

Dr. Cynthia Decker
NOAA Scientific Integrity Officer Dorian Notes
1315 East West Highway
Silver Spring, MD 20832

May 14, 2020

Dear Dr. Decker,

This letter is in response to your May 5, 2020, letter to me as a Complainant in the matter of violations of the NOAA Scientific Integrity Policy, other policies, and law, surrounding the events of Hurricane Dorian. In that letter you conveyed a copy of the National Academy of Public Administration Report (NAPA) entitled, “An Independent Account of Allegations of Scientific Integrity” dated March 2020. You also reminded me of my opportunity to provide any exceptions to the report or relevant remarks and I take that opportunity herein.

1. No Exception to Report. I find the Report to be thorough and to have competently addressed the issues given the information that was made available to the NAPA Panel of Fellows (Panel). I take no exception to the Findings and Recommendations of the NAPA panel and encourage the Deciding Official (DO) to accept and act on those as stated.

I add the following comments for consideration by the Deciding Official to fortify my view of the propriety of the NAPA recommendations, and to raise concerns that broach the environment under which we are attempting to sustain scientific integrity, making these findings all the more important:

2. Limited Panel Access to Witnesses. The Panel conservatively limited scope of review to the people of NOAA and the policies applicable. That includes the NOAA NAO 202-735D, and DAO 219-1, both of which were found to have been violated by NOAA leaders. I understand the Panel’s scope was defined by the NOAA Scientific Integrity Officer (SIO), which is a practical but limiting matter given the scope of NOAA’s own administrative authority. From that instruction the Panel was reluctant to pursue matters beyond NOAA employees into, for example, the multiple senior executive Department of Commerce employees who were named by witnesses in the Report. I do find at page 9, Section 1.2 that the Panel mentioned that they had no access to DOC employees involved in drafting the Sep 6th statement. The Panel asked for but NOAA did not provide access to DOC witnesses directly involved. The named parties include: Deputy Secretary of Commerce Karen Kelly, Deputy General Counsel David Dewhurst, Press Secretary and Deputy Director of Public Affairs Kevin Manning, Chief of Staff for the Deputy Secretary Joe Semsar, Deputy General Counsel performing the duties of Assistant Secretary for Legislative and Intergovernmental Affairs Cordell Hull, Rebecca Glover (position unidentified), and Chief of Staff to the Secretary of Commerce Mike Walsh. Given the authority of their positions, I find this open and unanswered component,



denying the Panel access to DOC witnesses, to be troubling. This is not a flaw by the Panel, but no reason was stated in the report, and perhaps no reason was given to the Panel. Some underlying truth is missing as to why the request to interview Commerce witnesses was denied. I recognize that the Office of the Inspector General of the Department of Commerce is conducting their own investigation spontaneously and in response to my and other complaints in this matter, and with their statutory investigative and law enforcement authority will have the ability to compel interviews with those named senior executives of the Department of Commerce and others. This is troubling. This unavailability seems remarkably juxtaposed to the willing affirmations lent by Deputy Secretary Kelly when she appeared three times with senior executives of NOAA to inspire us with her apparent willingness to fix the problems arising from the Dorian situation. Department of Commerce senior executives are outside the reach of NOAA's internal administrative procedures, but their access could have helped the panel and should have been available if the Deputy Secretary's affirmations are to be accepted. I raise this point as encouragement and context for the Deciding Official to consider when evaluating and supporting the recommendations of the Panel.

