

# REDACTING THE SCIENCE OF ~~CLIMATE CHANGE~~:

AN INVESTIGATIVE AND SYNTHESIS REPORT

By **Tarek Maassarani**  
**Government Accountability Project**

With contributions from  
**Jay Dyckman**  
**National Coalition Against Censorship**

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The Government Accountability Project  
1612 K Street, NW, Suite 1100  
Washington, DC 20006  
(202) 408-0034  
[gapdc@whistleblower.org](mailto:gapdc@whistleblower.org)

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The contents of this report are the sole responsibility of the author and do not necessarily reflect the opinions held by those who have supported it.

**INDEX OF ACRONYMS AND ABBREVIATIONS**

ACIA	Arctic Climate Impact Assessment	FAQ	Frequently Asked Questions
AOML	Atlantic Oceanographic and Meteorological Laboratory (NOAA)	FOIA	Freedom of Information Act
CAR	U.S. Climate Action Report	FY	fiscal year
CCRI	Climate Change Research Initiative	GAO	Government Accountability Office
CCSP	Climate Change Science Program	GAP	Government Accountability Project
CEI	Competitive Enterprise Institute	GCRA	Global Change Research Act
CEQ	Council on Environmental Quality (EOP)	GFDL	Geophysical Fluid Dynamics Laboratory (NOAA)
CIWG	Communications Interagency Working Group (CCSP)	GISS	Goddard Institute for Space Studies (NASA)
CMDL	Climate Monitoring and Diagnostics Laboratory (NOAA)	GMD	Global Monitoring Division (NOAA)
CSRA	Civil Service Reform Act	GRL	Geophysical Research Letters
DAO	DOC Administrative Order	GSFC	Goddard Space Flight Center (NASA)
DOC	U.S. Department of Commerce	HHS	Department of Health and Human Services
DOD	U.S. Department of Defense	HRD	Hurricane Research Division (NOAA)
DOE	U.S. Department of Energy	IG	inspector general
DOI	U.S. Department of Interior	IPCC	Intergovernmental Panel on Climate Change
DOS	U.S. State Department	IQA	Information Quality Act
DOT	U.S. Department of Transportation	NAO	NOAA Administrative Order
EOP	Executive Office of the President	NAS	National Academy of Sciences
EPA	Environmental Protection Agency	NASA	National Aeronautics and Space Administration
FACA	Federal Advisory Committee Act	NCAC	National Coalition Against Censorship

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NCAR	National Center for Atmospheric Research	ORNL	Oak Ridge National Laboratory
NCDC	National Climatic Data Center	OSTP	Office of Science and Technology Policy (EOP)
NEC	NOAA Executive Council	PAO	public affairs office
NESDIS	National Environmental Satellite, Data and Information Service (NOAA)	PEER	Public Employees for Environmental Responsibility
NHC	National Hurricane Center (NOAA)	PIO	public information officer
NIH	National Institutes of Health	PMEL	Pacific Marine Environmental Laboratory (NOAA)
NIST	National Institute of Standards and Technology	Q&A	question and answer
NOAA	National Oceanic and Atmospheric Administration	QFR	questions for the record
NOS	National Ocean Service (NOAA)	SAP	Synthesis and Assessment Product (CCSP)
NRC	National Research Council (NAS)	SBU	sensitive but unclassified
NRCS	Natural Resources Conservation Service	SOCRR	State of the Carbon Cycle Report
NSB	National Science Board	UCAR	University Corporation for Atmospheric Research
NSF	National Science Foundation	UCS	Union of Concerned Scientists
NSTC	National Science and Technology Council	UNFCCC	U.N. Framework Convention on Climate Change
NWS	National Weather Service (NOAA)	USAID	United States Agency for International Development
OAR	Oceanic and Atmospheric Research (NOAA)	USDA	U.S. Department of Agriculture
OCP	Our Changing Planet	USFWS	U.S. Fish and Wildlife Service
OLA	Office of Legislative Affairs (NOAA)	USGCRP	U.S. Global Change Research Program
OMB	Office of Management and Budget (EOP)	USGS	United States Geological Survey
OPCIA	Office of Public, Constituent, and Intergovernmental Affairs (NOAA)	USNA	U.S. National Assessment of the Potential Consequences of Climate Variability and Change
ORD	Office of Research and Development (EPA)	WPA	Whistleblower Protection Act



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## EXECUTIVE SUMMARY AND SYNTHESIS

This report, which presents and synthesizes the findings of a year-long investigation to determine the extent of political interference at federal climate science agencies, demonstrates how policies and practices have increasingly restricted the flow of scientific information emerging from publicly-funded climate change research. This has affected the media's ability to report on the science, public officials' capacity to respond with appropriate policies, and the public's grasp of an environmental issue with profound consequences for our future.

Conducted by the Government Accountability Project, the investigation incorporated dozens of interviews; a review of thousands of Freedom of Information Act disclosures, internal documents, and public records; and a comprehensive search of news archives.<sup>1</sup> Although the investigation focused heavily on the National Oceanic and Atmospheric Administration, it also included the National Aeronautics and Space Administration, the Environmental Protection Agency, the U.S. Geological Survey, the Department of Agriculture, and the Climate Change Science Program.

A perception of inappropriate political interference is widespread among employees of the federal climate science agencies and programs, as well as among journalists from national, mainstream outlets who cover their research. This perception is substantiated by evidence from inside sources, scientists' personal testimonies, journalists, and Freedom of Information Act disclosures.

The investigation found no incidents of direct interference with climate change research. Instead, unduly restrictive policies and practices were located largely in *the communication* of "sensitive" scientific information to the media, the public, and Congress. In this context, "sensitive scientific information" is meant to signify that science which does not support existing policy positions or objectives in research dealing with the effects of climate change or greenhouse gases on hurricanes, sea levels, Arctic ice loss, marine life, and human society.

Interference with media communications includes delaying, monitoring, screening, and denying interviews, as well as delay, denial, and inappropriate editing of press releases. Interference with the public and Congress includes inappropriate editing, delay, and suppression of reports and other printed and online material. These restrictive communication policies and practices are largely characterized by internal inconsistencies, ambiguity, and a lack of transparency. In turn, they send chilling signals to federal employees, including scientists and public affairs officers, that reinforce the suppression of "sensitive" information.

There is a clear trend toward increasingly restrictive policies and practices unsupported by any official justification from the agencies and programs. Why are these restrictions becoming more pervasive than ever before? The evidence suggests that incidents of interference are often top-down reactions to science that has negative policy

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<sup>1</sup> For more information, see Appendix B: About this report and the investigation.

or public relations implications for the administration. Attempts to impose such restrictions are sometimes unsuccessful and even counter-productive; how frequently they succeed unreported, however, cannot be quantified. Although restrictive practices tend to target the small number of federal employees working with sensitive information, the overbroad application of restrictive policies and their chilling effect impact a wide range of personnel.

Directives and signals from executive offices such as the Council on Environmental Quality, the Office of Management and Budget, and the Office of Science and Technology Policy are channeled through political appointees and younger politically-aligned career civil servants at lower-level press and policy offices. These communications largely take place off the record, frequently deviating from written policy guidelines and involving individuals with few scientific qualifications. Whereas low-level agency and program support staff are typically sympathetic to the scientists and their science, as one scientist noted, “the closer you get to Washington, the more hostile [they are to the science].” Despite supportive rhetoric, senior managers who are aware of the perception and even the incidents of interference largely fail to address them. To the contrary, they may be conforming to pressures from above to downplay politically-inconvenient science.

Whether these restrictive communication policies and practices have precipitated overt and, often, well-publicized incidents or have acted by more subtle processes, their effect has been to misrepresent and under-represent the taxpayer-funded scientific knowledge generated by federal climate science agencies and programs. In some cases, the policies and practices constitute constitutional and statutory infringements of the federal climate science employees’ free speech and whistleblower rights. In most cases, the policies and practices undermine the government’s inherent obligation to disseminate the results of publicly-funded research.

Increased congressional and media attention on the political suppression of climate science has often resulted in statements of commitment to scientific openness and a loosening of communication policies and their application. This pressure has led to actual or anticipated reforms, as well as improved morale, at NASA and NOAA, though institutional problems and policy weaknesses remain. Even in rhetoric, this reform movement has largely missed ongoing problems at EPA and CCSP.

*The Government Accountability Project recommends the executive branch and all federal agencies that support climate change research:*

- Implement a clear and transparent “notice and recap” media policy in which only a prior notification to public affairs and a subsequent follow-up are required. Correspondingly, eliminate mandatory pre-approval for media contacts, selective routing of media requests, drafting of anticipated questions and answers by scientists prior to interviews, and monitoring of media communications.

- Develop a transparent communications policy at the Climate Change Science Program and streamline the approval process for its products and communications.
- Reaffirm and educate federal employees about their right to speak on any subject so long as they make clear that they are expressing their personal views and do not use government time and resources – with the important proviso that no restrictions apply when federal employees are exercising their whistleblower rights to disclose unclassified information that is reasonably believed to evidence illegality, gross waste, gross mismanagement, abuse of power, or substantial and specific danger to public health or safety.
- Bring media policies into compliance with the Anti-Gag Statute, Whistleblower Protection Act, and related provisions, and provide clear regulations as to what constitutes properly classified, sensitive, or restricted information.
- Ensure the timely and pro-active coordination of press releases and media contacts so as to promote rather than limit the flow of information.
- Ensure that content editing and scientific quality control remain with qualified scientists and the peer-review process.
- Reaffirm and educate federal employees on their right to review any final draft that is to be published under their name or that substantially references their research.
- Establish accountability procedures that increase transparency and provide for internal reporting of undue interference with science.
- Investigate and correct inappropriate policies, practices, and incidents such as those described in this report.

*The Government Accountability Project recommends that Congress:*

- Enact legislation that protects federal free speech and whistleblower rights, with particular reference to employees of federal science agencies.
- Ensure that objective and independent science is the basis for policymaking.
- Strengthen its essential oversight functions with regard to the integrity of communications about scientific research.

## INTRODUCTION

Climate scientists' work consists primarily of research: observations, process studies, and modeling activities designed to enhance our understanding of climate change and variability. The investigation by the Government Accountability Project (GAP) has uncovered no concrete evidence that political actors are directly and willfully interfering with this fundamental aspect of scientific work. This finding is supported by a survey of federal climate scientists conducted by the Union of Concerned Scientists (UCS), whose results show that 88% and 70% of scientists polled believe, respectively, that U.S. federal government climate research is of generally excellent quality and that federal climate research is independent and impartial.<sup>2</sup> Largely, scientists remain free to choose their topics of interest, conduct research, and publish their results in scientific journals without being told otherwise.<sup>3</sup>

Journals such as *Nature*, *Science*, the *Journal of Climate*, the *Journal of the Atmospheric Sciences*, the *Journal of Geophysical Research*, and the *Bulletin of the American Meteorological Society* are held in high esteem by the scientific community. All the scientists we spoke to on this topic considered that, by virtue of the rigorous refereed and peer-review process and the ready opportunities for cross-validation, the conclusions that emerge from the scientific literature are of the highest quality and objectivity.<sup>4</sup> Not surprisingly, the freedom to publish in scientific journals is widely cherished and celebrated, and not just by scientists. In response to criticism, agency management commonly points to the scientists' freedom to conduct research and publish in scientific literature.<sup>5</sup> Consider Robert Atlas, Director of the Atlantic Oceanographic and Meteorological Laboratory (AOML) at the National Oceanic and Atmospheric Administration (NOAA), when asked about scientific integrity at his agency:<sup>6</sup>

I have not observed any political interference with our ability at AOML to communicate scientific information. All of our scientists are free to publish their results in the refereed scientific literature and to present high quality research at national or international conferences. Only the quality of the research is scrutinized and scientists are encouraged to present their conclusions that are supported by their research.

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<sup>2</sup> Survey of Federal Climate Scientists, UCS Scientific Integrity Program (2006) questions #5, 7. In summer 2006, UCS mailed printed surveys to more than 1,600 federal scientists, representing all the climate scientists UCS could identify throughout the major federal agencies conducting climate research, as well as the National Center for Atmospheric Research. The survey featured 40 questions, including 39 multiple-choice questions and one open-ended essay question. Three hundred eight surveys, including 132 essay responses, were completed and returned to UCS.

<sup>3</sup> See, e.g., anonymous lab director, communications with Maassarani (October 19, 2006) *record on file with GAP*; Conrad Lautenbacher, "We're Funding Climate Science, Not Muzzling It," Letter to the Editor in the *Washington Post* (April 19, 2006).

<sup>4</sup> 88% of survey respondents noted that they "generally seek to publish [their] research findings in peer-reviewed literature." Survey of Federal Climate Scientists, UCS Scientific Integrity Program (2006) questions #4.

<sup>5</sup> E.g., Richard Spinrad, communication with Maassarani (October 11, 2006) *record on file with GAP*.

<sup>6</sup> Robert Atlas, communication with Maassarani (October 12, 2006) *record on file with GAP*.

In May 2006, the National Science Board (NSB) issued a report in response to a request from Senator John McCain (R-AZ) examining the policies of science agencies with regard to the suppression of scientific research, noting that:<sup>7</sup>

Congressional aspirations for public access to the Federal agencies' scientific information [are] frequently reflected in statutory language, which generally requires or permits the generation, dissemination, and publication of the agencies' research results and information. We are only aware of one situation... where statutory language authorizes Federal agencies to withhold unclassified technical findings from public disclosure, and then only for a "reasonable" amount of time. We found only a few relevant Federal regulations for the disclosure of research findings, which generally encourage publication of research results.

