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.

Subject: RE: Scientific Integrity Policy Clearance Materials
From: Colin Quinn <Colin.Quinn@noaa.gov>
Date: Fri, 02 Dec 2011 12:15:29 -0500
To: 'Denise L Johnson' <Denise.L.Johnson@noaa.gov>
CC: Helen.Halloway@noaa.gov, Paul.Sandifer@noaa.gov, 'Jamon Bollock' <Jamon.Bollock@noaa.gov>, 'Lois Schiffer' <Lois.Schiffer@noaa.gov>, James.Chang@noaa.gov, 'Andrew Winer' <Andrew.Winer@noaa.gov>

Hi Denise,

Can you please replace the versions of the Scientific Integrity Policy and Procedural Handbook in the clearance package with the ones I have provided here. There were minor changes based on conversations with Lois and DOC GC.

I have also attached redline versions so that you can easily see where the very minor changes were made.

Thanks,

Colin

Scientific Integrity Policy_NAO 202-735D_Final (redline).docx	**Content-Type:** application/vnd.openxmlformats-officedocument.wordprocessingml.document **Content-Encoding:** base64

Scientific Integrity Policy_NAO 202-735D_Final.docx	**Content-Type:** application/vnd.openxmlformats-officedocument.wordprocessingml.document **Content-Encoding:** base64

Procedural Handbook_NAO 202-735D_ Final (redline).docx	**Content-Type:** application/vnd.openxmlformats-officedocument.wordprocessingml.document **Content-Encoding:** base64

Procedural Handbook_NAO 202-735D_ Final.docx	**Content-Type:** application/vnd.openxmlformats-officedocument.wordprocessingml.document **Content-Encoding:** base64