeholders and diminishes trust in DFG and its decisions. Ensuring all policies are in writing will improve transparency and improve the permitting process by allowing regulated entities to understand what will be asked of them when they apply for a permit.

Implementation Assessment:

- Method: Administrative, statutory
- Timeline: Mid-term

Ties to Strategic Vision: Goal 2, Objective 7; Goal 4, Objective 2

Potential Statutes and Regulations Recommendation #5: Develop formal consultation policy for working with federally recognized tribes

Potential Permitting Recommendations

Potential Permitting Recommendation #1: As part of a broader improvement to the permitting process, provide adequate resources to DFG for assisting applicants with pre-project planning in advance of submitting a permit application (e.g. state incidental take permits and streambed alteration agreements)

Implementation recommendations include:

A. DFG staff holds regular workshops for members of the public to inform project planning and permit applications.
   Implementation Assessment
   - Method: ?

- Timeline: ?

B. Fund dedicated staff time to serve as project pre-planners to aid with planning and application preparation.

[SAG member comment: Where's the funding going to come from? No new fees!]

Implementation Assessment

- Method: ?
- Timeline: ?

C. DFG permitting staff hold "office hours" to allow dedicated time to interface with project proponents.

Implementation Assessment

- Method: ?
- Timeline: ?

D. Create a user-friendly manual and or on-line information that helps guide project applicants through the planning and permitting process including information on when best to engage with DFG staff. For an idea for what this could look like check out http://cornandsoybeandigest.com/node/64081

~~D.~~

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Implementation Assessment

- Method: ?
- Timeline: ?

E. Update and maintain appropriate DFG contact information on the DFG website.
Implementation Assessment

- Method: ?
- Timeline: ?

Description: Efficiencies are captured when DFG and project proponents communicate about projects often and well in advance of preparing and submitting a permit application (e.g. state incidental take permits and streambed alteration agreements). During such early consultations, DFG staff is able to visit proposed project sites and clearly communicate project features necessary to meet statutory requirements and permit issuance criteria; project proponents are better able to submit successful applications. Both DFG and applicants spend less time and resources during application preparation, submittal, and review and during the permit preparation process.

Constraints: At current staffing levels DFG staff does not have adequate time to spend with project proponents engaging in such proactive and desirable actions. This is because of the statutory time limits for permit review; available staff must focus on permit issuance to satisfy permitting deadlines as opposed to pre-project planning. In addition, for state incidental take permits issued to satisfy the

California Endangered Species Act (CESA), there is insufficient funding of staff for review or issuance of these permits (with the exception of some renewable energy projects); the number of staff funded by General Fund (GF) or Environmental License Plate Fund (ELPF) have dwindled due to past cuts. These GF and ELPF funded positions have multiple responsibilities and time for the above potential actions is limited. Additional staffing and/or alternate allocation of staff time is needed to realize the strategic goals of better communication, efficiency, collaboration, and transparent decision making.

Implementation Assessment (previous, for overall recommendation)

- Method: Administrative and legislative (funding)
- Timeline: ?

Ties to Strategic Vision: Goal 4, Objective 1; Goal 4, Objective 2

Potential Permitting Recommendation #2a: Establish an inter-agency coordination process in the review of CESA incidental take permit applications, streambed alteration agreements, and other appropriate permits and agreements.

Implementation recommendations include:

A. Use or create where necessary joint state, federal,tribal and local review teams that bring all the permitting agencies to the table at the same time to review a proposed project and any associated permit applications.

   Implementation Assessment

   - Method: ?
   - Timeline: ?

B. Develop legislation that encourages the formation/use of such joint review teams that either offers incentives or requires agencies to come to the table.

   [SAG member comment: Why legislation? There's no legislation needed to produce joint review teams.]

   Implementation Assessment

   - Method: ?
   - Timeline: ?

Potential Recommendation #2b: Make the application review and permit preparation process more consistent and transparent to applicants.

Implementation recommendations include:

A. Have DFG develop and maintain an online permit tracking system so that applicants are able to follow their DFG permit through the review process.

   Implementation Assessment

Potential Permitting Recommendation #4: Develop a set of criteria and implementation guidelines for "beneficial" projects. YES!

Description: DFG projects on DFG properties are often restoration, habitat enhancement, maintaining or protecting species or habitat and can fall under a general descriptor of "beneficial projects." Beneficial projects are also often proposed by private landowners in conjunction with grants received, and where not part of a compensation or mitigation effort, should be considered differently than a project that is impacting a species or habitat and causing a loss or a take. Methods, timing of projects, best management practices and a post-project greater value should be considered during the permitting stage of the project.

Implementation recommendations include:

- DFG to work with the California Coastal Commission on those projects in the Coastal Zone that meet criteria for beneficial project so that permitting timelines and permit conditions are not so onerous that the projects cannot be accomplished.
- Work with Waterboard to integrate 401 permitting with CESA permitting for restoration projects.

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Implementation Assessment

- Method: Administrative, perhaps budgetary and legislative (Coastal Act changes?) in future years
- Timeline: Continuing

Ties to Strategic Vision: ?

Potential Integrated Resource Management Recommendations

[The text and potential recommendations on integrated resource management have been incorporated into Partnerships, which has been moved into Common Themes.]

Potential Partnerships Recommendations

[The text and potential recommendations on partnerships have been moved into Common Themes.]

Potential Enforcement Recommendations

Overarching Enforcement Recommendation (outcome): Effective Enforcement

Potential Enforcement Recommendation #1: Ensure successful recruitment and retention of California fish and game wardens

From: Diane Pleschner-Steele
Sent: Saturday, February 04, 2012 7:13 AM
To: Melissa Miller-Henson; Joanna Stone
Cc: Skyli McAfee
Subject: yesterday's CFWSV meeting

Hi Melissa,
Sorry my internet was down yesterday and I missed the meeting. I'll look forward to seeing the meeting summary...

I came across the attached and would appreciate it if you would circulate these docs. for discussion and, hopefully, adoption by the Exec. Committee. No sense reinventing the wheel when discussing / adopting a scientific integrity policy. NOAA has already done it.

Interesting to note, NOAA's scientific integrity policy parallels my continuing plea that science be reinstated as a core value of DFG (which I saw the homework volunteers again quashed in the pre-meeting docs, claiming that science was only a "tool", notwithstanding the fact that it is a statutory mandate)... Science is a process, and product, and also an essential paradigm of modern society and particularly natural resource management.

According to NOAA's scientific integrity policy (which I think would be good for DFG and the Commission to adopt) "Science provides the fundamental basis of the service and stewardship elements of NOAA's (and DFG's) mission.

I'll try to call in Monday AM.
Best,
d.

	National Oceanic and Atmospheric Administration	NOAA Administrative Order 202-735D	
	NOAA ADMINISTRATIVE ORDER SERIES	DATE OF ISSUANCE December 7, 2011	EFFECTIVE DATE December 7, 2011
	SUBJECT: SCIENTIFIC INTEGRITY		

SECTION 1. PURPOSES.

.01 To promote a continuing culture of scientific excellence and integrity, and to establish a policy on the integrity of scientific activities that the agency conducts and uses to inform management and policy decisions. In addition, the intent of the policy is to strengthen widespread confidence – from scientists, to decision-makers, to the general public – in the quality, validity, and reliability of NOAA science and to denote the agency's commitment to a culture of support for excellence of NOAA's principal science asset, its employees.