The NSB report's findings described the existence of dissemination policies but provided scant in-depth analysis of their content or application. The report went on to conclude little more than that "dissemination policies and practices of the agencies [were] inconsistent across the government."<sup>8</sup> However, GAP's investigation has uncovered where dissemination policies and practices fall short of the Congressional ideals laid out above. We show that the variation in these policies and practices tracks politically salient events, sensitive research, and the scientists who conduct this research.

In contrast to the more robust freedoms of scientific research and publication, the restrictions that our investigations document occurred more frequently with the communication of scientific information to the media, Congress, and the general public. Generally, scientists consider such communication a minor, if not discretionary or even disruptive, aspect of their work.<sup>9</sup> One scientist was quick to point out that it is not a part of his job description.<sup>10</sup> In light of the lower priority they tend to attach to public relations than to actual scientific research and its publication for fellow scientists, it is striking that this issue has recently captured the attention of so many scientists.

Like many of us, federal scientists realize that it is the communication of their work to decision makers and the public that ultimately justifies their employment at the science agencies.<sup>11</sup> The government would not have committed such tremendous resources to science if it was little more than an academic exercise. Yet as much as

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<sup>7</sup> Attachment 4 to NSB-06-60, Letter to Sen. McCain (May 10, 2006) *record on file with GAP*.

<sup>8</sup> Nonetheless, Dr. Warren Washington, chairman of the NSB and senior climate scientist at the National Center for Atmospheric Research (NCAR), told an audience that "The news media is not getting the full story, especially from government scientists" at a three-day conference entitled "Climate Change and the Future of the American West" in early June of 2006. In a June 8, 2006, article for the *Rocky Mountain News*, reporter Jim Erickson cites a personal interview with Dr. Washington in which he said "that Bush appointees are suppressing information about climate change, restricting journalists' access to federal scientists and rewriting agency news releases to stress global warming uncertainties... that the climate cover-up is occurring at several federal agencies, including NASA, the National Oceanic and Atmospheric Administration, and the U.S. Forest Service... and that government officials are trying to confuse the public about climate change and the scientific consensus that global warming is a real problem."

<sup>9</sup> *E.g.*, anonymous scientist, interview with Maassarani (April 13, 2006) *record on file with GAP*.

<sup>10</sup> *Ibid.*

<sup>11</sup> Pieter Tans, interview with Maassarani (March 9, 2006) *record on file with GAP*.

scientists carry a duty to transmit their research to taxpayers and policymakers, it cannot be achieved without the full encouragement and assistance of political superiors and government managers. Instead, policies and practices have increasingly restricted the flow of information. Moreover, government officials' disdain for science that argues against their policy preferences sends a chilling signal through the science agencies that compromises their morale and objectivity.

## SCIENTIFIC COMMUNICATIONS WITH THE MEDIA

Media reporting of science is an effective means for making research findings accessible to the general public. The media is a primary source of information for the American public and its decision makers. Furthermore, major news outlets have reporters with a working knowledge of the field who regularly track the newest scientific developments and translate technical language into plain speak. A scientist's communications with the media may include in-person interviews and written or telephone communications – whether for radio, television, or news print – as well as press releases and press conferences.

As with many organizations, federal climate science agencies have policies and practices that regulate their employees' media communications, which are institutionalized by means of an office of public affairs and the promulgation of an official media policy. Although these can encourage better media exposure through networking and assistance in handling reporters, our investigation has catalogued the recent rise of suspect restrictions by agencies on their scientists' communications with the media. These include:

- Pre-Approval – when, after an initial media contact, a scientist is required to get permission from the public affairs office (PAO) before proceeding with an interview. Pre-approval can apply to press releases and press conferences as well as interviews.
- Intake – when pre-approval is extended to require that even a reporter's initial media request be made to public affairs.
- Routing – when public affairs takes media requests and, in spite of the reporter's request, decides which scientists can respond and what topics may be covered.
- Anticipated Q&A – when, prior to granting pre-approval, public affairs requires scientists to anticipate the reporter's questions and to draft their prospective responses.
- Monitoring – when public affairs requires an agency official to be present during the media contact either in person or over the phone.
- No “Personal Views” Exception – when employees' communications are restricted though they are speaking in their private capacity and not abusing government time or resources.

## NOAA at the Turn of the Millennium

At the National Oceanic and Atmospheric Administration (NOAA), our evidence of media restrictions dates to 2001 and builds from there.<sup>12</sup> In an email obtained through FOIA, Jana Goldman, public affairs officer at NOAA's Oceanic and Atmospheric Research (OAR) division, told a scientist from the Geophysical Fluid Dynamics Laboratory (GFDL),<sup>13</sup> "if you get *any* press requests for IPCC please bump them to public affairs before you agree to an interview." [Emphasis in original] The scientist questioned this requirement: "It seems cumbersome at best. If this policy is implemented, it will greatly cut-down on NOAA scientist interviews."<sup>14</sup> The IPCC reference was to a major international scientific assessment report issued four days earlier by the first Working Group of the Intergovernmental Panel on Climate Change, which found "new and stronger evidence that most of the warming observed over the last 50 years is attributable to human activities."<sup>15</sup>

In an April 2006 interview, GFDL scientist Tom Delworth also recalled that the problems he currently observes began in 2001, which is when he attempted to raise media attention about a published paper he co-authored determining the anthropogenic influence on the warming of the oceans from a comparison of empirical and model data. At first there was to be a media advisory and press conference to highlight his findings, but it "kept getting degraded until it was canceled." The climate scientist contrasted this experience under the new Bush administration with the treatment of his work on the heat index in the late 1990s, which Vice President Al Gore was actually helping to publicize.<sup>16</sup> It is of note that the day of President George W. Bush's February 14, 2002, climate speech, mid-level management and PAOs were notified by an internal email to refer any media calls about the speech to the White House press office.<sup>17</sup>

In an April 6, 2006, interview, Dr. Kevin Trenberth, head of the Climate Analysis Section at the National Center for Atmospheric Research (NCAR), described another

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<sup>12</sup> Dr. Jerry Mahlman, who retired from NOAA in 2000 after serving 16 years as director of the Geophysical Fluid Dynamics Lab and who recently set out to write a history of the agency, described the years there since his retirement as the "McCarthy-esque era." Interview with Maassarani (April 6, 2006) *record on file with GAP*. 67% and 64% of survey respondents agreed that "today's environment for federal government climate science is [worse] compared with" five and ten years ago, respectively. Survey of Federal Climate Scientists, UCS Scientific Integrity Program (2006) question #8.

<sup>13</sup> GFDL is a small but significant branch of NOAA located on the Princeton Forrestal Campus in New Jersey. Founded in 1955, GFDL has pioneered the use of world-class supercomputers to create sophisticated climate forecast models.

<sup>14</sup> Email From: Stouffer; To: Goldman; Date: Jan 25, 2001; Subject: IPCC *Greenpeace NOAA FOIA response* pg. 43.

<sup>15</sup> "Climate Change 2001: The Scientific Basis," Working Group 1 of the IPCC Third Assessment.

<sup>16</sup> Tom Delworth, interview with Maassarani (April 13, 2006) on file with author. One lab director asserted that "The Clinton administration was perhaps even more extreme in pushing the opposite viewpoint, E.g., global warming was everywhere and was the cause of all the extremes." Interview with Maassarani (October 19, 2006) *record on file with GAP*.

<sup>17</sup> Email From Jana Goldman; To : Kristina Katsaros, Daniel L. Albritton Bruce Hicks, Randall M. Dole, David J. Hofmann, William Neff, Alexander E. Macdonald, Ants Leetmaa, Stephen B. Brandt, James Kimpel, Eddie N Bernard, and Ernest Hildner; Date: February 14, 2002; Subject: President Bush speech *GAP August 9, 2006, part 3 NOAA FOIA response* pg 75.

notable incident that occurred following the December 5, 2003, publication of his article entitled “Modern Climate Change” in the journal *Science*. The paper – co-authored by Dr. Tom Karl, director of NOAA’s National Climatic Data Center (NCDC) – effectively updated the current state of climate science and concluded that “modern climate change is dominated by human influences.” NOAA had been informed of the pending publication, which included a disclaimer that “this article reflects the views of the authors and does not reflect government policy.”<sup>18</sup> Nevertheless, media inquiries for Karl were diverted to Dr. Jim Mahoney – a political appointee who then served as Assistant Secretary of Commerce for Oceans and Atmosphere and NOAA Deputy Administrator. Mahoney was quoted downplaying the significance of the peer-reviewed study, stating: “My own view is somewhat more open-minded, and from my perspective we don't really understand these things as well as we might.”<sup>19</sup> Some media inquiries for Karl also appeared to require high-level pre-approval. In response to an August 2005 interview request on “intense rainfall events/intense hurricanes and global warming,” a staffer for NOAA public affairs headquarters directed its local office, “Please have [the journalist] contact me by phone [redacted] or email. I’ll run this by those who need to know.”<sup>20</sup>

A June 5, 2002, FOIA document shows that a blanket pre-approval requirement for all media inquiries and interviews was first informally implemented at NOAA’s Atlantic Oceanographic and Meteorological Laboratory (AOML), which houses the Hurricane Research Division (HRD).<sup>21</sup> Sent to an AOML-wide distribution list by Erica Van Coverden of the AOML PAO, the email stated:

NOAA Public Affairs has requested that for the time being, all media inquiries and interviews be cleared by NOAA PA (myself and Jana) BEFORE they are granted. This applies to any topics that may be of national interest (which covers most of our research)... [Emphasis in original]

This announcement was followed eight days later by an outline clarifying the “AOML media policy,” which now clearly allowed for routing of requests.<sup>22</sup> Both emails came on the heels of NOAA’s May 17 release of its 2002 hurricane season

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<sup>18</sup> <http://www.cgd.ucar.edu/cas/trenberth.papers/karlrenberthSci.pdf>

<sup>19</sup> David Perlman, “Climate Change Laid to Humans, Report Warns there is ‘No Doubt’ Industry is Primary Cause,” *San Francisco Chronicle* (December 4, 2003). Dr. Konrad Steffen – director of the Cooperative Institute for Research in Environmental Sciences (CIRES), which is partially funded by NOAA – recounted a similar incident in October 2004 when Dr. Mahoney told him and another colleague involved with the Arctic Climate Impact Assessment Report over a conference call to forward all media inquiries about the report to him. Konrad Steffen, communication with Maassarani (August 26, 2006) *record on file with GAP*. Juliet Eilperin reported that Mahoney “had ‘no recollection’ of the conversation.” “Climate Researchers Feeling Heat from White House,” *Washington Post* (April 6, 2006).

<sup>20</sup> Email From: John Leslie; To: Laborde; Date: Aug. 22, 2005; Subject: interview request *Thacker complete FOIA response pg. 82*; Email From: Leslie; To: Karl, Laborde; Date: Aug. 25, 2005; Subject: [redacted] Channel Request for Tom Karl *Thacker complete NOAA FOIA response pg. 83*.

<sup>21</sup> Email From Erica Van Coverden; To: All AOML Staff; Date: June 5, 2002; Subject: Media requests must be cleared by NOAA PA *GAP July 31, 2006, NOAA FOIA response pg. 22*.

<sup>22</sup> Email From Erica Van Coverden; Date: Jun 13, 2002; Subject: Media Policy – update and details *GAP July 31, 2006, NOAA FOIA response pg. 1-2*.

outlook, which predicted “above-normal levels of storm activity.”<sup>23</sup> Since 1998, a number of scholarly articles including a 2001 IPCC Technical Summary had begun to explore the tentative links between global warming and hurricanes, suggesting that human influences may supplement the currently-observed multi-decadal upswing in cyclonic activity.<sup>24</sup>

The development of an official NOAA-wide media policy seems to have been in progress at this time, in tandem with a general centralization of public affairs functions at Washington headquarters.<sup>25</sup> In an email from Jana Goldman dated December 23, 2003, Jordan St. John, director of the Office of Public, Constituent and Intergovernmental Affairs (OPCIA), which serves as headquarters for the regional PAOs, set forth the first outlines of such a policy.<sup>26</sup> From the FOIA record, however, the distribution of this directive seems once again limited to AOML. A later email from Mahoney to NOAA upper management with the subject line “Re: [Fwd: FYI re: NYTimes call]” urges press inquiries be referred to the PAO and that PAO representatives listen in on conversations with reporters.<sup>27</sup> This is followed by a May 5, 2005, email from the Assistant Administrator of OAR, Dr. Richard Rosen, to OAR senior management, stating, “The Ocean Commission report and other activities are generating increased media interest in NOAA. Please remember that NOAA Public Affairs is responsible for coordinating media requests, so refer all inquiries from any news media to our public affairs officer...”<sup>28</sup> The document referred to by Rosen was a strongly-worded preliminary report released on April 20, 2004, by the congressionally-mandated U.S. Commission on Ocean Policy that recommended extensive policy reform, increased environmental regulation, ratification of the UN Convention on the Law of the Seas, heightened investment, and a trust fund drawn from the revenue of oil and gas leases to meet the challenges of maintaining healthy ocean ecosystems.<sup>29</sup>

### NOAA’s 2004 Media Policy

On June 28, 2004, under the signature of the Under Secretary of Commerce for Oceans and Atmosphere and NOAA Administrator, Vice Admiral Conrad C. Lautenbacher, Jr., U.S. Navy (Retired), NOAA released an official written media policy that incorporated language directly from St. John’s directive and codified a number of the

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<sup>23</sup> AOML Newsletter *available at* <http://72.14.209.104/search?q=cache:5ZMfFnVCf4YJ:www.aoml.noaa.gov/keynotes/PDF-Files/May-Jun04.pdf+aoml+june+2002+news&hl=en&gl=us&ct=clnk&cd=3&client=firefox-a> (last visited on March 23, 2007).