3. Privilege Review and Redactions. Your May 5 letter indicates a period of "privilege review" though I see no indication of to whom the Report was sent for such review or performed by or debated by whom. I also find no entry indicating such a procedural step in the Handbook implementing the NOAA Scientific Integrity Policy. Coupling the undocumented but apparent privilege review with the redactions that appear at pp. 33, 51, 66, 67, and 87, and the past behavior of DOC leadership in this matter, I find these also troubling and adding to the weight of propriety in supporting the recommendations of the Panel. The Panel reports at page 10 including footnote 14 that neither Jacobs' nor Roberts' text messages were available to the Panel. From an evidentiary perspective these would have been quite germane to finding fact, veracity, and trustworthiness of witness statements. These had either been destroyed (Roberts) or determined unavailable because of the unidentified parties in those texts would deserve notice, contact, and privilege review, for these unnamed persons to consent or assert privilege, and consume time that might or might not influence the timely outcome of the review so far as NOAA's jurisdiction might allow. Not knowing the nature or origin of privilege review, of the statements or names redacted, or in the texts from Jacobs and Roberts not shared with the Panel I find again concerning the remarkable proximity of senior DOC or higher officials, and am reminded of their steady and the routinely belligerent posture toward NOAA on such matters as scientific integrity. (Recalling that in the matter of Bates, the politically appointed officials of the Department of Commerce sufficiently manipulated and isolated knowledgeable NOAA personnel from having unsupervised direct contact with the Mitre panel reviewing the Bates allegation, ultimately proven unfounded, did by their spurious intervention cause at least two mistakes of fact to emerge from an otherwise irreproachable panel. Further, in the matter surrounding Bates, this same Department of Commerce administration denied private citizens the same privilege review in the release of their voluntarily contributions of time, intellect, and professional reputation, in performing peer reviews of scientific research for NOAA. DOC trod upon any expectation of privacy or privilege review for their publicly released comments. While a



separate grievance, I highlight these matters to further substantiate the propriety of the recommendations of the Panel, and to encourage the DO to find favorably.

4. Adjudication and Accountability. The panel found violations of the NOAA Scientific Integrity Policy (NAO 202-735D), and of the DOC Public Communications Policy (DAO 219-1). Accordingly the DO's attention will eventually arrive at remedies. The Panel and the NAO admonish the agency to act to make sure that the harm to scientific integrity is restored. But how? Here, the highest level of the agency has been found by the Panel to have intentionally, knowingly, or with reckless disregard violated the agency Scientific Integrity Policy. NOAA's Procedural Handbook directs the Deputy Under Secretary to refer such matters to the appropriate management authority in the Respondent's management chain for appropriate action. These would be the very people in the Department of Commerce who, though unreachable by the Panel, are same high candidates who directed the actions be carried out by the offending NOAA officials. Further, the Procedural Handbook at Section 4.06.a, also instructs the management official to propose disciplinary action subject to applicable provisions of Chapter 75 of Title 5 of the United States Code, and Department Administrative Order 202-751. While two other investigations may have farther reaching authorities and remedies (the DOC Inspector General, and the U.S. Congress), no one is left home at NOAA to take up the remedy. NOAA can only weep.

As the Handbook guides adjudication of matters also found at Section 4.06 and invites consideration of:

- i. The nature of the misconduct;
- ii. The nature and degree of damage to the scientific record caused by the actions;
- iii. The nature and degree of real or potential damage to the public caused by the actions;
- iv. The degree of damage to NOAA's reputation for quality science;
- v. The Respondent's cooperation with the inquiry or investigation;
- vi. Whether the Respondent engaged in retaliation or intimidation of the Complainant or other witnesses;
- vii. The professional experience of the Respondent; and
- viii. Whether the Respondent destroyed or altered evidence.

I will treat these in sequence:

- (i) the nature of the misconduct was found to be deliberate;
- (ii) the degree of damage is high, drew international media visibility and embarrassment, generated confusion with the public NOAA is charged to protect relating to immediate safety of life and property, and difficult to imagine a higher degree of insult;
- (iii) the degree of real damage to the public interest, trust, and safety is high;
- (iv) the damage to NOAA's reputation was expressed in international media, nationally, and ruminates within the agency today pending a definitive outcome of this and other investigations;
- (v) the Respondents' cooperation with the investigators raises questions in the record and are not clearly unqualified;



(vi) there is no evidence that the Respondents engaged in any retaliation or intimidation;

(vii) the professional experience of the Respondents is remarkable, operating at the highest level(s) of a federal agency including Senate Confirmation in 2018 as the Assistant Secretary of Commerce (Jacobs) and Director of Communications (Roberts) who is a widely experienced political operative; these levels of sophistication rebut notions of complete intimidation by others.