Achieving these purposes requires commitment from scientists, their managers, and those who use scientific results to set policy. Therefore, this Order also establishes reciprocal responsibilities among all three groups through a Code of Scientific Conduct and Code of Ethics for Science Supervision and Management for NOAA employees and contractors who conduct, supervise, assess, or interpret scientific information for the use of NOAA, the Department of Commerce, and the Nation.

.02 The Procedural Handbook to this Order establishes processes for responding to allegations of misconduct. The Procedural Handbook has the full force and authority of this NOAA Administrative Order (NAO).

.03 Future guidance and resources related to scientific integrity and the implementation of this NAO will be made available to staff and the public on the Scientific Integrity Commons website at http://nrc.noaa.gov/scientificintegrity.html.

SECTION 2. SCOPE.

.01 To achieve its purposes, this Order will:

- Establish NOAA's Principles of Scientific Integrity and the general NOAA Policy on Integrity of Scientific Activities.
- Define the reciprocal responsibilities among scientists, their managers and supervisors, and policy makers by establishing a Code of Scientific Conduct and a Code of Ethics for Science Supervision and Management.
- Provide for compliance training and maintenance of a NOAA Scientific Integrity Commons website for its employees.
- Set procedures for resolving allegations of misconduct and consequences for misfeasance by adopting an associated Procedural Handbook.

.02 This Order applies to:

a. All NOAA employees, political and career, who are engaged in, supervise, or manage scientific activities, analyze and/or publicly communicate information resulting from scientific activities, or use scientific information or analyses in making bureau or office policy, management, or regulatory decisions; and

b. All contractors who engage in or assist with activities identified above.

.03 Recipients of NOAA financial assistance awards, including NOAA Cooperative Institutes, as well as other NOAA research partners and collaborators are responsible for abiding by the principles contained in this Order regarding NOAA's commitment to Scientific Integrity, as specified in award agreements or in other written agreements with NOAA.

.04 This Order is in addition to and does not alter the requirements applicable to the specific activities, topics, and persons that are explicitly covered by other applicable federal statutes, regulations, or policy directives, or by other NOAA or Department of Commerce administrative orders, such as but not limited to:

a. Department policy for engaging in public communications, as specified in Departmental Administrative Order (DAO) 219-1, "Public Communications," as clarified on June 15, 2011 by the General Counsel of the United States Department of Commerce's *Memorandum for all Bureau Chief Counsels and General Counsels*.[1]

b. The Information Quality Act (Section 515 of Public Law 106-554), which may be applicable to certain information disseminated by NOAA.

c. Testimony or information provided to Congress that is addressed by DAOs 218-1, "Legislative Activities"; 218-2, "Legislative and Intergovernmental Affairs"; and 218-3, "Reports to Congress Required by Law"; NOAA Administrative Order 218-1, "The Preparation and Clearance of Congressional Testimony"; and any other requirement that information presented to Congress must be scientifically accurate.[2]

d. Rulemakings, adjudications, or publications in the Federal Register.

e. Requirements for authorizing the production, printing, and distribution of publications and audiovisuals that are addressed by DAO 219-4.

f. Department regulations and policies pertaining to financial assistance awards, as specified in 15 C.F.R. Parts 14 and 24 (as applicable); the Department of Commerce Financial Assistance Standard Terms and Conditions (March 2008); and DAO 203-26, "Department of Commerce Grants Administration," as

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[1] The Departmental Administrative Order (DAO) 219-1, "Public Communications," does not apply to employees in bargaining units represented by the National Weather Service Employees Organization.

[2] Dr. John P. Holdren's *Memorandum for the Heads of Executive Departments and Agencies on Scientific Integrity*, issued on December 17, 2010, states: "In addition, the Director of the Office of Management and Budget (OMB) will be issuing guidance to OMB staff concerning the review of draft executive branch testimony on scientific issues prepared for presentation to the Congress. That guidance will provide standards that are to be applied during the review of scientific testimony."

supplemented by the Department's Grants Manual, any or all of which may be periodically updated.

.05 This Order shall not be interpreted to conflict with the rights of an employee under the law, including:

- The Federal Service Labor-Management Relations Statute (5 U.S.C. §§ 7101-7135);
- Department Administrative Order (DAO) 202-711, "Labor-Management Relations";
- Various collective bargaining agreements;
- Those provisions of Chapter 75 of Title 5 of United States Code relating to disciplinary action of employees; and
- The Whistleblower Protection Act of 1989 (5 U.S.C. § 1213).

Additionally, this Order shall not be interpreted to conflict with any rights accorded a union representative under the Federal Service Labor-Management Relations Act when communicating as a union representative.

SECTION 3. DEFINITIONS.

Allegation

Any written or oral statement or other indication of possible scientific misconduct made to a NOAA employee or contractor, or to an employee of a NOAA research partner.

Bias (Research Bias)

Research bias, also called experimenter bias, is a process where the scientist(s) performing the research influence the results in order to produce a certain outcome.[3]

Conflict of Interest

Any financial or non-financial interest which conflicts with the actions or judgments of an individual when conducting scientific activities because it:

1. Could impair the individual's objectivity;
2. Could create an unfair competitive advantage for any person or organization; or
3. Could create the appearance of either item listed above.

Decision-Makers

Employees who may:

- Develop policies or make determinations about policy or management;
- Make determinations about expenditures of Department of Commerce or NOAA funds;
- Implement or manage activities that involve, or rely on, scientific activities; or
- Supervise employees who engage in scientific activities.

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[3] *See* Martyn Shuttleworth, *Research Bias*, EXPERIMENT RESOURCES (2009), http://www.experiment-resources.com/research-bias.html.

Fabrication

Making up data or scientific results and recording or reporting them for the purposes of deception.[4]

Falsification

Manipulating research materials, equipment, processes, or changing or omitting data or results such that the research is not accurately represented in the research record.[5]

Financial Interest

Any matter affecting a personal financial interest or a financial interest imputed to the individual (including, but not limited to, the individual's spouse and any entity for which the individual serves in a personal capacity as an officer or board member, such as due to fiduciary duties to the organization under state law).[6]

Fundamental Research Communication

The complete definition of "Fundamental Research Communication" is found in DAO 219-1, available at http://www.osec.doc.gov/omo/dmp/daos/dao219_1.html.

A brief definition is: Public communication prepared as part of the employee's official work regarding the products of basic or applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community. Matters of policy, budget, or management are not considered Fundamental Research Communications.

Non-Financial Conflict of Interest

Individual participation in a matter where one of the parties has, or is represented by someone with whom the individual has, a covered relationship (including, but not limited to, a spouse's employer and any entity for which the individual is actively involved in a personal capacity).[7]

Plagiarism

The appropriation of another person's ideas, processes, results, or words without giving appropriate credit.[8]

Research

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[4] *See* Federal Policy on Research Misconduct, 65 Fed. Reg. 76,260, 76,262 (Dec. 6, 2000).

[5] *See* Federal Policy on Research Misconduct, 65 Fed. Reg. 76,260, 76,262 (Dec. 6, 2000).

[6] *See* 18 U.S.C. § 208. This definition will be applied consistent with any rule issued by U.S. Office of Government Ethics permitting the appointment of Federal employees to serve in their official capacities on the boards of directors and as officers of nonprofit organizations, including scientific organizations, professional societies, and similar bodies that are actively involved in matters under the jurisdiction of the Department. *See* 76 Fed. Reg. 24816 (May 3, 2011).