<sup>24</sup> See <http://www.usgcrp.gov/usgcrp/links/hurricanes.htm> (last visited on March 23, 2007).

<sup>25</sup> Anonymous NOAA director, interview with Maassarani (June 1, 2006) *record on file with GAP*.

<sup>26</sup> Email From: Erica Van Coverden; Date: Dec 29, 2003; Subject: NOAA media policy *GAP July 31, 2006, NOAA FOIA response pg. 28-29*.

<sup>27</sup> Email From: James R Mahoney; To: Chester Koblinsky; Date: April 23, 2004; Subject: [Fwd: FYI Subject: NYTimes call] *record on file with GAP*.

<sup>28</sup> From: Rick Rosen; To: OAR Senior Management Staff Nationwide; Date: May 5, 2004; Subject: Media Inquiries *record on file with GAP*.

<sup>29</sup> <http://www.oceancommission.gov/documents/prelimreport/welcome.html> (last updated December 19, 2004). The Commission expired on December 19, 2004. Few if any of its recommendations were acted upon.

isolated practices described above.<sup>30</sup> In particular, the policy addresses media and public interactions under Section 3 of the administrative order, requiring news conferences, media contacts, and scientific papers to be referred to the servicing PAO. NOAA employees are further obliged to notify the PAO before responding to news media inquiries whenever they are of national news interest, concern regulatory or controversial matters, or have policy implications.<sup>31</sup> Finally, Section 4 asks employees to “limit discussions to matters for which you are responsible and of which you have direct knowledge.”<sup>32</sup> Employees are further told that whenever “speaking to a reporter you represent and speak for the entire agency,” thereby preempting the “personal views” exception.<sup>33</sup> Some form of pre-approval, intake, and routing restrictions are tacitly invoked by Section 2.02: “OPCIA is responsible for coordinating and approving media communications involving NOAA, including advisories, interviews, and other related media contacts.” And then more explicitly in Section 3.03: “Any proposed participation or inclusion in media presentations... by individuals resulting from their duties as NOAA employees must be referred by those individuals to and cleared by OPCIA beforehand.” Section 2 also makes clear that “the clearance of releasable information is the ultimate responsibility of the Secretary of Commerce and his/her designated Public Affairs Director.”

Prior to the issuance of an agency-wide media policy, each research lab had its own established practices. According to Dr. Pieter Tans, chief scientists at NOAA’s Global Monitoring Division (GMD) (then called the Climate Monitoring and Diagnostics Laboratory), a scientist used to be able to make a media appointment, notify the PAO,

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<sup>30</sup> A DOC administrative order, DAO 219-2, that has been in effect since 1980 “to ensure accuracy and timeliness of the Department’s policies and views” requires PAO clearance for any news releases, speeches, press conferences, and publications; however, it is limited in application to all operating units in and around Washington, DC. “Each operating unit is expected to assure that its field offices coordinate their activities so as to meet the general intent and purpose of this regulation.”

<sup>31</sup> An example of what may be deemed an inappropriate policy statement for a NOAA scientist is “persuading elected officials to move from accepting the science to curtailing emissions remains a much bigger challenge.” Email From: Stouffer; To: Stouffer [and Andrew Revkin]; Date: Sept. 13, 2004; Subject: Question *Greenpeace select hurricane NOAA FOIA response pg. 8-10.*

<sup>32</sup> The policy thus preempts scientists from speaking on policy issues that may be inherently implicated by their research, as well as on findings from other scientific fields that may bear significantly on their own work.

<sup>33</sup> Neither does the “personal views” exception seem to have much traction in practice. In an email to a GFDL scientist anticipating a political discussion at an upcoming conference on science and the media, a public affairs officer explains,

I always maintain that the science is strong enough to speak for itself – it’s just when people start giving personal opinions – which I know you do not in such settings – heartburn is felt throughout the higher ups.

You are not one of the scientists I worry about – believe me, I would have advised strongly against you doing the Lamont event if I had any concern that you would not conduct yourself in a professional manner or poorly represent NOAA.

Email from: Ronald Stouffer; To: Jana Goldman; Date: April 22, 2005; Subject: Question *GAP August 9, 2006, part 3 NOAA FOIA response pg 267-68.*

which would help out with the arrangements, and then report back afterwards.<sup>34</sup> GFDL scientists recalled a similar standing policy.<sup>35</sup> OAR press officer Jana Goldman, who oversees the research labs, also operated by “notification and recap.”<sup>36</sup>

Initially, the 2004 media protocols did not appear to be seriously implemented as a general policy. FOIA records show that they were informally re-phrased to more clearly require pre-approval and routing at AOML in an email distributed to lab employees at the start of the 2005 hurricane season.<sup>37</sup> One month later, Erica Rule of the AOML PAO again reiterated stricter measures to its HRD staff in an email dated July 27, 2005.<sup>38</sup>

A study on hurricanes and global warming by [Kerry Emanuel] will be released in Nature this Sunday. As this topic might generate media inquiries – consider this e-mail a reminder that ALL media requests are to be directed to NOAA Public Affairs.... [Emphasis in original]

The FOIA record shows that this announcement was preceded by a July 26, 2005 *Associated Press* media request for comments on Emanuel’s by Tom Knutson – a NOAA researcher whose climate modeling supported a link between increased hurricane intensity and climate change. Knutson asked OPCIA for permission to respond, noting that the “paper has the potential to generate a lot of press interest...”<sup>39</sup> On July 27, Erica Rule notified Dr. Chris Landsea of NOAA that media inquiries on the subject would be routed to him and that he had blanket pre-approval. Both Knutson and Landsea were familiar with the Emanuel study, having read an advance copy of the manuscript.<sup>40</sup> The seeming difference – as made clear in his email early that morning – was that Landsea expressed “strong concerns about [his] methodology,” and thus about the conclusion that climate change has an intensifying effect on cyclonic activity.<sup>41</sup> On that same day, though out of the office, Landsea appeared to take the AP interview.<sup>42</sup> By August 1, FOIA emails show, Landsea had participated in four such “routine, but sensitive” interviews, including an interview with *USA Today* granted on July 29.<sup>43</sup>

<sup>34</sup> Pieter Tans, interview with Maassarani (March 9, 2006) *record on file with GAP*.

<sup>35</sup> Anonymous public affairs official, interview with Maassarani (date withheld) *record on file with GAP*.

<sup>36</sup> Email From: Goldman; To: Dixon; Date: Nov. 6, 2003; Subject: Forthcoming Science paper *Greenpeace select hurricane NOAA FOIA response pg. 133-34*.

<sup>37</sup> Email From: Erica Rule, June 27, 05, Subject: AOML media policy update *GAP July 31, 2006, NOAA FOIA response pg. 35-36*.

<sup>38</sup> Email From: Erica Rule, July 27, 05, Subject: possible media attention Subject: [redacted] paper *GAP July 31, 2006, NOAA FOIA response pg. 37*.

<sup>39</sup> Email From: Erica Rule; Date: July 27, 2005; Subject: HRD media response to [redacted] paper *GAP July 31, 2006, NOAA FOIA response pg. 6-9*.

<sup>40</sup> In fact, Knutson was arguably more familiar, having had the opportunity to discuss the paper with Emanuel a month prior. Email From: Knutson; To: Laborde; Date: July 26, 2005; Subject: AP news story on [redacted] paper *Thacker complete NOAA FOIA response pg. 56-57*

<sup>41</sup> Email From: Knutson; To: Laborde; Date: July 26, 2005; Subject: AP news story on [redacted] paper *Thacker complete NOAA FOIA response pg. 56-57*

<sup>42</sup> Email From: Landsea; To: Laborde; Date: July 27, 2005; Subject: [redacted] interview *Thacker complete NOAA FOIA response pg. 58*.

<sup>43</sup> Daily Media Tracking; Date: Aug. 1, 2005 *Thacker complete FOIA response pg. 191*; Email From: Kent Laborde; To: Tribble, Trinj, Smullen, West, Sprague, and Lepore; Date: July 28, 2005; Subject: USA

Elsewhere, the media policy simply went unenforced or selectively enforced. At GMD, Tans did not recall being made aware of the media policy until his director referred him to a NOAA web page containing the policy in January 2006. At GFDL, the new media policy was emailed around in the summer of 2004, but the unwritten policy of “notification and recap” largely remained in effect – except when dealing with “hot button” issues or particular scientists – according to laboratory scientists and staff.<sup>44</sup> For example, one leading NOAA climate modeler recalls that after his name appeared in *The New York Times*, he was personally contacted and told he would need approval – though it was not clear by whom.<sup>45</sup> The FOIA record shows that interviews on global warming and sea level rise were subject to clearance, anticipated Q&As, and monitoring.<sup>46</sup> Echoing the anonymous sentiments of other scientists in our investigation, the anonymous scientist cited above did not feel “he [had] the stature to ignore the media policy.”<sup>47</sup>

Tom Knutson also gained considerable media attention for his modeling of hurricanes and climate change, which the *Journal of Climate* published in September 2004.<sup>48</sup> FOIA records show him contacting Jana Goldman for approval of a media request from Dave Brown of the *Washington Post* on September 2, 2004. Goldman responded, asking what “might you say about the relationship [between hurricanes and climate change]?”<sup>49</sup> Knutson describes how, in another incident soon thereafter, the PAO required a public affairs officer to listen in on an interview he was to give *The New York Times* science reporter Andrew Revkin.<sup>50</sup> Upon learning of this condition, Revkin

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Today Interview *GAP August 9, 2006, part 2 NOAA FOIA response pg. 51*. See also Email From: Landsea; To: Erica Rule, Goldman, Laborde; Subject: media contacts on [redacted] article *Thacker complete FOIA response pg. 60-61*.

<sup>44</sup> Tom Knutson, interview with Maassarani (April 13, 2006) *record on file with GAP*. Anonymous scientist, interview with Maassarani (April 6, 2006), *record on file with GAP*; Email From: Knutson To: Jana Goldman; Date Sept. 2, 2004; Subject: press contact *GAP August 9, 2006, part 3 NOAA FOIA response unscanned docs pg 27-28*.

<sup>45</sup> Anonymous scientist, interview with Maassarani (April 13, 2006) *record on file with GAP*.

<sup>46</sup> Email From: Stouffer; To: Goldman; Date: April 16, 2004; Subject: Nat geo interview *Greenpeace select hurricane NOAA FOIA response pg. 34-37*; Email From: Stouffer; To: Goldman; Date: April 23, 2004; Subject: another interview *Greenpeace select hurricane NOAA FOIA response pg. 47-51*. In one instance, NOAA required clearance for a GFDL researcher to be placed on a web-posted list of “resource people” that could respond to questions about the film, “The Day After Tomorrow.” Email From: Stouffer; To: Goldman; Date: April 23, 2004; Subject: another interview *Greenpeace select hurricane NOAA FOIA response pg. 47-51*. At NASA Goddard Space Flight Center, a top press officer sent out a message saying that “No one from NASA is to do interviews or otherwise comment on anything having to do with’ the film... ‘Any news media wanting to discuss science fiction vs. science fact about climate change will need to seek comment from individuals or organizations not associated with NASA.” Andrew Revkin, “NASA Curbs Comments on Ice Age Disaster Movie,” *The New York Times* (April 25, 2004).

<sup>47</sup> Anonymous scientist, interview with Maassarani (April 13, 2006) *record on file with GAP*.

<sup>48</sup> Tom Knutson, interview with Maassarani (April 13, 2006) *record on file with GAP*; <http://www.gfdl.noaa.gov/reference/bibliography/2004/tk0401.pdf> (last visited on March 23, 2007).

<sup>49</sup> Email From: Knutson; To: Goldman; Date: Sept 2, 2004; Subject: press contact *GAP August 9, 2006, part 3 NOAA FOIA response unscanned docs pg 27-28*.

<sup>50</sup> See also Email From: Goldman; To: Knutson; Date: Sept. 22, 2004; Subject: NY Times *Greenpeace select hurricane NOAA FOIA response pg. 68*. Interviews with Knutson were heavily monitored at this time, including an ABC interview for which Laborde planned on traveling up to Princeton from DC. From:

dropped the interview and instead contacted Robert Tuleya, a 2002 GFDL retiree with whom Knutson had co-authored the *Journal of Climate* article. In a personal interview, Ms. Goldman has confirmed that certain controversial topics have received selective treatment.<sup>51</sup> More specifically, the NOAA PAO's Daily Media Tracking logs label "sensitive" such topics as "hurricanes and climate change," "percentage of CO<sub>2</sub> in greenhouse effect," "sea level rise," "global surface and satellite temperature measurements," "unusually warm lake temperatures," "amount of \$\$ [sic] spent on climate change," "[Kerry] Emanuel paper," "climate change," and "arctic info."<sup>52</sup>

### The Media Storm

It was not until late 2005, in the wake of the Hurricane Katrina disaster and the subsequent media frenzy on hurricanes and global warming, that the official media policy was widely publicized to agency scientists.<sup>53</sup> An October 4, 2005, email from Dr. Richard Spinrad, assistant administrator of OAR, to senior-level staff, states: "several incidents in the last few days have served as indications that we need to provide our folks with an important reminder regarding our dealings with the press. Please make sure your folks have reviewed the subject policy.... It's short and it's clear. A quick review can save lots of problems downstream."<sup>54</sup> Attached to the email string, and presumably one of the "incidents" referred to by Spinrad, is an earlier email linking to an article that was posted on RawStory.com that day.