(viii) there is evidence that at least one Respondent (Roberts) destroyed or altered evidence (deleted texts with Jacobs and others).

The Panel concludes that Jacobs and Roberts felt that the situation they were in was out of their hands and their actions were driven by the direction of unnamed and un-interviewed Commerce officials who may well have been the subjects of the redactions. While there may be found causes of sympathy for the oppressed and meek subordinates of domineering autocratic ogres, I hardly can find sympathy in this scintilla of an argument for clemency. If not the single highest person in NOAA, who will stand for the Scientific Integrity of the agency and the trust our public needs to invest in our scientific process and products? The NOAA Administrator? The NOAA Director of Communications?

5. Cooperation with investigators, inconsistent statements in the record, and unavailability of evidence.

At page 32 of the Report there is evidence of high level concern over producing a chronology of event surrounding Dorian. These calls span 12 hours through the night involving the Secretary, his Chief of Staff, Roberts and Jacobs over what is reported as producing a Dorian chronology during the day the “NOAA” statement was authored. The text messages between Jacobs and Roberts were unavailable to the Panel, Roberts having destroyed hers, and Jacobs burdened by a review of privilege of an undisclosed nature. There is not sufficient evidence to elucidate the complexity or simplicity of these urgent communications and transactions.

At page 80 of the Report, Jacobs is reported to believe that the intent of the September 6th statement from “NOAA” was to reconcile the Birmingham WFO Tweet with the guidance coming from the National Hurricane Center forecast products. Most of the rest of the world finds the September 6th Statement to be rectifying the agency action to comport with the incorrect and misleading statements from the President of the United States. Neither Jacobs nor Roberts make any reference in the Report to find what the Panel did find, that the motivation of the NOAA Statement was political, and in response to direction from Commerce if not higher. Why?

These possible interpretations of inconsistency will linger perhaps until the remaining two investigations are concluded and released to the public.

6. Penalties. The Dorian event is the second time in one Administration that NOAA had to seek expert review from outside the agency to conduct a Scientific Integrity review. Political manipulation of NOAA science is historically memorialized in the practices of the Department of Commerce and was the cause the creation of the NOAA Scientific Integrity over a decade ago. The disciplinary statute and regulations cited in the Handbook lead toward remedies available. In this case, there is no one left standing to



issue those punitive remedies. The culpable and additionally responsible parties from Commerce, possibly higher, are out of reach of the NOAA investigation. NOAA should seriously consider the arrangement of other agencies in which the Office of the Inspector General is pre-assigned responsibility to investigate and bring statutory investigative authority to an inquiry. Missing texts could be found.

7. Conclusion. If a CFO mishandled the finances and public funds of the agency, a great trust would be violated and severe disciplinary consequences would follow. Yet the funds are only means to accomplish the agency's mission. When the mission product is mishandled as in an intentional, knowing, or reckless violation of the agency Scientific Integrity Policy, Scientific Code of Ethics, and Code of Ethics for Supervisors and Managers of Science, should the penalty be any less severe? In the disciplinary tables and regulations cited in the Handbook, remedies are available. In this case, there is no one left to issue that remedy.

Were the Respondents pressured to accord their conduct with the demands of the Department of Commerce in order to satisfy an angered President, Chief of Staff, or Secretary of Commerce? Yes. Is that exculpatory? This is the highest level of government, which should correspond to the highest level of public trust and integrity. Part of that integrity is knowing when to say no, and be prepared to walk away.

I encourage the DO to find in favor of the Panel's findings and recommendations. Release of this Report and information to the public is likely the most appropriate remedy available under the current situation as well as implementing the recommendations of the NAPA Panel.

Sincerely,

Craig N. McLean
Assistant Administrator for Research, NOAA
Acting Chief Scientist