[7] *See* 5 C.F.R. § 2635.502(b).

[8] *See* Federal Policy on Research Misconduct, 65 Fed. Reg. 76,260, 76,262 (Dec. 6, 2000).

Research is systematic study directed toward fuller scientific knowledge or understanding of the subject studied.[9]

- Basic research is defined as systematic study directed toward fuller knowledge or understanding of the fundamental aspects of phenomena and of observable facts without specific applications towards processes or products in mind.
- Applied research is defined as systematic study to gain knowledge or understanding necessary to determine the means by which a recognized and specific need may be met.

Science

Science at NOAA is the systematic study of the structure and behavior of the ocean, coasts, Great Lakes, atmosphere, and their related ecosystems, including people; and the integration of research, analysis, observations, monitoring, and environmental modeling, or subsets of those and related fields of study. NOAA science includes discoveries and ever new understanding of the oceans and atmosphere and their intimate relationship to humans and the application of this understanding to such issues as the causes and consequences of climate change, the physical dynamics of high-impact weather events, the dynamics of complex ecosystems and biodiversity, and the ability to model and forecast the future states of natural and human systems.

Science provides the fundamental basis of the service and stewardship elements of NOAA's mission.[10]

Scientific Activities

Activities that involve inventorying, monitoring, observations, experimentation, study, research, integration, modeling, and scientific assessment.

Scientific activities are conducted in a manner specified by standard protocols and procedures and include any of the physical, biological, or social sciences, as well as engineering and mathematics, or any combination of these.

Scientific Assessment

Evaluation of a body of scientific or technical knowledge that typically synthesizes multiple factual inputs, data, models, and assumptions, and implies the use of best professional judgment to bridge uncertainties in the available information.

Scientific Integrity

The condition resulting from adherence to professional values and practices when conducting and applying the results of science that ensures objectivity, clarity, and reproducibility, and that provides insulation from bias, fabrication, falsification, plagiarism, interference, censorship, and inadequate procedural and information security.

Scientific Product

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[9] *See* National Science Foundation Survey of Federal Funds for Research and Development, http://www.nsf.gov/statistics/randdef/fedgov.cfm#gs.

[10] Adapted from *NOAA's Next Generation Strategic Plan*, p. 3 (Dec. 2010), http://www.ppi.noaa.gov/wp-content/uploads/NOAA_NGSP.pdf

Presentation of the results of scientific activities including the analysis, synthesis, compilation, or translation of scientific information and data into formats for the use of NOAA, the Department of Commerce, or the Nation.

Traceability

The ability to discover by going backward over the evidence step by step.

Transparent (Transparency)

Characterized by visibility or accessibility of information (the quality or state of being transparent).

SECTION 4. NOAA PRINCIPLES OF SCIENTIFIC INTEGRITY.

.01 NOAA is an organization based upon science, scientific research, and providing and using scientific advice for decision-making. NOAA recognizes a clear distinction between the scientific process and the policy decisions made based on the results of science. NOAA's ability to achieve its strategic vision of "healthy ecosystems, communities, and economies that are resilient in the face of change" relies on transparency, traceability, and scientific integrity at all levels. Transparency, traceability, and integrity are, therefore, core values of our organization and the reason for issuing this Order. The principles described in the paragraphs below constitute NOAA policy.

.02 NOAA scientists are expected to be cognizant of and understand the statutes and any other mandates that guide their work.

.03 NOAA scientists are encouraged to publish data and findings in ways that contribute to the effective transparency and dissemination of NOAA science and that enhance NOAA's reputation for reliable science, including online in open formats and through peer-reviewed, professional, or scholarly journals. Development and dissemination of scientific and technical products must be consistent with NOAA policies and procedures related to peer review, the Open Government Directive (Office of Management and Budget, 2009b), NOAA's information quality guidelines,[11] and other legislative and policy mandates.

.04 In response to media interview requests to the Agency about the scientific and technological dimensions of NOAA's work, NOAA will offer knowledgeable spokespersons who can, in an objective, nonpartisan and articulate fashion, describe and explain these dimensions to the media and the American people.

.05 To be open and transparent about their work, and consistent with DAO 219-1 on (Public Communications) and their official duties, NOAA scientists may freely speak to the media and the public about scientific and technical matters based on their official work, including scientific and technical ideas, approaches, findings, and conclusions based on their official work. Additional guidance for employees is available in DAO 219-1.[12] Communication by email or other electronic means in response to inquiries from the media, and concerning scientific or

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[11] NOAA Information Quality and Peer Review Guidelines are available on the NOAA website at http://www.cio.noaa.gov/Policy_Programs/info_quality.html. Additional peer review guidance will be made available to employees through the NOAA Scientific Integrity Commons website.

[12] DAO 219-1, "Public Communications" (April 30, 2008), http://www.osec.doc.gov/omo/dmp/daos/dao219_1.html.

technical matters based on an employee's official work, are considered to be the same as oral communication and not subject to approval, but are still subject to the restrictions on protected non-public information set forth in DAO 219-1. Social media communications are governed by the Department of Commerce Policy on the Approval and Use of Social Media and Web 2.0,[13] as well as DAO 219-1.[14]

.06 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 – not the views of the Department of Commerce or NOAA. In such cases, NOAA personnel may also note their NOAA affiliation as part of their biographical information, provided that their NOAA affiliation is noted as one of several biographical details, or, if the information is being published in a scientific or technical journal, their NOAA affiliation may be listed with an appropriate disclaimer. Appropriate disclaimers for use by NOAA scientists when expressing such opinions will be posted to the Scientific Integrity Commons website.

.07 NOAA recognizes that scientific leadership is critical to advance its mission and the professional development and stature of its scientists and engineers and therefore encourages and supports its researchers to become scientific leaders. NOAA also encourages its scientists, consistent with Federal ethics laws and regulations, to engage with their peers in academic, industry, governmental, and non-governmental organizations by:

- presenting their work at scientific meetings,
- publishing their work in appropriate outlets,
- serving on editorial boards and on scientific and technological expert review panels, and
- actively participating in professional societies and national/international scientific advisory and science assessment bodies.

.08 NOAA supports the election or appointment of its scientists and engineers to fellowships or positions in professional organizations, including as officers and on governing boards, subject to applicable ethics requirements and Department of Commerce policy. According to Department of Commerce policy, NOAA employees may generally serve in their personal capacity as officers and on governing boards of outside organizations or in their official capacity as a government liaison. Service in an official capacity on a governing board or as an officer of an outside organization is subject to restrictions under ethics laws;[15] employees should consult an ethics official before accepting an appointment on behalf of NOAA to such a position.

.09 NOAA supports recognizing the outstanding science conducted by its employees and authorizes its scientists to accrue the professional benefits of any honors and awards for their research and discoveries, subject to applicable law, with the goal of minimizing, to the extent

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[13] Department of Commerce Policy on the Approval and Use of Social Media and Web 2.0 (Oct. 21, 2010), http://www.osec.doc.gov/webresources/socialmedia.

[14] The Departmental Administrative Order (DAO) 219-1, "Public Communications," and Department of Commerce Policy on the Approval and Use of Social Media and Web 2.0 do not apply to employees in bargaining units represented by the National Weather Service Employees Organization.