In the article, Larisa Alexandrovna published the following leaked email memo from the regional public affairs director for NOAA's National Weather Service (NWS) to agency scientists.<sup>55</sup> The authenticity of the email was confirmed by NWS Director,

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Berman; To: Knutson; Date: Sept. 30, 2004; Subject: we're on! *Greenpeace select hurricane NOAA FOIA response pg. 71-72*; Email From: Laborde; To: Knutson; Date: Sept. 30, 2004; Subject: New Scientist magazine *Greenpeace select hurricane NOAA FOIA response pg. 69*; Email From: Goldman; To: Knutson; Date: Sept. 22, 2004; Subject: NY Times *Greenpeace select hurricane NOAA FOIA response pg. 68*.

<sup>51</sup> Jana Goldman, interview with Maassarani (October 7, 2006) *record on file with GAP*. Consider the following incident from the FOIA record: Goldman asks her superior, Kent Laborde, if there are "any problems with" an interview request for Tom Delworth on a pending paper whose findings are consistent with Delworth's earlier published findings of an anthropogenic forcing component to the warming of the world's oceans. Laborde responds that he has gotten the go-ahead from the OPCIA director – "Tom is already on the record for his opinion on this [and w]e're safe with anthropogenic forcing as a component" – and that he will also notify NOAA upper management. Email From: Laborde; To: Goldman; Date: Feb. 16, 2005; Subject: Request from [redacted] *Thacker complete NOAA FOIA response pg. 9*.

<sup>52</sup> Daily Media Tracking log *Thacker complete NOAA FOIA response pg. 170-211*. Note that the hurricane and climate change topic is generally not considered "sensitive" when handled by Chris Landsea, a NOAA scientist who, as discussed below, denies a linkage between the two.

<sup>53</sup> In essence, an old unpracticed policy became the new operational policy. As Laborde at PAO HQ responded on October 18, 2005, when asked why DOC had not been informed of a pending interview, "This was done several months ago. We will [now] follow the new procedures." Email From: Fuqua; To: Laborde; Date: Oct. 19, 2005; Subject: on Lehrer request... kent labored will [redacted?] *Thacker complete NOAA FOIA response pg. 121*.

<sup>54</sup> Email From: Rick Spinrad; Date: Oct. 4, 2005; Subject: NOAA Media Policy *Greenpeace NOAA FOIA response pg. 37*.

<sup>55</sup> Larisa Alexandrovna, "Commerce Department tells National Weather Service media contacts must be pre-approved," *The Raw Story* (October 4, 2005).

Brigadier General David L. Johnson, at an October 7, 2005, U.S. House Committee on Science hearing on hurricane prediction and seasonal activity.<sup>56</sup>

From "Jim Teet" [redacted]@noaa.gov  
Date Thu, 29 Sep 2005 12:04:34 -0600  
To \_NWS WR WFO MICs wr.wfo.mics@noaa.gov, \_NWS WR WCMs  
wr.wcms@noaa.gov  
Subject DOC Interview Policy

Good Day All:

I have been informed that any request for an interview with a national media outlet/reporter must now receive prior approval by DOC. Please ensure everyone on your staff is aware of this requirement.

Any request for an interview requires the following information to be forwarded to me immediately, so this process may begin:

The name of the reporter and their affiliation; Their deadline and contact phone number; Name of individual being requested for the interview and purpose of the interview; Additional background about the interview subject, and expertise of requested interviewee on this subject.

The request will be forwarded through NWS/NOAA to DOC; however, the individual to be interviewed ultimately will be determined by DOC.

If any requests for an update concerning the interview are received from the media, refer the individual to me for a response via my cell phone: [redacted]-3516.

Thanks, Jim Teet

With unambiguous blanket pre-approval and routing authority granted all the way up the chain to the Department of Commerce (DOC), this directive betrays a sharp departure from any prior policies and practices studied in our investigations. The NWS staff contacted by Raw Story “expressed surprise” and suspicion about this newest development, especially as they were unaware of the 2004 policy to begin with.<sup>57</sup> According to one 15-year employee in the article, “There has never been a blanket policy of needing approval before granting an interview with a national media outlet.” Furthermore, another anonymous contact indicated that media decisions had always been made at the local level. Nevertheless, the article quotes OPCIA Director Jordan St. John saying, “‘the policy has been in existence all along,’ adding that he rewrote it in June 2004 with ‘several others,’ including lawyers and Commerce Department policymakers.”<sup>58</sup>

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<sup>56</sup> “Science Democrats Recognize NWS for Hurricane Forecasting Work,” Press Release (October 7, 2005) *GAP* May 30, 2006, *NOAA FOIA response* pg 24-25. A similar directive was disseminated to GFDL and AOML PAO. Email From: Goldman; To: Erica Rule, Brian Gross; Date: Sept. 13, 2005; Subject: Katrina media inquiries *Greenpeace select hurricane NOAA FOIA response* pg. 126-27.

<sup>57</sup> Larisa Alexandrovna, “Commerce Department tells National Weather Service media contacts must be pre-approved,” *The Raw Story* (October 4, 2005).

<sup>58</sup> *Ibid.*

This sudden post-Katrina re-interpretation of the 2004 media policy was not confined to NWS.<sup>59</sup> On October 5, 2005, Dr. Robert Atlas, Director of AOML, sent a laboratory-wide order to review the NOAA media policy.<sup>60</sup> In the email, Atlas goes on to state that “one important change from the current AOML policy is that Commerce Public Affairs has asked to be made aware of all media interview requests – especially those pertaining to Katrina and Rita.” In response, one HRD scientist, Dr. Stanley Goldenberg, writes Jana Goldman and Erica Rule asking for clarification on how to follow the policy and stating “the real question is – and one that we would appreciate DOC or OAR, etc. being more up front about – what prompted this email in the first place?”<sup>61</sup> A few days prior to the November 29, 2005, press conference where NOAA announced the end of the busiest hurricane season on record, Goldman advised Goldenberg that the OAR PAO “was putting a hold on media interviews about hurricanes until 11:15 EST.”<sup>62</sup>

Nor was the “re-interpretation” limited to DOC review. In an email dated June 13, 2005, OPCIA officer Kent Laborde tells GFDL senior scientist Venkatachalam Ramaswamy and senior level PAO staff:

CEQ and OSTP have given the green light for the interview with Ram. They had me call Juliet[ Eilperin, the reporter who requested the interview] to find out more specifics. She will be asking the following:

- \*what research are you doing with climate change
- \*what research has been encouraged or discouraged by the administration
- \*what interaction has he had with the administration
- \*does he have free reign to conduct the research her [sic] wants to do

I told Juliette [sic] that he feels comfortable to comment only on science and does not want to loose [sic] his scientific objectivity by addressing policy/potitcal [sic] questions. She said since he is not a policy maker, she wouldn’t ask policy questions.

Michele [St. Martin of CEQ] wants me to monitor the call and report back to her when it’s done...

Note that press conferences also required DOC and CEQ approval.<sup>63</sup> Earlier that day, responding to an email from Juliet Eilperin asking whether he “would be willing to speak about to [sic] the extent that you’re allowed to pursue the kind of climate research you want,” Ramaswamy had responded “yeah sure,” but directed her to arrange it with

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<sup>59</sup> Anonymous lab director, communications with Maassarani (October 19, 2006) *record on file with GAP*.

<sup>60</sup> Email From: Robert Atlas, Jana Goldman; Date: Oct 5, 2005; Subject: NOAA media policy: please read as soon as possible *GAP July 31, 2006, NOAA FOIA response pg. 38-40*.

<sup>61</sup> *Ibid.*

<sup>62</sup> Email From: Jana Goldman; Date: Nov 28, 2005; Subject: media requests *GAP July 31, 2006, NOAA FOIA response pg. 41*.

<sup>63</sup> Email From: Tribble; To: Laborde; Date: Oct. 26, 2005; Subject: media at the workshop *Thacker complete NOAA FOIA response pg. 140-41*.

Goldman<sup>64</sup> Of course, many media requests were registered directly with the PAO and could be denied without the burden of having to explain the decision to any particular scientist. Consider this response from OPCIA Director St. John to a general PAO media request: “I talked to producer [sic]. They are setting this up to a debate on whether there is global warming. I told John to call her back and say thanks, but not [sic] thanks.”<sup>65</sup> According to another email, climate change-related questions posed to the Climate Prediction Center generally were first to be handed to senior political administrators Mahoney or Ahsha Tribble.<sup>66</sup>

In early January of 2006, OPCIA issued implementation protocols for the 2004 media policy, as well as an interview request template, a media contact reporting form, and a NOAA/DOC press release review process flow sheet, which were disseminated by Spinrad to all OAR laboratory directors<sup>67</sup> The implementation protocols explicitly require pre-approval for press releases, anticipated Q&As, and routing for media requests.<sup>68</sup>

What is the stated intent of these increasingly restrictive policies? In presenting the media policy, Atlas explains, “the end goal here is to ensure we get the highest degree of visibility for our work, while still maintain [sic] a positive image of NOAA as an organization.”<sup>69</sup> Jana Goldman stated, however, that she could not remember one

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<sup>64</sup> From: Kent Laborde; To: Ahsha Tribble, Jana Goldman, Jordan St. John, V. Ramaswamy; Date: June 13, 2005; Subject: GFDL Washington Post *GAP August 9, 2006, part 3 NOAA FOIA response pg 278*; Email From: Ramaswamy; To: Juliet Eilperin; Date: June 13, 2005; Subject: I deleted your re-mail by mistake-what the name and contact info for the NOAA press person? *GAP August 9, 2006, part 3 NOAA FOIA response pg. 279-280*. Goldman then forwarded the email to Kent Laborde at PAO headquarters, who discussed it with OPCIA Director St. John and contacted Michele St. Martin at CEQ, recommending they allow the interview to proceed “since [Ramaswamy] already knows his boundaries.” Email From: Ramaswamy; To: [redacted]; Date: June 11, 2005; Subject: I’m the [redacted] national environmental reporter *Thacker complete NOAA FOIA response pg. 39-41*. As reported by Paul Thacker in *Salon*, “when NOAA press officer Laborde was contacted to discuss the e-mails, he denied that interviews were subject to approval from White House officials. Confronted with his own e-mails, however, he said, ‘If you already knew the answer, why did you ask the question?’” “Bush’s Climate-Controlled White House” (August 9, 2006).

<sup>65</sup> Email From: St. John; To: Smullen; Date: Dec. 19, 2005; Subject: Media Interview Request Subject: Global Warming *Thacker complete NOAA FOIA response pg. 166*. See also Daily Media Tracking *Thacker complete NOAA FOIA response pg. 202*. Requests: “seeks scientist to discuss global warming in general and gw and hurricanes specifically.” Action taken: “Goldman will likely decline.”

<sup>66</sup> Email From: Carmeyia Gillis; To: Laborde, Goldman, Leslie; Date: Nov. 2, 2005; Subject: Climate Czar *Thacker complete NOAA FOIA response pg. 216*.

<sup>67</sup> Email From: Richard Spinrad; Date: Jan 9, 2006; Subject: NOAA Media Policy and Implementation Protocols *GAP July 31, 2006, NOAA FOIA response pg. 42*.

<sup>68</sup> See, e.g., Email From: Goldman; To: [redacted]; Date: Nov. 28, 2005; Subject: Stanley Goldenberg on [redacted] Connected [redacted] 2:30p to 12:40p ET *Thacker complete NOAA FOIA response pg. 158*.