[15] The U.S. Office of Government Ethics has published a proposed rule that would create a government-wide exemption to 18 U.S.C. § 208. *See* 76 Fed. Reg. 24816 (May 3, 2011). The exemption would permit the appointment of Federal employees to serve on the boards of directors and as officers of nonprofit organizations, including scientific organizations, professional societies, and similar bodies that are actively involved in matters under the jurisdiction of the Department. DOC and NOAA support this proposed rule.

practicable, disparities in the potential for private-sector and public-sector scientists and engineers to accrue the professional benefits of such honors or awards.

.10 To establish a culture of transparency, integrity, and ethical behavior among its employees NOAA will use a combination of policy, opportunities for training, and open communications, both internally and with the public. NOAA commits to:

- provide regular integrity and ethics training to its employees and contractors,
- provide new covered employees with training within one year of beginning employment, and
- provide information to ensure that employees and contractors are fully aware of their rights regarding publication of their research, communication with the media and the public, participation in professional scientific societies, and their responsibility to report waste, fraud, and abuse.

SECTION 5. NOAA POLICY ON INTEGRITY OF SCIENTIFIC ACTIVITIES.

.01 All staff identified in Section 2.02 must uphold the fundamental Principles of Scientific Integrity, the Code of Scientific Conduct, and the Code of Ethics for Science Supervision and Management outlined in this Order.

.02 NOAA recognizes the importance of scientific activity and the information it produces to maintain and enhance its effectiveness and to establish credibility and value with the public, both nationally and internationally. NOAA will preserve the integrity of the scientific activities it conducts, and activities that are conducted on its behalf. It will not tolerate loss of integrity in the performance of scientific activities or in the application of science in decision-making. To that end, NOAA will:

a. Ensure the free flow of scientific information online and in other formats, consistent with privacy and classification standards, and in keeping with the Department of Commerce and NOAA data sharing and management policies. Where appropriate, this information will include data and models underlying regulatory proposals and other policy decisions.

b. Document the scientific findings considered in decision-making and ensure public access to that information and supporting data through established Department of Commerce and NOAA procedures—except for information and data that are restricted from disclosure under procedures established in accordance with statutes, regulations, Executive Orders, Presidential Memorandums, or other legal authorities.

c. Ensure that the selection and retention of employees in scientific positions or in positions that rely on the results of scientific activities are based on the candidate's integrity, knowledge, credentials, and experience relevant to the responsibility of the position.

d. Ensure that NOAA and Department of Commerce public communications guidances provide procedures by which scientists may speak to the media and the public about scientific and technical matters based on their official work and areas of expertise. In no circumstance may any NOAA official ask or direct Federal scientists or other NOAA employees to suppress or alter scientific findings.

e. Ensure that data and research used to support policy decisions undergo independent peer review by qualified experts, where feasible, appropriate, and consistent with the law and NOAA's Information Quality and Peer Review Guidelines. In cases where a full external peer review is appropriate but not possible (e.g., emergencies where lives and property are at risk), NOAA staff may use modified peer review processes as necessary for timely decision-making and release of data and information. In these cases, NOAA will explicitly state that the information has not been peer reviewed.

f. Provide information to employees on, and abide by existing, whistleblower protections.

g. Communicate scientific and technological findings by including a clear explication of underlying assumptions; accurate context of uncertainties; and a description of the probabilities associated with both optimistic and pessimistic projections, including best-case and worst-case scenarios, except in extraordinary or emergency situations.

h. Communicate policies for ensuring scientific integrity and responsibilities to employees, contractors and recipients of NOAA financial assistance awards who assist with developing or applying the results of scientific activities, as appropriate.

i. Enhance scientific integrity through appropriate cooperative engagement with the communities represented by professional societies and organizations.

j. Examine, track, resolve, and report all reasonable allegations of misconduct while seeking to ensure the rights and privacy of those covered by this policy and ensuring that unwarranted allegations do not result in slander, libel, or other damage to them.

k. Ensure the sharing of best administrative and management practices that promote the integrity of NOAA's scientific activities.

.03 Recipients of NOAA financial assistance awards: As provided in Section M.10 of the Department of Commerce Financial Assistance Standard Terms and Conditions[16] and supplemental award terms, as applicable, recipient organizations have the primary responsibility for:

- Promptly investigating allegations of scientific or research misconduct under a NOAA award;
- Promptly notifying the NOAA Grants Officer of allegations of scientific or research misconduct; and
- Reporting the results of its investigation for appropriate disposition.

NOAA recipients are also required to follow all Codes of Conduct as stated in Section J of the Department of Commerce Financial Assistance Standard Terms and Conditions. NOAA Cooperative and Joint Institutes are further subject to the rules and guidelines stated in the

[16] Department of Commerce Financial Assistance Standard Terms and Conditions (March 2008), http://oam.eas.commerce.gov/ docs/GRANTS/DOC%20STCsMAR08Rev.pdf.

NOAA Cooperative Institute Handbook.[17] In cases of joint or collaborative Federal funding, NOAA and the other Federal agencies funding the award(s) may, as agreed upon, jointly investigate any allegations of scientific or research misconduct.

.04 NOAA protects those who uncover and report allegations of scientific and research misconduct, as well as those accused of scientific and research misconduct in the absence of a finding of misconduct, from prohibited personnel practices (as defined in 5 U.S.C. § 2302(b)).

SECTION 6. CODE OF SCIENTIFIC CONDUCT.[18]

.01 All NOAA employees and contractors identified in Section 2.02 and all NOAA financial assistance award recipients and other NOAA research partners and collaborators identified in Section 2.03 will, to the best of their ability, be:

a. **Honest** in all aspects of scientific effort and:

- Clearly differentiate between facts, personal opinions, assumptions, hypotheses, and professional judgment in reporting the results of scientific activities and characterizing associated uncertainties in using those results for decision-making, and in representing those results to other scientists, decision-makers, and the public.
- Preserve the integrity of the data record through adherence to NOAA data management standards and not fabricating or deleting raw data.
- Approach all scientific activities objectively and completely, and accurately report results in a timely manner without allegiance to individuals, organizations, or ideology.
- Disclose any apparent, potential, or actual financial conflicts of interest or non-financial conflicts of interest of their own and others.
- Objectively consider conflicting data and/or studies.
- Acknowledge in publications the names and roles of those who made significant contributions to the research, including writers, funders, sponsors, and others who do not meet authorship criteria.

b. **Accountable** in the conduct of research and interpretation of research results and:

- Use resources entrusted to them responsibly, including equipment, funds, and employees' time.
- Disclose all research methods used, available data, and final reports and publications consistent with applicable scientific standards, laws, and policy.

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[17] NOAA Cooperative Institute Handbook (Dec. 2005), http://www.nrc.noaa.gov/ci/policy/docs/handbook.pdf.

[18] NOAA supports the Principles of Integrity set forth in the Singapore Statement developed in September 2010. We have directly adopted the Singapore Statement Principles as the categories for our Code of Scientific Conduct. Similarly, the responsibilities outlined in the Singapore Statement have also greatly helped inform our work on this document. For more information on the Singapore Statement and the World Conference on Research Integrity, please see http://www.singaporestatement.org.

- Provide scientific advice to NOAA as requested to inform management and other decision-making.

c. **Professional, courteous, and fair** in working with others and respectful of the ideas of others and:

- Neither unfairly hinder the scientific activities of others nor engage in dishonesty, fraud, deceit, misrepresentation, coercive manipulation, or other scientific or research misconduct.

- Provide constructive, objective, and frank evaluation to others on their scientific activities as appropriate for standards of respectful peer review, and accept constructive critique from others.