<sup>69</sup> Email From: Robert Atlas/Jana Goldman; Dated: October 5, 2005; Subject: NOAA media policy: please read as soon as possible *GAP July 31, 2006, NOAA FOIA response pg. 38-40*. Interestingly, a January 5, 2006, media request from the *BBC* on climate modeling demonstrates that clearance has also been required for interviews that are merely “on background,” i.e., not for the purpose of attribution, rather for the reporter’s background understanding. The public affairs officer at GFDL responds, “Thanks Keith, I still have to forward these requests to NOAA for clearance.” Email From: Maria Setzer; To: Keith Dixon; Date: Jan. 5, 2006; Subject: BBC Science Special / Climate Modeling *GAP August 9, 2006, part 3 NOAA*

instance in her seven years at the OAR PAO where an OAR researcher had said something to tarnish the agency's image.<sup>70</sup> A slideshow prepared for training GFDL scientists on how to interact with the media explains that PAO participation can help scientists feel more comfortable talking to the media, provide factual background information, educate the public, and avoid surprises for all those involved.<sup>71</sup> Indeed, scientists have acknowledged their own shortcomings as media-savvy personalities (something echoed by journalists) and voiced their appreciation for assistance in more effective media communication.<sup>72</sup> In a small number of cases, scientists recalled PAO intervention as having helped correct misquotes or provided other important follow-up to the media. Similarly, scientists have acknowledged the government's legitimate right to oversee its own internal affairs and "speak with one voice" when it comes to policymaking.<sup>73</sup>

Nevertheless, these same scientists have also expressed dissatisfaction with these policies and practices, as well as, concerns about their effects. Interviews conducted in April 2006 with leading scientists and local press officers at GMD and GFDL revealed that climate scientists with national media attention – typically, those researching some aspect of anthropogenic climate change – had experienced a marked reduction in their media communications.<sup>74</sup> At the same time, some journalists have encountered complementary problems.<sup>75</sup> Mahlman claims that when he visited NOAA's David Skaggs lab on March 3, 2006, he was "mobbed" by scientists that wanted to discuss the "censorship."<sup>76</sup> Furthermore, scientists and certain public affairs officers alike see these problems reflecting poorly on the credibility of their research.<sup>77</sup> Finally, our sources have found the interpretation and implementation of the media policy's pre-approval,

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*FOIA response pg 555-56; Email From: Keith Dixon; To: Maria Setzer; Date: Jan. 13, 2006; Subject: Potential BBC television contact GAP August 9, 2006, part 3 NOAA FOIA response pg 575.*

<sup>70</sup> Jana Goldman, interview with Maassarani (October 7, 2006) *record on file with GAP.*

<sup>71</sup> PowerPoint slides for media training presented by Jana Goldman (April 5-6, 2006) *GAP August 9, 2006, NOAA FOIA undated response pg 2.*

<sup>72</sup> Anonymous scientist, interview with Maassarani (April 13, 2006) *record on file with GAP*; Anonymous NOAA director, interview with Maassarani (June 1, 2006) *record on file with GAP*; Sid Perkins, communications with Maassarani (October 5, 2006) *record on file with GAP.*

<sup>73</sup> *E.g.*, anonymous scientist, interview with Maassarani (April 13, 2006) *record on file with GAP*; Anonymous NOAA director, interview with Maassarani (June 1, 2006) *record on file with GAP.* Nonetheless, scientists agree "speaking with one voice" should not be a euphemism for restricting scientific debate.

<sup>74</sup> Anonymous scientist, interview with Maassarani (April 13, 2006) *record on file with GAP*; Pieter Tans, interview with Maassarani (March 9, 2006) *record on file with GAP*; Anonymous NOAA director, interview with Maassarani (June 1, 2006) *record on file with GAP.* 19% and 36% of UCS survey respondents, respectively, experienced "[n]ew or unusual administrative requirements or procedures that impair climate-related work." Survey of Federal Climate Scientists, UCS Scientific Integrity Program (2006) question # 28.

<sup>75</sup> *E.g.*, Sid Perkins, communications with Maassarani (October 5, 2006) *record on file with GAP.*

<sup>76</sup> Jerry Mahlman, interview with Maassarani (April 6, 2006) *record on file with GAP.*

<sup>77</sup> *Ibid*; Jana Goldman, interview with Maassarani (October 7, 2006) *record on file with GAP.*

routing, monitoring, and anticipated Q&A requirements to be characterized by secrecy and uncertainty, instead of adding clarity.<sup>78</sup>

Neither support for scientists, nor unity in policy positions, seems to justify the involvement of the DOC and White House in purely scientific communications. The unstated role of these officials and their aptitude in handling scientific information are illustrated by the following exchange from the FOIA record between OPCIA Deputy Director Scott Smullen and 28-year old DOC press officer Catherine Trinh on September 20, 2005:<sup>79</sup>

[Smullen:] Ellsworth Dutton, NOAA project manager for Solar and IR Measurements at NOAA's Climate Monitoring and Diagnostics Laboratory (CMDL), called saying he'd been called by a reporter who requested an interview... to get his opinion of two papers on global dimming... a term used to describe the decrease in the amount of radiation reaching the Earth due to particulates in the atmosphere..... Ellsworth has media experience and is accustomed to dealing with reporters on this subject.

[Trinh:] Do we usually have our scientists comment on third party studies, and do you see an advantage in having him comment on these papers?

[Smullen:] Sometimes, yes. Our scientists are frequently seen as the unbiased voice of reason. CMDL is the largest climate monitoring network in the world... and he's seen as the guru in this regard. It will help establish that NOAA is a leader in the field....

[Trinh:] Does global dimming have anything to do with climate change and/or decrease in the ozone?

[Smullen:] It's a factor in global warming, but its [sic] counters the warming aspect. Solar radiance is a small contributing factor in overall climate change... a small player, so to speak. And no.. not related to ozone.

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<sup>78</sup> Anonymous public affairs official, interview with Maassarani *record on file with GAP*; Jana Goldman, interview with Maassarani (October 7, 2006) *record on file with GAP*. In response to a letter assessing scientists' interest in a media training, one GFDL scientist responded,

I guess I am not very interested in a class that teaches one how to interact with the media. I would be interested in one that gives rules and guidelines for media interactions. I seem to find myself in many situations where the current rules (as I understand them) do not apply well... for example, when I am at an IPCC meeting and I am asked to participate in a local media event. It is very hard to get prior approval because of the time zone problems and the very short deadlines... one example of many."

Email From: Ronald Stouffer; To: Maria Setzer; Date: March 2, 2006; Subject: Media Training *GAP August 9, 2006, part 3 NOAA FOIA response pg 697*.

<sup>79</sup> Email From: Trinh; To: Smullen; Date: Sept. 20, 2005; clearance #7 – global dimming papers – science for Dutton 9-10 *Thacker Complete NOAA FOIA response pg. 102-04*.

[Trinh:] So if global dimming is occurring, then global warming probably isn't?

[Smullen:] No. the atmosphere is so complex, that they are both occurring. But they're really separate issues.... [Smullen provides another detailed explanation]

[Trinh:] OK. So, how about this.... Is it safe to say that a discussion about global dimming does easily lend itself to a discussion about global warming?....

[Smullen:] Not in this case. We doubt if the larger issue of global warming will come up. Remember, this is a focused science journal that is looking to pick apart the methodology the authors used to decipher their angles about dimming. Dutton is an unbiased expert playing peer review, so to speak.

[Trinh:] Ok. Thanks for walking me through all of this. I think this is fine. Please go ahead.

It should be noted that the absolute number of scientists revealed by our investigations or the UCS survey to have directly experienced interference or onerous delays with media communications is not great. One lab director observed, "probably the great majority of interviews have been granted."<sup>80</sup> Yet, as Mahlman has noted:

NOAA employs roughly 1,200 people, the large majority of which have little or nothing to do with climate, or climate change. I think it is fair to say that there are about 120 people who are connected with the climate problem in some form or another.... Of that roughly 120 people, I would estimate that about, say, 20 of them are the ones who are actively submitting climate-warming relevant scientific papers to prestigious scientific journals....<sup>81</sup>

Notwithstanding who actually experiences it, a widespread perception of interference can result from even a few "sensitive" incidents, increasingly restrictive and inconsistent media policies and practices, and a lack of pro-active support on the part of agency leadership.<sup>82</sup>

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<sup>80</sup> Anonymous lab director, communications with Maassarani (October 19, 2006) *record on file with GAP*..

<sup>81</sup> Similarly, the UCS survey found a:

pattern of higher reported levels of interference from scientists working on controversial topics [for whom] the rate of political interference [rose] to more than 50 percent. For example, 46 percent of all respondents, but 59 percent of scientists who always or frequently work on sensitive or controversial issues, perceived or experienced pressure to eliminate the words "climate change," "global warming," or other similar terms from a variety of communications. Survey of Federal Climate Scientists.

Timothy Donaghy, et. al. "Atmosphere of Pressure," joint UCS-GAP report (February 2007).

<sup>82</sup> In the *Traverse City Record-Eagle*, Sheri McWhirter wrote of a retired NOAA hydrologist:

"I'm with the majority of scientists who believe climate change is a manmade cause and effect," Frank Quinn said.

## Tom Knutson

On April 10, 2006, Tom Knutson – a GFDL research meteorologist and climate modeling expert working with hurricane specialists to investigate the link between climate change and cyclonic activity – told us that generally around one-fifth of his 60-70 annual media requests “fall through the cracks” due to the delay and added lines of communication, and that these are often with the major national media outlets.<sup>83</sup> Knutson describes the climate change/hurricane link as a “fast-moving, hot” topic. In September 2004, he published a paper in the *Journal of Climate* that was picked up by *The New York Times* and coincided with the Florida hurricane season. It was around this time that this area of science and his research in particular gained media attention. Knutson’s models suggest that a small anthropogenic contribution to hurricane activity is already at play.<sup>84</sup>

Upon returning from trip out of town, a week after the July 31, 2005, publication of Kerry Emanuel’s controversial study on increased hurricane activity, Knutson recalled receiving a voicemail from Kent Laborde at OPCIA asking whether he would be interested in appearing on Ronald Reagan Jr.’s MSNBC talk show to discuss hurricanes and climate change.<sup>85</sup> Shortly thereafter, he received a voicemail from the producer’s staff inquiring the same. As it was the weekend, Knutson responded directly to the show staffer to confirm his appearance and request they contact the PAO on Monday morning. That Monday, Laborde left a voicemail apologizing for the confusion and notifying Knutson that the “White House said no” to the appearance. Knutson then received a second voicemail in which Laborde notified him that he had already called the show and offered as an excuse that Knutson was too tired for the interview after his trip.

In early October 2005, journalist Brian O’Malley contacted Knutson in regard to an op-ed piece for *The New York Times*.<sup>86</sup> Knutson checked with Jana Goldman, who relayed an email to OPCIA director St. John, which she concluded with, “Knutson and I are concerned that Knutson’s science may be used to advance a policy position.”<sup>87</sup> St.

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That's an opinion he can utter now that he's retired, he said. President George W. Bush controls what federal agencies can say about climate change, Quinn said.

“He has muzzled people at NOAA and at NASA. We have a real problem with the administration,” Quinn said.

“Climate Change Having Impact?” (August 21, 2006).

<sup>83</sup> Tom Knutson, interview with Maassarani (April 14, 2006) *record on file with GAP*; Antonio Regalado and Jim Carlton; “Statement Acknowledges Some Government Scientists See Link to Global Warming,” *Wall Street Journal* (February 16, 2006).

<sup>84</sup> This contribution equals about half a category of increased hurricane intensity per 1.75 ° C Sea Surface Temperature or 4% rise in wind speeds per degree Celsius, which is still much smaller than what has been observed by Kerry Emanuel’s study. Tom Knutson, interview with Maassarani (April 14, 2006) *record on file with GAP*.

<sup>85</sup> *Ibid.*

<sup>86</sup> *Ibid.*

<sup>87</sup> Email From: Goldman; To: St. John, Smullen, Laborde; Date: Oct. 5, 2005; Subject: media request for gfdl Thacker complete NOAA FOIA response pg. 119, 133.

John responded, “Can you call [redacted] back and quiz him on what he’s working on. If it sounds a bit untowards, you can always just refer him to Tom’s paper and let me [sic] make his own characterizations.” Goldman replied, “Just spoke to him – he just wants to better understand the science – he is not looking to link an individual with a point of view.” St. John then concluded, “Take a pass. We’ll deal with media requests but let’s not open the door to others.” For his part, Knutson recalled hearing nothing of the request until he brought it up again with Goldman in February 2006, at which time Goldman offered to get back in touch with O’Malley. As of mid-April 2006, Knutson had yet to heard back from O’Malley. Asked about this in a phone conversation on May 26, 2006, O’Malley told us that he had made repeated phone calls to Jana Goldman, but found himself constantly forwarded to voicemail. “Those of us in the press were used to getting stone-walled... it’s a bone-head idea though,” he said, because he would get the information anyway, but then without “feeling so charitable.” Similar complaints were voiced among a number of the participants at a June 2005 Workshop on “Science Communications and the News Media” hosted by Columbia University and the Lamont-Doherty Earth Observatory.<sup>88</sup>

At the same time that writers such as O’Malley and Revkin have experienced difficulties with the media policy, other writers contacted in our investigations, such as Barbara Levi of *Physics Today*, “have not encountered any barriers when [contacting] federal scientists in reporting on climate issues.”<sup>89</sup> Jorge Salazar of Earth & Sky News

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<sup>88</sup> From: Ronald Stouffer; To: Jana Goldman; Date: June 6, 2005; Subject: scientist/journalist workshop *GAP August 9, 2006, part 3 NOAA FOIA response pg 274-76*. Participating journalists included: David Appell, Freelance; Chris Bowman, *Sacramento Bee*; Beth Daley, *Boston Globe*; Daniel Grossman, Freelance; Matt Hammill, WQAD TV ABC; Bill Kovarik, Radford University; Phillip Meyer, University of North Carolina at Chapel Hill; Jon Palfreman, PFG Media (WGBH/Nova); Andrew Revkin, *The New York Times*; Richard Wald, Columbia University; Don Wall, WFAA-TV (Dallas-Ft. Worth); and Dale Willman, *Field Notes Productions*.

Scientists have faulted the media for misleading the public as well. As Dr. Casper Ammann pointed out, “the media seems to feel compelled to make scientific stories seem balanced, as if each side is equally valid, even when the data doesn’t support that premise.” Interview with Maassarani (April 5, 2006) *record on file with GAP*. Another scientist concurred, they “pit one naysayer against thousands of scientists and call it 50-50.” Anonymous NOAA director, interview with Maassarani (June 1, 2006) *record on file with GAP*. This “balancing” is often promoted by industry-backed special interest groups and perpetuated by federal and local government. See Jeff Nesmith, “Foes of global warming theory have energy ties,” *Cox News Service* (June 2, 2003). Jeff Nesmith, “Nonprofits push controversial climate study,” *The Atlanta Journal-Constitution* (June 1, 2003). For example, the House Oversight and Government Reform Committee invited John Christy, professor and Director of the Earth System Science Center at the University of Alabama, and Dr. Roger Pielke Jr. from the University Corporation for Atmospheric Research (UCAR), to speak at a panel on climate change. The inclusion of Christy is apparently one reason that Dr. James Hansen opted out of the panel at the last minute, saying “I would get out of my sickbed to testify to Congress on global warming, if they were ready to deal responsibly with the matter. But obviously they are still in denial, inviting contrarians to ‘balance’ the science of global warming.” Darren Samuelsohn, “Congress ‘still in denial’ on global warming, NASA’s Hansen says,” *Environment and Energy Daily* (July 21, 2006). At the local level, consider the mayor of Juno, Alaska who appointed a skeptic, Tom Ainsworth of NWS, to his small panel on climate change to inform city policymakers. Eric Morrison, “Scientist working on local climate change report: Social, environmental effects assessed as area grows warmer,” *Juneau Empire* (August 9, 2006); Elizabeth Blueminks, “Panhandle Meltdown: Local panel reviews effects of climate change,” *Juneau Empire* (August 9, 2006).

<sup>89</sup> Barbara Levi, communication with Maassarani (October 11, 2006) *record on file with GAP*.

told us, “I can personally say that the approval process with NOAA in getting clearance to speak with scientists about their research has been pretty good.”<sup>90</sup> Though a more extensive survey is warranted, in our investigations this positive testimony was solely associated with reporters of local, technical, foreign, and non-mainstream outlets.

### **Pieter Tans**

Dr. Pieter Tans works at the NOAA Skaggs Laboratory in Boulder, Colorado. His research suggests that carbon dioxide plays a dominant role as a “forcing agent” for climate change and that this role is likely to increase relative to other causes of climate change. On October 27, 2004, Tans was contacted by David Shukman, a science correspondent with the BBC, requesting a series of broadcast interviews. According to Tans, it took until February 2005 for permission to be granted, and then only with Kent Laborde’s being flown from OPCIA in Washington, DC, to be present at the March 22 and 24 interviews, which took place in Boulder and in Mauna Loa, Hawaii. When David Shukman again requested an interview with Tans, on February 1, 2006, it was approved owing only to Shukman’s insistence, and Laborde again flew in to be present when it took place on March 8.<sup>91</sup>

Tans recalls that Laborde did not come across as an ideologue, nor did he ever intervene in the interview. When Tans asked Laborde if he was required to report on the interviews, Laborde replied that he did not report the proceedings to anyone. Notwithstanding, Tans continues to refer to such agency officials who sit in on interviews with the media as “minders.” To be sure, it is curious that so much time and energy, including flying across five time zones, has been invested into an activity with such a minimal stated purpose. At least three other scientists interviewed at GFDL have had Kent Laborde or another “minder” listen in on phone interviews.<sup>92</sup> In all cases, the scientists assented to the monitoring on the condition that the press officer not interrupt the interview, and they reported that no monitors have done so.

### **Ronald Stouffer**

Earlier this year Ronald Stouffer, senior research meteorologist at GFDL, estimated that his interviews with American media, about half of the total interviews he entertains, have dropped almost to zero.<sup>93</sup> Interviews with the European media, whom he describes as being “shocked” when they find out that approval is required, have remained constant, but only because of an increasing demand from European reporters interested in

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<sup>90</sup> Jorge Salazar, communication with Maassarani (October 2, 2006) *record on file with GAP*.

<sup>91</sup> From his perspective, however, Shukman found NOAA public affairs to be “helpful.” David Shukman, communication with Maassarani (October 24, 2006) *record on file with GAP*.

<sup>92</sup> Anonymous scientist, interview with Maassarani (April 13, 2006) *record on file with GAP*; Anonymous scientist, interview with Maassarani (April 13, 2006) *record on file with GAP*; Tom Knutson, interview with Maassarani (April 13, 2006) *record on file with GAP*. 27% and 26% of survey respondents noted that their “agency [always and frequently, respectively] requires public affairs officials to monitor scientists’ communications with the media.” Survey of Federal Climate Scientists, UCS Scientific Integrity Program (2006) question #18.

<sup>93</sup> Ron Stouffer, interview with Maassarani (April 13, 2006) *record on file with GAP*.

his work on ocean circulations, which is a large concern for Europe. In all, the clearance policy – which he has nicknamed the “pocket veto” – has reduced requests from one every two to three weeks to one every two to three months.

For reporters, even a well-intentioned pre-approval process introduces added delay and the possibility of denial, which in light of pressing deadlines may force them to look for information elsewhere. In one instance, FOIA records show how a *National Geographic* reporter asked Stouffer to comment on a study on Arctic sea ice decline and its divergence from natural variability on October 30, 2005.<sup>94</sup> Stouffer responded that he would first need to get public affairs approval and copied Jana Goldman, who writes: “I know the DoC is going to ask – well, what is his position.... so can you give me an idea of how you might respond?” As a result of the clearance process, Stouffer missed the reporter’s short deadline. Moreover, it seems that these procedures are not necessarily mere formalities. In a February 17, 2006, email Stouffer relates how he was told, possibly by someone in the NOAA Administrator’s office, that he was not qualified for a proposed interview after submitting the required anticipated Q&As.<sup>95</sup>

A variation on routing interviews from one scientist to another is the explicit placement of restrictions on the topics a scientist is allowed to cover. FOIA records revealed one incident in which Stouffer’s colleague at GFDL, Dr. Leo Donner, felt the PAO had “imposed restrictions on the topics the interview could cover.”<sup>96</sup> In response to a media request from Todd Neff of the *Boulder Camera*, Jana Goldman wrote on January 28, 2005.<sup>97</sup>

I think this is OK – I just spoke to [redacted] and he’s looking more for how is [sic] this model contributes to the overall future of climate models – I told him we didn’t want to get into comparing models or talking about deficiencies and strengths, but just the general overall how this advances the whole science of modeling.

In another email dated September 22, 2005, OPCIA Deputy Director Scott Smullen advised Kent Laborde that an interview – regarding warming of the Gulf of Mexico and its causes – with NCDC scientist Dr. Richard Reynolds has been cleared “with the caveat that we tell Richard to be very careful with how he frames the global warming signal aspect. Sensitivities there, as you know.”<sup>98</sup>

Although these incidents may be somewhat infrequent, some of the scientists express feelings of discomfort and intimidation and it appears that some have already

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<sup>94</sup> Email From: Ronald Stouffer; To: Jana Goldman; Date: Oct 8, 2005; Subject: national geographic.com inquiry *GAP August 9, 2006, part 3 NOAA FOIA response pg 382-86.*

<sup>95</sup> *Ibid.*

<sup>96</sup> Email From: Leo Donner; To: Steve Mayle; Date: April 24, 2006; Subject: Media Policy FOIA Request *Greenpeace NOAA FOIA response pg. 1.*

<sup>97</sup> *Ibid.*

<sup>98</sup> Email From: Smullen; To: Laborde; Date: Sept. 22, 2005; Subject: [redacted] cleared *Thacker complete NOAA FOIA response pg 108.*

placed “self-imposed” restrictions on their media communications.<sup>99</sup> Indeed, Stouffer himself has recently refused a number of interview requests himself, including one to discuss NOAA’s media policy.<sup>100</sup> Four of our sources, who collaborate with but are positioned outside of the agency, asserted that NOAA scientists do not dare speak for fear of being fired.<sup>101</sup> A more subtle and pervasive form of self-restraint occurs when scientists feel obliged to temper their words, to avoid sensitive topics, or to represent the government at the expense of their personal views. Consider one researcher from the Pacific Marine Environmental Laboratory (PMEL) who wrote in his request for PAO pre-approval:<sup>102</sup>

Since [the topic of anthropogenic carbon and its ocean storage] is getting into a more politically sensitive area than the numerous interviews we have been doing over the last few weeks, I thought I should check to make sure everyone is okay with my doing this interview.... I am comfortable doing this interview and am confident that I can discuss the science while stating I am not qualified to comment on the policy or political implications.... I am happy to modify this as necessary to make sure this interview goes smoothly and I represent NOAA and IPCC properly.

### Tom Delworth

Although Dr. Tom Delworth has not experienced an explicit denial of an interview request, he agrees that a non-response or delay has the same effect.<sup>103</sup> By April 2006, Delworth found that about a quarter of his interviews fell through due to delays at levels higher than the OAR PAO.<sup>104</sup> He added that about one third of the reporters of

<sup>99</sup> 21% and 14% of UCS survey respondents, respectively, felt “[s]elf-induced pressure to change research or reporting in order to align findings with agency policy or to avoid controversy.” Survey of Federal Climate Scientists, UCS Scientific Integrity Program (2006) question # 23.

<sup>100</sup> On one occasion, Stouffer hung up on a German reporter who, after Stouffer had told him to talk to Goldman first, became “very unhappy and got right to accusing Bush of gagging me....” Email From: Goldman; To: Laborde; Date: July 5, 2005; Subject: fodder *Thacker complete NOAA FOIA response pg. 43-44.*

<sup>101</sup> Jerry Mahlman, interview with Maassarani (April 6, 2006) *record on file with GAP*; Kevin Trenberth, interview with Maassarani (April 5, 2006) *record on file with GAP*, Judith Curry, interview with Maassarani (May 10, 2006) *record on file with GAP*; John Judis, “The Government’s Junk Science,” *The New Republic* (November 2, 2006) “Scientists who don’t toe the party line are being intimidated from talking to the press. I think it is a very sad situation. I know quite a few people who are frightened, but they beg me not to use their name.”

<sup>102</sup> Email From: St. John; To: Goldman; Date: Aug. 10, 2004; Subject: [redacted] media request – CO2 and Oceans/IPCC *Thacker complete NOAA FOIA response pg. 66-67.*

<sup>103</sup> Tom Delworth, interview with Maassarani (April 13, 2006) *record on file with GAP*; Email From: Tom Delworth; To: Jana Goldman, Maria Setzer; Date: Feb. 14, 2006; Subject: Earth and Sky Interview *GAP August 9, 2006, part 3 NOAA FOIA response pg 616.*

<sup>104</sup> Email From: Tom Delworth; To: Jana Goldman; Date: Nov. 14, 2005; Subject: Reporter’s request for Science News *GAP August 9, 2006, part 3 NOAA FOIA response pg. 481*; Email From: Tom Delworth; To: Jana Goldman; Date: Nov. 14, 2005; Subject: Interview request *GAP August 9, 2006, part 3 NOAA FOIA response pg. 485*; Emails between: Jana Goldman and Jordan St. John; Date: Nov. 14, 2005; Subject: Ben Harder of Science News request to interview T. Delworth *GAP August 9, 2006, part 3 NOAA FOIA response pg. 492.*

whom he is aware have given up in their attempts to interview him. He estimates it takes about 24 hours for typical requests and longer for more controversial ones. FOIA records show that five- to six-day delays are not unusual depending on how “politically sensitive” the topic is.<sup>105</sup> On two occasions, Delworth never heard back from the PAO. Furthermore, on two or three occasions, NOAA has also made verbal requests of Delworth to prepare anticipated Q&As for the interview. When Jana Goldman informed the NOAA PAO on November 14, 2005, that there were a number of requests on the same climate change-related topic for Delworth and requested blanket approval, Jordan St. John responded, “There are no blanket answers. Each one has to be dealt with as we get it.”<sup>106</sup>

FOIA records demonstrate one incident concerning a January 23, 2006, request by Sid Perkins of *Science News Magazine* to speak with Delworth and his colleague Keith Dixon about their paper recently published in the *Geophysical Research Letters* (GRL).<sup>107</sup> Their paper explored whether “anthropogenic aerosols [have] delayed a greenhouse gas-induced weakening of the North Atlantic thermohaline circulation.” After receiving a message from Jana Goldman at the OAR PAO saying, “I’m afraid this needs to go through the food chain – When did Sid want to talk to them?” and asking for anticipated Q&As, GFDL public affairs officer Maria Setzer apologizes to the two scientists that the interview “needs to go through a more formal clearance process... I will try to clarify with her why this particular interview is being treated differently but in the meantime, do you have any way of anticipating questions the reporter might ask (has asked)?”<sup>108</sup>

This was the first time Sid Perkins had encountered the NOAA policy.<sup>109</sup> Although it seemed widely known to NOAA scientists, he felt it was still unfamiliar to

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<sup>105</sup> Email From: Jana Goldman; To: Stanley Goldenberg; Date: November 15, 2005; Subject: Media Update -- Status of Ada Monzon interview *GAP August 9, 2006, part 3 NOAA FOIA response pg. 489-490*; Anonymous NOAA director, interview with Maassarani (June 1, 2006) *record on file with GAP*. Consider a casual email by Jana Goldman at the OAR PAO soliciting suggestions from a GFDL scientist in anticipation of an upcoming media storm: “stuff is starting to come out now in preparation for the IPCC report next January and I want to ensure that NOAA gets proper credit as well as starting to calm Those Who Need to Be Calmed months before the actual event.” [emphasis in original] The scientist responds, “I guess I am not interested in calming people, the science is what it is - in spite of the politics. NOAA management should know/understand/appreciate the key science points.” Email From: Ronald Stouffer; To: Jana Goldman, Maria Setzer; Date: February 7, 2006; Subject: Larry O interview for the discovery channel *GAP August 9, 2006, part 3 NOAA FOIA response pg 594*.