- Contribute to open and respectful scientific discourse that adheres to scientific standards for reporting results and conclusions and respects the intellectual property rights of others, including acknowledging and crediting prior work.

d. **Good stewards** of research on behalf of others and:

- Diligently create, use, preserve, document, and maintain collections and data.

- Adhere to established quality assurance and quality control programs, follow Department of Commerce records retention policies, and comply with Federal law and agreements related to use, security, and release of confidential and proprietary data.

- Adhere to the laws and policies related to protection of human research subjects, natural and cultural resources, and research animals while conducting scientific activities.

- Respect, to the fullest extent permitted by law, confidential and proprietary information provided by communities, such as Native American tribes or tribal organizations, and individuals whose interests are studied or affected by scientific activities or the resulting information.

- Immediately report any observed, suspected, or apparent Scientific and Research Misconduct through means established in Section 8 and the Procedural Handbook for this Order.

SECTION 7. CODE OF ETHICS FOR SCIENCE SUPERVISION AND MANAGEMENT.

.01 NOAA science managers and supervisors identified in Section 2.02 will adhere to the guidelines for Scientific Integrity established in the March 9, 2009, *Presidential Memo to Heads of the Executive Departments and Agencies* and this Order. Specifically, science managers and supervisors will ensure:

- The selection, promotion, and retention of candidates for science and technology positions in NOAA are based on the candidate's integrity, knowledge, credentials, accomplishments, and experience relevant to the responsibility of the position.

- Appropriate rules and procedures are in place and implemented to preserve the integrity of the scientific process and the dissemination of its scientific products and information, including providing scientists the right to review and correct any official document (such as a press release or report) that cites or references their scientific work, to ensure that accuracy has been maintained after the clearance and editing process.

- The establishment and use of Federal Advisory Committees (FACs) will follow procedures established by the Federal Advisory Committee Act and be in accordance with the guidelines established in the Office of Science and Technology Policy memorandum on Scientific Integrity of December 17, 2010. As specified in the memorandum, NOAA will:

    - Ensure that the recruitment process for new FAC members is transparent by announcing FAC member vacancies widely with an invitation for the public to recommend individuals for consideration;
    - Make widely available to the public the professional biographical information (including current and past professional affiliations and a clear illustration of their qualifications for serving on the committee) for appointed committee members, subject to legal considerations;
    - Ensure that the selection of members to serve on a scientific or technical FAC is based on expertise, knowledge, and contribution to the relevant subject area, as well as the availability and ability to serve, and obtains a representative diversity of viewpoints among the committee members;
    - Make all conflict-of-interest waivers granted to committee members publicly available, except where prohibited by law; and
    - Except where explicitly stated in a prior agreement, all reports, recommendations, and products produced by the FAC will be treated as solely the findings of such committees rather than of the U.S. Government, and thus are not subject to intra- or inter-agency revision.

- When scientific or technological information is considered in policy decisions, the information will be subject to well-established scientific processes, including peer review where appropriate, and policy decisions will appropriately and accurately reflect the best available science in compliance with relevant statutory standards.

- Except for information that is properly restricted from disclosure under procedures established in accordance with a statute, regulation, patent, trademark, Executive Order, Presidential Memorandum, or other legal authority, the scientific or technological findings, conclusions, and methodologies considered or relied on in policy decisions will be made available to the public in a timely manner.

- Procedures are in place to identify and address instances in which the scientific process or the integrity of scientific and technological information may be compromised.

- Additional procedures are adopted as are necessary to ensure the integrity of scientific and technological information and processes on which the agency relies in its decision making or otherwise uses or prepares.

- The intellectual property rights of others are respected.

.02 All individuals identified in Section 2.02 of this Order must not:

- Suppress, alter, or otherwise impede the timely release of scientific or technological findings or conclusions, unless explicitly required by a Department or government-wide statute, regulation, Executive Order, Presidential Memorandum, or other legal authority.
- Intimidate or coerce employees, contractors, recipients of financial assistance awards, or others to alter or censor scientific findings.
- Implement institutional barriers to cooperation and the timely communication of scientific findings or technology.

Any such interference will be considered a violation of this section: NOAA's Code of Ethics for Science Supervision and Management.

.03 Decisions to approve or not approve a Fundamental Research Communication must be based only on whether the work is scientifically meritorious: specifically, whether the methods used are clear and appropriate; the presentation of results and conclusions is impartial; and there are no apparent, actual, or potential conflicts of interest. Consistent with DAO 219-1, the approval or non-approval of a Fundamental Research Communication cannot be based on the policy, budget, or management implications of the research. Differences of opinion will be resolved by through the NOAA-wide framework for review and approval of Fundamental Research Communications consistent with DAO 219-1.

.04 The NOAA Research Council will develop a NOAA-wide framework for peer review and approval of Fundamental Research Communications consistent with the criteria in 7.03. Each Line Office will develop and document procedures for review and approval consistent with the Research Council's framework. The procedures must include time limits for review and approval, and procedures for redress if the time limits are not met. The framework and procedures will be posted on the Scientific Integrity Commons website.

.05 NOAA science managers and supervisors will immediately report suspected cases of scientific or research misconduct through means established under Section 8 and the Procedural Handbook for this Order.

SECTION 8. SCIENTIFIC AND RESEARCH MISCONDUCT AND RESPONDING TO ALLEGATIONS.

.01 Scientific and Research Misconduct is defined as fabrication, falsification, or plagiarism in proposing, performing, or reviewing scientific and research activities, or in the products or reporting of these activities. Scientific and Research Misconduct specifically includes:

- intentional circumvention of the integrity of the science and research process by violation of NOAA's Code of Ethics for Science Supervision and Management; and
- actions that compromise the scientific process by violating NOAA's Code of Scientific Conduct.
- Scientific and Research Misconduct does not include honest error or differences of opinion.

.02 Procedures for lodging and responding to allegations of misconduct are provided in the Procedural Handbook to this Order.

SECTION 9. AUTHORITIES.

.01 Statutes, Regulations, and Policies

a. Authority to issue Departmental Regulations, 5 U.S.C. § 301, which allows the head of an executive department to prescribe regulations for the conduct of its employees.

b. Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. § 2635, and Conflict of Interest, 18 U.S.C. § 208, and related rulings by the U.S. Office of Government Ethics.

c. Federal Policy on Research Misconduct, 65 Fed. Reg. 76,260 (Dec. 6, 2000), available at http://nrc.noaa.gov/plans_docs/fed_research_misconduct_dec_2000.pdf.

d. Presidential Memo to Heads of the Executive Departments and Agencies (March 9, 2009), available at http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-3-9-09.

e. Office of Science and Technology Policy Memorandum on Scientific Integrity (Dec., 17, 2010), available at http://www.whitehouse.gov/sites/default/files/microsites/ostp/scientific-integrity-memo-12172010.pdf.

SECTION 10. COMMUNICATION, OVERSIGHT, REVIEW, AND REPORTING.

.01 The NOAA Research Council, or its designee, will be responsible for the communication and oversight of this policy, as well as for periodic review and revisions of the policy.

.02 The NOAA Research Council will communicate these policies and procedures both internally to NOAA employees and contractors, and to NOAA partners, recipients of financial assistance awards, and others involved in external research.

.03 The NOAA Research Council will maintain the Scientific Integrity Commons website at http://nrc.noaa.gov/scientificintegrity.html, where it will post a general statement of the NOAA Scientific Integrity Policy. The Council will also ensure that the policy is referenced, as appropriate, in financial assistance award solicitations, requests for proposals and in the terms and conditions of resulting financial assistance awards and contracts, and communicated to individuals either involved in peer review panels evaluating proposals to NOAA grants programs and cooperative agreements or evaluating internal NOAA scientific programs and activities.