<sup>106</sup> Emails between: Jana Goldman and Jordan St. John; Date: Nov. 14, 2005; Subject: Ben Harder of Science News request to interview T. Delworth *GAP August 9, 2006, part 3 NOAA FOIA response pg. 492*.

<sup>107</sup> Email From: Jana Goldman; To: Maria Setzer; Date January 24, 2006; Subject: Media Contact: Science News Magazine *GAP August 9, 2006, part 3 NOAA FOIA response pg. 576-79*; Tom Delworth, interview with Maassarani (April 13, 2006) *record on file with GAP*; Sid Perkins, communications with Maassarani (October 5, 2005) *record on file with GAP*. In response to our inquiry, one scientist wrote to us, “I appreciate the work that you and your colleagues are doing, but I believe it’s best that we not meet.” Anonymous scientists, communication with Maassarani (July 18, 2006) *record on file with GAP*.

<sup>108</sup> *Ibid.*

<sup>109</sup> Sid Perkins, communications with Maassarani (October 5, 2005) *record on file with GAP*.

the media. When asked about how the request was handled, Sid Perkins maintained that:<sup>110</sup>

The “approval process,” if it existed at all in this case, was incredibly slow. After I e-mailed him [Keith Dixon] to officially request an interview, I tried to call a NOAA public affairs person -- a lady that I've worked with often -- to confirm this policy. She was out of the office for a few days at the time, so I had to call NOAA headquarters and speak with someone there. As far as I know, my request disappeared into a black hole.... My interview with Dixon did not take place, but eventually I was able to speak with Dr. Delworth.

### Press Releases

Press releases or media advisories allow scientists to raise widespread media attention, typically to the publication of new research. Our investigations show that from early in the Bush administration’s first term, agency treatment of press releases has largely mirrored that of media requests. In a June 3, 2002, email entitled “draft press release,” Jana Goldman responds to Kent Laborde’s questions on the press release protocols, “I’m still not even sure about certain things and I’ve been here for three years! I think we are OK on this one as it’s not a sensitive subject – like climate change – and we are quoting a scientist rather than an administration official.”<sup>111</sup>

When press releases did concern climate change, obtaining Department of Commerce approval was standard practice. Consider a September 26, 2002, conversation string between Goldman and Dr. Richard Wetherald, a Republican-registered research meteorologist at GFDL.<sup>112</sup> Pending its publication, Wetherald forwards the abstract of an article he has co-authored on a study of the simulated “hydrological changes associated with global warming.”

[Wetherald:] .... I have not bothered to write a draft NOAA press release since the last time it was turned down by the Dept. of Commerce. Apparently at that time, greenhouse or global warming papers were considered to be the literary equivalent of “persona non grata” by the current administration. I assume that this is still the case? I don't want to waste both of our times if it is. Anyway, here is the summary for your information. Please let me know if this policy has changed....

[Goldman:] .... What I think I may do is pass the abstract along downtown and see what they think. I agree with you, the attitude seems to have changed regarding climate change, but let's also avoid doing unnecessary work if it's not going to go anywhere....

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<sup>110</sup> *Ibid.*

<sup>111</sup> Email From: Kent Laborde; To: Jana Goldman; Date: June 3, 2002; Subject: Draft Press Release *GAP August 9, 2006, part 3 NOAA FOIA response pg 93-95.*

<sup>112</sup> Email From: Dick Wetherald; To: Jana Goldman; Date: September 26, 2002; Subject: AGU Journal Highlight *GAP August 9, 2006, part 3 NOAA FOIA response pg 144-46.*

[Wetherald:] .... That sounds like a sensible idea. If by some miracle, you can use it as a NOAA press release, this would be fine as long as it contains the basic conclusions in the summary that I sent. I will certainly help out if it comes to that.....

[Goldman:] .... I sent the abstract down to see if it would fly -- if so, we would have to draft a release, but at least we would know that it would go through and our work would not be in vain. Thanx [sic] again for letting me know about the paper....

The New Jersey *Star-Ledger* has reported that Wetherald has had three proposed press releases rejected – beginning with an early 2001 publication concerning “committed warming and its implications” in the prestigious *Geophysical Research Letters* (GRL).<sup>113</sup> The push-back did not appear to come from OAR public affairs. Jana Goldman told him his paper “warrants a release” in a February 1, 2001, email.<sup>114</sup> Instead, he remembers being told that his most recent 2004 press release accompanying the publication of another global warming paper was rejected by “officials” at the Department of Commerce. “Obviously, the papers had a message, and it was not what they wanted it to be,” Wetherald told Kitta MacPherson of the *Star-Ledger*. “A decision was made at a high level not to let it out.” The FOIA record reveals that Wetherald proposed another press release to Goldman on August 18, 2005, stating:<sup>115</sup>

I know our “track record” on any study even remotely involving greenhouse warming research but I thought that since these two studies [that Wetherald co-authored and recently published in *Science*] basically resolved and highlighted various discrepancies in both the satellite and radiosonde [sic] data as compared with model prediction, I thought that there might be a “ghost of a chance” on doing something with this since some of our people were involved with the studies.... Believe it or not, I still want to do this sort of thing “through the system” with you. Hopefully, it will happen again someday???

It appears from a review of the record that no such press release was ever issued.<sup>116</sup>

Ronald Stouffer, co-author on at least one of Wetherald’s above-mentioned papers, has “stopped trying to get press releases out” because of the difficulty of conveying the science to the PAOs and the complexity of the approval process.<sup>117</sup> A comparison of press release requests passed onto Commerce in the FOIA record and the

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<sup>113</sup> Kitta MacPherson, “Scientists: Climate data squelched,” *Star-Ledger* (October 1, 2006); The draft March press release can be found at *GAP August 9, 2006, part 3 NOAA FOIA response pg 55-57*.

<sup>114</sup> Email From: Steve Carson; To: Jana Goldman; Date: February 1, 2001; Subject: GRL Paper “Committed warming and its implications for climate change” *GAP August 9, 2006, part 3 NOAA FOIA response pg 28-29*.

<sup>115</sup> Email From: Wetherald; To: Goldman; Date: Aug. 18, 05; Subject: Science papers on Observed Temperature biases *Thacker complete NOAA FOIA summary pg. 212*.

<sup>116</sup> See <http://www.publicaffairs.noaa.gov/releases2005/> (last visited on March 23, 2007).

<sup>117</sup> Ronald Stouffer, interview with Maassarani (April 10, 2006), *record on file with GAP*.

NOAA press release archives reveals at least one other release that was buried pertaining to a 2001 *Journal of Climate* paper by Dr. Isaac Held, senior research scientist at GFDL, and Dr. Tapio Schneider, assistant professor at the California Institute of Technology. According to Schneider, the paper “contains what probably is the first clear observational (i.e. model-independent) indication for a human influence on climate.”<sup>118</sup>

Section 2.02 of the 2004 media policy mentions the coordination and approval of press releases. This is reinforced by the 2006 implementation protocols, which stipulate that “all releases, especially those announcing issues of national interest, policy, that detail a significant accomplishment, or that may be controversial for some reason, are to be forwarded through the NOAA Press Release process.” Dated February 2006, the NOAA/Commerce News Release Review Process is a 12-step procedure that includes “NOAA Line Office Asst. Admin. [review],” “OPCIA review and edit,” “Policy Office/PCO [Program Coordination Office]/Leg. Affairs Review,” “NOAA Chief of Staff and Leadership review,” and “DOC PA REVIEW.” Notably, this flowchart omits any mention of White House review, which our report suggests as routine for “sensitive” topics under this administration.

This clearance procedure has resulted in considerable delay. On February 27, 2006, the NOAA PAO issued a press release entitled, “Researchers Identify Cause of Unusual 1979-2003 Cooling of the Global Lower Stratosphere,” three days after the publication of the research in *Science*.<sup>119</sup> In response to an inquiry by the lead author and NOAA GFDL senior scientist Venkatachalam Ramaswamy concerning the delay, a local press officer advised the researcher that a three-week turn-around was to be expected.<sup>120</sup> In light of such delays, an anonymous NOAA senior scientist explains, “it is a shame” that only his co-authors from universities get their press releases out the same day their papers are released and that “NOAA thus fails to garner the credit due on its own work.”<sup>121</sup> Furthermore, it appears from the FOIA record that Ramaswamy was not allowed final approval of the advisory after it went “downtown” in the few days prior to its final release.<sup>122</sup>

It seems that sensitive press releases are delayed more than others, if cleared at all. Tom Knutson recalled that he had prepared a one-page summary of his 2004 paper to be published in the *Journal of Climate* for a press release but was soon informed it would not go through.<sup>123</sup> He recently confirmed this incident at a GFDL media workshop, where two of his colleagues also brought up (and Jana Goldman acknowledged) similar

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<sup>118</sup> Email From Steve Carson; To: Jana Goldman; Date: January 11, 2001; Subject: outreach? *GAP August 9, 2006, part 3 NOAA FOIA response pg 13.*

<sup>119</sup> Press release at <http://www.publicaffairs.noaa.gov/releases2006/feb06/noaa06-025.html> (last visited on March 23, 2007).

<sup>120</sup> Email From: Maria Setzer; To: Ramaswamy; Date: March 6, 2006; Subject: Press Release *Greenpeace NOAA FOIA response pg. 2.*

<sup>121</sup> Anonymous scientist, interview with Maassarani (April 13, 2006) *record on file with GAP.*

<sup>122</sup> Email From: Goldman; To: Ramaswamy; Date: Feb. 21, 2006; Subject: Draft release for science paper *Greenpeace select hurricane NOAA FOIA response pg. 2-6.*

<sup>123</sup> Tom Knutson, interview with Maassarani (April 10, 2006) *record on file with GAP.*

experiences with their proposed releases. This contrasts with the handling of press releases that are supportive of the administration's position or otherwise congratulatory.

On July 1, 2005, NOAA OAR Assistant Administrator Rick Rosen contacted Ahsha Tribble personally to propose a press release for a comment by Dr. Chris Landsea to be published several months later in the *Journal of Climate*. According to Rosen, "It challenges the conclusions reached by Knutson and Tuleya (2004) regarding the potential for more intense hurricanes in a warmer climate. It is not likely to attract the same media attention as the original Knutson and Tuleya [sic] paper, but we should consider drafting a NOAA press release nonetheless."<sup>124</sup> On October 7, 2003, NOAA put out a press release announcing "NOAA awards over \$3.4 million to Princeton University for Climate... 'as envisioned in the Bush administration's Climate Change Research Initiative,'" adds Commerce Undersecretary and NOAA Administrator Lautenbacher.<sup>125</sup> In an email trail leading up to the October 7 release, GFDL Administrative Officer Steve Mayle writes, "George [Philander, a Princeton professor and researcher] said the University would probably issue its own press release. If that turns out to be the case, we should put your press people in touch with our press people so that they can coordinate the issuance of the releases." At other times – for example, with Wetherald's 2001 proposed press release described above – duplication of press releases has been cited as a reason to reject more politically sensitive press releases.

In a more recent instance, Dr. Joellen Russell, a former GFDL research scientist who had moved to the University of Arizona to take an appointment as Assistant Professor of Geosciences, sent Jana Goldman the following email:<sup>126</sup>

Dear Jana,

Ron Stouffer asked me to contact you. He told me that you and Maria had discussed the following paper, "The Southern Hemisphere Westerlies in a Warming World: Propping the Door to the Deep Ocean."

I am the lead author of this paper that describes the critical role of the Southern Ocean in the global climate response to increasing greenhouse gases. I have a number of GFDL co-authors {Ronald Stouffer, Keith Dixon, Robbie Toggweiler, and Anand Gnanadesikan} and our study uses the latest GFDL coupled climate

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<sup>124</sup> Email From: Rick Rosen; To: Ahsha Tribble; CC: James Mahoney, Jana Goldman; Date: July 1, 2005; Subject: Paper on hurricanes and global warming *GAP August 9, 2006, part 3 NOAA FOIA response pg. 299*.

<sup>125</sup> Email From: Jana Goldman; To: Steve Mayle; Date: September 29, 2003; Subject: Draft Princeton Press Release *GAP August 9, 2006, part 3 NOAA FOIA response unscanned docs pg 6*; Email From: Goldman; To: Aja Sae-Kung, Eric Smith; Date: October 6, 2003; Subject: GFDL climate release with Cong. Quote *GAP August 9, 2006, part 3 NOAA FOIA response unscanned docs pg 7-8*; Email From: Goldman; To: Scott Smullen; Date: October 6, 2003; Subject: climate paper pg 9; Email From: Jana To: Steve Mayle Re: draft quote Date: Oct. 6, 2003 *GAP August 9, 2006, part 3 NOAA FOIA response unscanned docs pg 10*.