.04 NOAA's Chief Scientist, in consultation with the Deputy Under Secretary for Operations (DUS/O), will provide annual public reporting, through a NOAA website, of the aggregate number of misconduct cases, the areas of concern (e.g., climate science, fisheries management, financial, contracting, etc.), the affiliation of the individuals involved (i.e., federal employees, contractors, partners, and recipients of financial assistance awards), how many accusations were investigated, and the number of findings of misconduct. If the position of Chief Scientist is vacant, the Under Secretary will assign this responsibility to another high-level official with scientific expertise within NOAA.

.05 The NOAA Research Council will review the policy at least every two years to ensure that it is current and effective in relation to its purpose as stated in Section 1.

SECTION 11. EFFECT ON OTHER ISSUANCES.

This document supersedes NAO 202-735D, "Scientific Misconduct," effective November 7, 1990.

An electronic copy of this Order will be posted in place of the superseded Order on the NOAA Office of the Chief Administrative Officer website under the NOAA Administrative Issuances Section at http://www.corporateservices.noaa.gov/~ocao/index.html.

Under Secretary of Commerce
for Oceans and Atmosphere

Offices of Primary Interest:
Office of the Under Secretary
NOAA Office of General Counsel (GC)
U.S. Department of Commerce Office of General Counsel

PROCEDURAL HANDBOOK

for

NOAA Administrative Order (NAO) 202-735D: Scientific Integrity

Issued: xx/xx/2011; Effective xx/xx/2011

Preface.

This Procedural Handbook provides the procedures to be followed in responding to allegations of Scientific and Research Misconduct by NOAA employees. It also addresses procedures to be followed in responding to allegations of Scientific and Research Misconduct pertaining to NOAA contracts and to external organizations and persons receiving NOAA financial assistance for scientific or research activities. This Procedural Handbook should be read in conjunction with NAO 202-735D on Scientific Integrity Policy. All terms not otherwise defined in this Procedural Handbook have the meanings ascribed to them in NAO 202-735D.

Section 1. Scientific and Research Misconduct.

.01 A finding of Scientific and Research Misconduct requires a determination by the Determining Official by a preponderance of the evidence on the record before him or her that the person or entity has:

a) Significantly departed from the Code of Scientific Conduct or Code of Ethics for Science Supervision and Management set forth in NAO 202-735D; and
b) Engaged in the misconduct intentionally, knowingly, or in reckless disregard of the Code of Scientific Conduct or Code of Ethics for science supervision and management in NAO 202-735D

.02 Scientific and Research Misconduct does not include honest error or differences of opinion.

Section 2. Definitions.

Determining Official (DO) is the institutional official who makes final determinations on allegations of Scientific and Research Misconduct and proposes institutional administrative actions. The Determining Official is designated for a specific inquiry. The Determining Official will be at the level of Deputy Assistant Administrator or above and will not be the same individual as the Integrity Review Panel Chair. The DO should have no direct prior involvement in the institution's inquiry and investigation of an allegation and should not be in the Line Office chain of command for either the person making the allegation (if known) or the person alleged to be in violation. A DO's involvement in the preliminary assessment of an allegation, appointment of an individual to assess allegations of Scientific and Research Misconduct, or service on an inquiry or investigation committee is not considered to be direct prior involvement.

Integrity Review Panel Chair (IRPC) is the institutional official responsible for overseeing the inquiries and investigations, chairing the review panel, and carrying out other responsibilities

specified in this Procedural Handbook. The Integrity Review Panel Chair is designated for a specific inquiry.

Section 3. Allegations of Scientific and Research Misconduct.

.01 NOAA has the primary responsibility for all scientific and research activities conducted by its employees using agency resources. NOAA also has certain oversight and monitoring responsibilities pertaining to the implementation and administration of NOAA contracts and financial assistance awards for scientific and research activities.

.02 Allegations of Scientific and Research Misconduct with respect to NOAA employees, contractors, and NOAA-funded research must be submitted within 60 calendar days, or as quickly as possible in the case of external organizations, of the discovery of the alleged misconduct. Allegations must be submitted in writing to the Office of the Deputy Under Secretary for Operations (DUS/O) at 14th & Constitution Avenue, NW, Washington, DC 20230. Allegations may be submitted by individuals or entities, internal or external to NOAA, and must bear the name of the individual or entity making the allegations. Complainants who wish to remain anonymous should recognize that any inquiry and action on an anonymous allegation may be very limited.

.03 The Deputy Under Secretary for Operations (DUS/O) is responsible for overseeing the agency's process for responding to allegations of Scientific and Research Misconduct. Within 30 calendar days of receiving an allegation, the DUS/O will: assess the allegation of Scientific and Research Misconduct to determine if it falls within the definition of Scientific and Research Misconduct in Section 8 of NAO 202-735D and warrants an inquiry on the basis that the allegation is sufficiently credible and specific so that potential evidence of Scientific and Research Misconduct may be identified. If an inquiry is warranted, the DUS/O will appoint an Integrity Review Panel Chair and a Determining Official within 60 calendar days of receiving the allegation. These appointments will be commensurate with the scope of the allegation. The review panel chair must meet the criteria for being a panel member set out in Section 5.01. The DUS/O may retain or delegate Determining Official authority.

.04 When appointing the review panel chair and DO, the DUS/O will determine whether the apparent scale of the allegation rises to a level that warrants appointing IRPC and DO from Line Offices independent of the Line Office of either the person making the allegation (if known) or the person alleged to be in violation.

.05 If the allegations relate to NOAA employees, the review panel chair will follow the procedures provided in Section 5.

.06 For allegations of Scientific and Research Misconduct under contracts or financial assistance, the DUS/O will direct the Director of Acquisition and Grants to address the allegation in coordination with the Line Office with the most significant interest in a matter. The Director of Acquisition and Grants, or his or her designee, will follow the procedures provided in each contract or financial assistance award and will report promptly to the DUS/O on steps taken and

outcomes. The DUS/O will determine which Line Office or external organization has the most significant interest in a matter.

.07 The NOAA General Counsel, the Director of the NOAA Office of Workforce Management (WFMO), and the Department of Commerce Assistant General Counsel for Administration, or their designees, will be notified of all allegations of Scientific and Research Misconduct, and will assist the DUS/O, IRPC, and DO with investigations of allegations of employee misconduct.

.08 Any publicity or media attention about an allegation or any other step specified in this Procedural Handbook will be handled by the DUS/O with assistance from the NOAA Office of Communications and External Affairs.

.09 Allegations that have been previously resolved will not be reopened unless substantial new information is submitted, as determined by the DUS/O.

Section 4. General Rights and Responsibilities.

.01 The Complainant has the responsibility to make any allegation in good faith, maintain confidentiality, and cooperate with the inquiry and investigation. The Complainant has the right to be informed of the status of the investigation of their claim, and will be notified of the DUS/O's decision if an allegation warrants an inquiry and has been assigned an IRPC.

.02 At the time of or before beginning an inquiry, the IRPC must make a good faith effort to notify the Respondent in writing, if the Respondent is known. The Respondent may have the advice of counsel, or other expert adviser or union representative who agrees to be bound by the confidentiality provisions of this Procedural Handbook, during any investigation, to the extent permitted by law.

.03 No allegation of scientific or research misconduct will be used as the basis for any adverse action taken against a Respondent until those allegations are proved and a finding is issued in accordance with the NAO and these procedures.

.04 The Integrity Review Panel Chair will:

a) Conduct an inquiry and investigation, if warranted, and provide consistency, oversight, and guidance throughout the entire process;
b) Chair and propose to the DUS/O members of the panel that will undertake any necessary inquiry and/or investigation, ensure that panel is properly staffed and that there is expertise and capacity appropriate to carry out a thorough and authoritative investigation and evaluation of the evidence;
c) Maintain the confidentiality of the proceedings, and monitor the treatment of the Complainant and Respondent, and those who participate in the review process;
d) Report regularly to the DUS/O on the status of integrity allegations, steps taken, and recommendations made;
e) Sequester research data and evidence pertinent to the allegation of Scientific and Research Misconduct, and maintain it securely in accordance with this policy and applicable law and regulation, unless the IRPC determines that release of the

research data is time-sensitive or otherwise appropriate, in which case the IRPC may exercise discretion in releasing research data;

f) Notify the Respondent and provide opportunities for him/her to review/respond to allegations, evidence, and panel reports in accordance with Section 5 of this Procedural Handbook;
g) Inform the Respondents, Complainants, and witnesses of the procedural steps in the Scientific and Research Misconduct proceeding;
h) Determine whether any person involved in handling an allegation of Scientific and Research Misconduct has an unresolved personal, professional, or financial conflict of interest, and take appropriate action, including recusal, to ensure that no person with such a conflict is involved in the Scientific and Research Misconduct proceeding;
i) Cooperate with other agency officials to take all reasonable and practical steps to protect or restore the positions and reputations of good faith complainants, witnesses, and committee members and countering potential or actual retaliation against them by respondents or other institutional members;
j) Keep the Determining Official and others who need to know, consistent with confidentiality concerns in Section 8 of this Procedural Handbook, apprised of the progress of the review of an allegation of Scientific and Research Misconduct.

.05 The Determining Official will:

a) Receive the inquiry report from the IRPC and determine based on the information in the report whether an investigation is warranted;
b) If an investigation is conducted, receive the investigation report from the IRPC and determine the extent to which NOAA accepts the findings of the investigation and, if Scientific and Research Misconduct is found, propose appropriate institutional administrative actions, if any;
c) Ensure that the final investigation report, the findings of the DO, and a description of any pending or completed institutional administrative actions are provided to the DUS/O.
d) Recognize the potential for possible adverse effect on the person or entity against whom an allegation is made and thus maintain confidentiality during and after the process, to the extent permitted by law.

.06 The Deputy Under Secretary for Operations (DUS/O) will:

a) Oversee the agency's process for responding to allegations of Scientific and Research Misconduct, and appoint officials for the process;
b) Receive and initially assess allegations of Scientific and Research Misconduct with respect to NOAA employees, contractors, and NOAA-funded researchers in external institutions;
c) Inform complainant, respondent, and any other affected parties of resources available to assist him/her/them through the process, including potential volunteer mentors;
d) Recuse himself or herself in the case of a personal, professional, or financial conflict of interest, in which case the NOAA Administrator, or his or her designee, shall take

on the responsibilities of the DUS/O to oversee the agency's process for responding to an allegation;

e) Track and work with the NOAA Chief Scientist to annually report all allegations and dispositions of Scientific and Research Misconduct; and
f) Recognize the potential for possible adverse affect on the person or entity against whom an allegation is made, and thus maintain confidentiality during and after the process, to the extent permitted by law.

Section 5. Review Process for Allegations of Misconduct against NOAA Employees.

.01 General – NOAA will attempt to resolve each review as quickly as possible while also guaranteeing the completion of a full and fair investigation.

a) Once the DUS/O determines under Section 3.03 that further evaluation of an allegation is required, he or she will appoint a DO and an IRPC, who will chair the review panel. Upon appointment of an IRPC, the DUS/O will also propose appointments to a review panel consisting of members who are chosen based on their experience, availability, and mature judgment. Within 30 calendar days of appointment, the IRPC will propose at least two additional review panel members who are U.S. government employees with the appropriate expertise in the type of research in which the alleged misconduct occurred. The majority of the panel must be external to the Line Office of either the person making the allegation (if known) or the person alleged to be in violation. Appointed members of the panel may not be political appointees. If the Respondent is a member of a bargaining unit, one member of the review panel should be appointed after consultation with the union that is the exclusive bargaining representative of that bargaining unit. The IRPC will submit the proposed composition of the review panel to the DUS/O for approval.
b) The IRPC and proposed panel members must reveal any actual or potential conflicts of interest to the DUS/O prior to their appointment. Conflicts of interest will result in the disqualification of the individual from serving on the panel. These conflicts include:

    - personal knowledge or involvement in the incidents that resulted in the allegations;
    - professional, financial, or close personal relationships with either the Complainant or Respondent; and,
    - other contact, associations, or interests that could compromise the impartiality or appearance of impartiality of the panel member.

c) Once the panel members are approved by the DUS/O, the IRPC will notify the Complainant and Respondent of the membership. If either the Complainant or Respondent has reason to believe that a proposed panel member has a potential conflict of interest, within 7 days of notice of the panel membership that party may submit a written objection to the DUS/O detailing the concerns. The DUS/O will make the decision whether to replace or retain a panel member after considering these comments at his or her unreviewable discretion.

d) If neither the Complainant nor the Respondent submits a written objection, or upon the DUS/O's decision whether to replace or retain a panel member, the DUS/O will establish the review panel.
e) The review panel's response to allegations of Scientific and Research Misconduct will consist of two possible stages: inquiry and investigation.

.02 Inquiry

a) The purpose of the inquiry phase is to assess whether a Scientific and Research Misconduct allegation has substance and to determine whether an investigation is warranted. The inquiry phase will be concluded within 60 calendar days of the panel's establishment pursuant to Section 5.01(d), unless the IRPC, at his or her discretion, provides for a different time frame.
b) The review panel may collect any evidence it deems necessary to evaluate the merits of an allegation. The review panel will assure that the Respondent has adequate opportunity to address the evidence.
c) The Complainant and Respondent must be given an opportunity to provide written testimony to the review panel.
d) After assessing the merits of a Scientific and Research Misconduct allegation, the review panel will:
    i. Develop a draft inquiry report on whether the allegation has sufficient grounds to merit further investigation, which must include summaries of any evidence developed in the course of the inquiry and the basis for the recommendation;
    ii. Provide the draft inquiry report to the NOAA General Counsel for legal review;
    iii. Provide the draft inquiry report to the Complainant and Respondent, who may each submit a response within 5 calendar days after receipt, to be attached with the final inquiry report;
    iv. Develop a final inquiry report taking into consideration, as appropriate, comments from the Complainant and the Respondent, which the IRPC will transmit to the DO.
e) The DO must make a finding in writing whether an investigation is warranted and provide it to the DUS/O and the IRPC, together with a copy of the inquiry report, within 30 days of receiving the final inquiry report from the IRPC. The inquiry is complete when the DO makes this determination. If the DO determines that no investigation is warranted, the DO will explain the basis for his or her determination in writing to the DUS/O and IRPC. Once the DO makes a determination, the IRPC will notify the Respondent whether the DO determined that an investigation was warranted, and will include in the final inquiry report a copy of NAO 202-735D, and this Procedural Handbook.

.03 Investigation

a) The purpose of this stage is to determine whether Scientific and Research Misconduct occurred and to recommend institutional action. The investigation must begin within 30 calendar days after the determination by the DO that an investigation is warranted. Based upon information found in the inquiry phase, the review panel may broaden the scope of

its inquiries during the investigation phase beyond the initial allegations. If the panel changes the scope of the investigation, it must notify the Respondent of the new areas being examined and provide the Respondent the opportunity to comment and supply additional information regarding the conduct examined in the expanded investigation.

b) In addition to information obtained in the inquiry phase, the review panel may collect any additional information it deems necessary to evaluate the merits of an allegation, and shall have available to it appropriate investigative capability, provided internally or from another agency.

c) The review panel will conclude its review within 120 calendar days of the date it began the investigation phase; at the request of the panel, the IRPC may grant additional time for the panel's review.

d) The Complainant and Respondent must be given an opportunity to provide written testimony to the review panel. The review panel may request oral testimony from either the Complainant or the Respondent.

e) The Respondent may suggest additional avenues of investigation, witnesses, or questions, and the panel may determine at its discretion whether to pursue them. If the panel determines not to pursue a Respondent's suggestion, the panel will state its reasons in writing.

f) After completing its investigation, the review panel will:

   i. Develop a draft investigation report with a recommended finding as to whether Scientific and Research Misconduct occurred. If the panel recommends that Scientific and Research Misconduct has occurred, the panel will include in its report an assessment as to the seriousness of the misconduct and, if possible, a recommended determination as to whether misconduct was isolated or part of a pattern. The report will contain a summary of all relevant evidence and the basis for the recommendations.

   ii. Provide the draft investigation report to the NOAA General Counsel for legal review;

   iii. Provide the draft investigation report to the Complainant and Respondent, who may each submit a response within 10 calendar days after receipt, to be attached with the final investigation report;

   iv. Develop a final investigation report taking into consideration, as appropriate, comments from the Complainant and the Respondent, which the IRPC will transmit to the DO.

g) The DO will determine in writing within 30 calendar days of receipt of the final investigation report whether NOAA accepts the investigation report, its findings, and the recommended actions; whether it declines to accept the report, findings, and recommendations, or whether it accepts with modification the report, findings, and recommendations. The DO will also specify the appropriate institutional administrative actions in response to accepted findings of Scientific or Research Misconduct. If the DO's findings or determinations vary from the findings of the investigative panel, the DO will, as part of his/her written determination, explain in detail the basis for rendering a decision different from the findings of the investigative panel. Alternatively, the DO may return the report to the investigative panel with a request for further fact-finding or analysis.

h) Once the DO makes a final decision on the case, the IRPC will provide the findings, report, and recommended actions to the DUS/O within 10 days. Once the DUS/O has had an opportunity for review, the IRPC will notify both the Complainant and Respondent in writing.

.04 Adjudication

a) If the DO finds under the standard in Section 1 of this Procedural Handbook that Scientific or Research Misconduct has occurred, the DUS/O will refer the matter to an appropriate manager in the Respondent's reporting structure for consideration of administrative action. In consultation with the NOAA General Counsel, Director of WFMO, and the Department of Commerce Assistant General Counsel for Administration, or their designees, the management official may propose disciplinary action or other action. Such action will be subject to applicable provisions of Chapter 75 of Title 5 of United States Code, DAO 202-751, other relevant laws or regulations and collective bargaining agreements, as applicable, taking into consideration the following factors:

- The nature of the misconduct;
- The damage to the research record caused by the actions;
- The real or potential damage to the public caused by the actions;
- The damage to NOAA's reputation for quality science;
- The cooperation of the responsible party in the investigation;
- Whether the responsible party engaged in retaliation or intimidation of the Complainant or other witnesses;
- The experience of the responsible party; and
- Whether the responsible party destroyed or altered evidence.

b) If the DO finds evidence of waste, fraud, or abuse, he or she will refer the evidence to the Department of Commerce Office of Inspector General for further investigation. If the DO finds evidence of a violation of criminal law, the evidence will be referred to the Office of Inspector General for investigation and consultation with the Department of Justice. At all times, any employee who believes that he or she has been subject to a prohibited personnel practice for engaging in this process has the right to contact the Office of Inspector General or the U.S. Office of Special Counsel.

Section 6. Contracts and Financial Assistance.

.01 NOAA adopts, and applies to contracts and financial assistance awards for research, the Federal Policy on Research Misconduct (Federal Policy) issued by the Executive Office of the President's Office of Science and Technology Policy on December 6, 2000 (65 Fed. Reg.76260 (Dec. 6, 2000)).

As provided for in the Federal Policy, research misconduct refers to the fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest errors or differences of opinion. Organizations

that perform research under a NOAA contract or financial assistance award must foster an atmosphere conducive to the responsible conduct of sponsored research by safeguarding against and resolving allegations of research misconduct. In accordance with the terms and conditions contained in NOAA contracts or financial assistance awards, organizations also have the primary responsibility to prevent, detect, and investigate allegations of research misconduct and, for this purpose, may rely on their internal policies and procedures, as appropriate, to do so. Expenditure of federal funds on an activity that is determined to be invalid or unreliable because of research misconduct may result in appropriate enforcement action under the award, up to and including award termination and possible suspension or debarment.

If the contractor or financial assistance recipient receives any allegation of scientific or research misconduct related to a NOAA contract or financial assistance, the institution must notify NOAA, and state whether the allegation contains sufficient information to proceed with an inquiry. If so, the institution must submit the allegation to the Grants Officer or Contracting Officer, who will also notify the DUS/O of such allegation. Once the recipient organization has investigated the allegation, it will submit its findings to the Grants Officer or Contracting Officer, who will provide the information to the DUS/O. NOAA may accept the recipient's findings or proceed with its own investigation. The NOAA Grants Officer or Contracting Officer will consult with the Federal Program Officer (FPO), the Contracting Officer's Technical Representative (COTR), or the Department of Commerce Office of General Counsel's Federal Assistance Law Division or Contract Law Division, as appropriate, in reviewing and responding to allegations of scientific or research misconduct in connection with a NOAA financial assistance award or contract. In cases of joint or collaborative Federal funding, NOAA and the other Federal agencies funding the award(s) may, as agreed upon, jointly investigate any allegations of scientific or research misconduct.

Section 7. Employee Appeals of Disciplinary Actions.

If disciplinary action is taken against an employee, the employee may have appeal rights under DAO 202-771, "Administrative Grievance Procedure," his or her collective bargaining agreement, and statutory appeals processes, such as the through the Merit System Protection Board, as applicable. An employee's appeal rights will be outlined in the disciplinary decision letter he or she receives.

Section 8. Confidentiality.

Disclosure of the identity of respondents and complainants in Scientific and Research Misconduct proceedings is limited, to the extent possible, to those who need to know, consistent with a thorough, competent, objective, and fair Scientific and Research Misconduct proceeding, and as allowed by law.

Section 9. Records Retention.

The DUS/O will work with the DO and the IRPC to ensure that detailed documentation of the initial receipt of the allegation, each phase of the review process, and final disposition is retained for 7 years (consistent with NARA GRS-1-30) after termination of the case. The NOAA Chief

Scientist, in consultation with the DUS/O, will be responsible for providing a publicly available annual report on scientific misconduct cases as noted in Section 10 of the Scientific Integrity Order, NAO 202-735D.