<sup>126</sup> Email From: Joellen L. Russell; To: Jana Goldman; Date: April 10, 2006; Subject: Southern Ocean "Oven Door" paper warming *GAP August 9, 2006, part 3 NOAA FOIA response pg. 733-34*.

models to quantify the large and growing influence of the Southern Ocean on climate.... Therefore, we think this paper is worthy of a press release.

Russell went on to note that “the PR people here are also interested in putting out a press release.” In declining the request, Jana Goldman responded on April 10, 2006, “the lead author’s organization/agency usually takes the lead in issuing releases.” Nonetheless, as recently as October 13, 2006, NOAA issued a press release for a GRL publication co-authored by Jason Dunion, an AOML hurricane researcher.<sup>127</sup> The paper discussed how hurricane activity was influenced by dust clouds (as opposed to global warming). The press release itself clearly stated, “The lead author is Amato Evan of the University of Wisconsin-Madison.”

By early 2005 Dr. Richard Feely of NOAA’s Pacific Marine Environmental Laboratory (PMEL) and colleagues at NOAA, USGS, and outside the government had begun organizing a national workshop of invited specialists on the “Impacts of Increasing CO<sub>2</sub> on Coral Reef Organisms and Other Marine Calcifiers” to take place April 18-20, 2005.<sup>128</sup> On January 5, 2005, Feely wrote Jana Goldman, “since NOAA has a major role is [sic] protecting critical marine ecosystems including coral reefs, NOAA is a major sponsor of this workshop [it] would be great if we could build up wide interest in this workshop through press releases from your office....”<sup>129</sup> On February, 16, he reiterated his request for a press release and added:

If you want to see what other country’s [sic] are saying about the impacts of CO<sub>2</sub> on Coral Reefs go to Google News and type in Carol Turley. She is the director of the Plymouth Laboratory in England and just participated in a major international conference on the Impact of Global Warming. Her presentation was picked up by all the major news organizations throughout the world with the obvious exception of the United States! I wonder why? The US has the second largest coral reef systems in the world and we can’t even read about what might happen to them if we keep going down the same path that we are. Hopefully, we can change that lack of understanding of this important impact in the US with [your] help at the workshop.<sup>130</sup>

By March 7, Feely had provided Goldman with a draft release; however a review of NOAA’s online news release archives reveals that NOAA did not issue it.<sup>131</sup>

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<sup>127</sup> Press release at <http://www.publicaffairs.noaa.gov/releases2006/oct06/noaa06-076.html> (last visited on March 23, 2007).

<sup>128</sup> Email From: Richard Feely, To: Jana Goldman, Date: Jan. 5, 2005, Subject: Workshop on Impacts of Increasing CO<sub>2</sub> on Coral Reef Organisms and Other Marine Calcifiers *Thacker complete NOAA FOIA response pg.1.*

<sup>129</sup> *Ibid.*

<sup>130</sup> Email From:Richard Feely; To: Jana Goldman, Date: February 17, 2005; Subject: [Redacted] *Thacker complete NOAA FOIA response pg. 8*

<sup>131</sup> Email From:Richard Feely; To: [redacted]; Date: March 7, 2005; Subject: Calcification Workshop – Press Opportunities *Thacker complete NOAA FOIA response pg.17;* <http://www.publicaffairs.noaa.gov/releases2005/>. To their credit, USGS issued a press release announcing the workshop on April 11, 2005. <http://www.usgs.gov/newsroom/article.asp?ID=690>

Later that year, Feely co-authored a paper that was published in *Nature* and detailed the acidification of oceans through increasing CO<sub>2</sub> in the atmosphere.<sup>132</sup> This phenomenon is expected to affect all organisms producing calcium carbonate parts, including corals, and because these form the base of the food chain, continuing CO<sub>2</sub> emissions could lead to mass marine extinctions. According to Feely's colleague, Tans, Jana Goldman had prepared a press release with the assistance of NOAA scientists to coincide with the publication of the paper; however it never made it past the "higher-ups."<sup>133</sup> "It appeared that NOAA didn't want to be associated with it, even though they had reason to be proud of a good paper," Tans explained. "The association of ocean acidification with high atmospheric CO<sub>2</sub> is about as solid as it gets." At about the same time, Goldman sought guidance from the PAO headquarters about media efforts for a similar report that arose from a workshop co-sponsored by NOAA and of which two out of the six authors, including Feely, were NOAA PMEL researchers.<sup>134</sup> When the report summarizing the way "worldwide emissions of carbon dioxide from fossil fuel burning are dramatically altering ocean chemistry and threatening marine organisms" was released on July 5, 2005, NOAA issued no press release.<sup>135</sup>

## NASA

The trajectory of media policies and practices seems to have followed a similar path across agencies. Sid Perkins, a reporter for *Science News* since July 2000, recalled that:<sup>136</sup>

Once upon a time, there was no real problem with access. As little as 2 years ago, I encountered only occasional problems. It was About [sic] 2 years ago when I first noticed problems (i.e., scientists preferring not to talk until their PR folks had been apprised) -- not in all cases, mind you, just a few. Scientists at the U.S. Geological Survey got antsy about media contacts about then, which was about the same time that news reports about restrictions on media contacts at HHS were first reported. I first heard news of the same thing at NASA at about the same time.

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<sup>132</sup> "Anthropogenic ocean acidification over the twenty-first century and its impact on calcifying organisms," *Nature* 437, 681-686 (September 29, 2005).

<sup>133</sup> Pieter Tans, interview with Maassarani (March 9, 2006) *record on file with GAP*. See also Email From: Feely; To: [redacted]; Date: August 29, 2005; Subject: Pre-proofed Nature paper – Orr nature04095 *Thacker complete NOAA FOIA response pg. 84*.

<sup>134</sup> Email From: Goldman; To: St. John, Smullen; Date: December 15, 2005; Subject: Ocean Acidification Report *Thacker complete NOAA FOIA response pg. 163-64*.

<sup>135</sup> Compare <http://www.ucar.edu/news/releases/2006/acidification.shtml> (last visited on March 23, 2007) with NOAA's media archives <http://www.publicaffairs.noaa.gov/releases2006/> (last visited on March 23, 2007). Interestingly, USGS, which also sponsored the workshop and contributed one of the report's authors, similarly issued no release. See

[http://www.usgs.gov/newsroom/article\\_archive.asp?CurPage=7&Year=2006](http://www.usgs.gov/newsroom/article_archive.asp?CurPage=7&Year=2006) (last visited on March 23, 2007). More on USGS and other agencies in the next section.

<sup>136</sup> Sid Perkins, communications with Maassarani (October 5, 2006) *record on file with GAP*.

Some scientists ignore these policies, but increasingly many of them aren't; again, I don't know whether they feel such policies are a blessing (i.e., an excuse not to talk to the media) or a curse.

My federal science contacts aren't decreasing per se. (FYI: The magazine that I write for covers science news for the layman, and we get the vast majority of our news from peer-reviewed journals [maybe 80 percent or so]. Much of the rest is basic research that's done comes [sic] by government agencies such as EPA, NASA, DOE, etc. In many cases, however, there's some overlap; rather than publication via a mere press release, the government research is also being reported in journals or at meetings and conferences as well. However, in some cases it's increasingly easier for me to contact a university source/co-author rather than a government one, if given the choice, just due to the roadblocks that government PR folks can and do create.

Don't know if all of these policies stem from an unstated mission to restrict media access to government data or not; hopefully, your research will find out. The policies certainly seem to have cropped up among a wide variety of agencies at or near the same time. Much of the types of research that we cover is basic science that's publicly funded, conducted by researchers who are partially (or in many cases fully) paid by government agencies, so access should be as unfettered as possible, as far as I'm concerned.

In an October 26, 2004, article, NASA climate scientist and director of the Goddard Institute for Space Science (GISS), Dr. James Hansen, told the *New York Times* that then NASA Administrator Sean O'Keefe asked him not to discuss the dangerous consequences of climate change.<sup>137</sup> In a lecture at the University of Iowa that same day, Hansen elaborated:<sup>138</sup>

In my more than three decades in the government, I have never seen anything approaching the degree to which information flow from scientists to the public has been screened and controlled as it is now. I am referring specifically to research on climate change that yields results of possible public interest that would likely be interpreted as being relevant to policy considerations on climate change.

Yet things seemed to get worse. Dr. Jerry Mahlman recalls, "in late 2005, I got a call from Jim saying that what I had described to him [happening at NOAA] the previous May was now happening to him, within NASA."<sup>139</sup> What had brought about such changes for NASA's leading climate scientists? In December 2005, Hansen presented a

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<sup>137</sup> Andrew Revkin, "NASA Expert Criticizes Bush on Global Warming," *The New York Times* (October 26, 2004); Tom Yulsman, "Political interference with science real, troubling," *The Denver Post* (August 21, 2005).

<sup>138</sup> Distinguished Public Lecture Series at the Department of Physics and Astronomy, University of Iowa (October 26, 2004) available at [http://www.columbia.edu/~jeh1/dai\\_complete.pdf](http://www.columbia.edu/~jeh1/dai_complete.pdf) (last visited on March 23, 2007).

<sup>139</sup> Jerry Mahlman, interview with Maassarani (April 6, 2006) record on file with GAP.

lecture on the importance of reducing emissions at the American Geophysical Union and also announced on ABC News that data showed 2005 to be the “warmest year on record.” Subsequently, the NASA PAO told Hansen that there had been a “storm of anger at headquarters” and threatened him with “dire consequences” if he kept making similar remarks.<sup>140</sup> According to GISS press officer Leslie McCarthy, George Deutsch rejected an interview request for Hansen from NPR, “the most liberal” media outlet, because it would undermine his job of “mak[ing] the President look good.”<sup>141</sup>

NASA is generally deemed more flexible than NOAA because there is no extra department with which public relations must be coordinated.<sup>142</sup> Indeed, NASA’s media policy and practices were originally based on 1987 regulations found in 14 CFR 1213, which entail no pre-approval requirements for media interviews.<sup>143</sup> Nevertheless, already years before Hansen came under fire, an internal memorandum demonstrated that these regulations had been overlain with a new media policy mandating pre-approval, intake, and routing by NASA headquarters.<sup>144</sup> Other restrictive practices also developed, often without being put into writing, such as monitoring or dress rehearsals for press conferences.<sup>145</sup> According to Hansen, scientists participating in such rehearsals were told it was unacceptable to share certain scientific conclusions. Elvia Thompson, a former PAO employee at NASA, has commented that there was a “general understanding” that “climate change” was to be used in place of “global warming.”<sup>146</sup> Indeed, media policies

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<sup>140</sup> James Hansen, interview with Maassarani (February 2006) *record and internal memo on file with GAP*. As of noon of March 16, 2006, 285 NASA scientists and engineers had signed a “Statement of support for NASA’s commitment to openness.” The statement “fully supports Dr. Hansen in his professional capacity to continue alerting the public about global warming” and encourages “all NASA affiliated scientists and engineers to openly present their expertise for the public good.” See <http://support-letter.umiacs.umd.edu:8080/hansen/index.jsp> (last visited October 2006).

<sup>141</sup> In a June 6, 2006, letter to Senator Susan Collins (D-ME), Brian Chase, Assistant Administrator of NASA’s Office of Legislative Affairs, admitted this request had been “inappropriately declined.” *available at* <http://lieberman.senate.gov/documents/letters/060606nasaliebermanresponse.pdf> (last visited on March 23, 2007). An October email message from Deutsch also shows that he told a NASA web designer to add the word “theory” after every mention of the “Big Bang,” adding that “It is not NASA’s place, nor should it be to make a declaration such as this about the existence of the universe that discounts intelligent design by a creator.” Deutsch, resigned on February 7, 2006, after it was discovered that he had not actually graduated from Texas A&M University as asserted on his resume. Andrew Revkin, “A Young Bush Appointee Resigns his Post at NASA,” *The New York Times* (February 8, 2006).

<sup>142</sup> Jana Goldman, interview with Maassarani (October 7, 2006) *record on file with GAP*. Due to its mission statement emphasizing education, NASA can also spend 10% of its budget on outreach.

<sup>143</sup> Letter From: Brian Chase; To: Collins; Date: June 6, 2006.

<sup>144</sup> James Hansen, interview with Maassarani (February 2006) *record and internal memo on file with GAP*. According to one anonymous UCS survey respondent “Another issue: PA offices discouraging access to certain scientists and promoting contact with more “convenient” scientists (again this happens at NOAA and EPA); PA officers making decisions on scientist availability for media requests without consulting scientists and indeed in one instance that happened to me, canceling an interview on CNN that had already been agreed with the statement “the agency has no one available to discuss X at this time!!” Survey of Federal Climate Scientists, UCS Scientific Integrity Program (2006) NASA commentary.

<sup>145</sup> Drew Shindell, communications with Maassarani (May 25, 2006) *record on file with GAP*. Shindell’s work was significant because skeptics have often pointed to warming trends in the Arctic to counter global warming theories. Shindell’s research suggested an explanation and reversal of this warming phenomenon.

<sup>146</sup> Andrew Revkin, “Call for Openness at NASA Adds to Reports of Pressure,” *The New York Times* (February 16, 2006).

and practices were selectively implemented to target sensitive research such as on climate change being reported to national media outlets.<sup>147</sup>

In the Iowa lecture, Hansen disclosed an internal NASA memo about a delayed press release for which the cited justification was:<sup>148</sup>

According to HQ, there's a new review process that has totally gridlocked all earth science press releases relating to climate or climate change. According to HQ Public Affairs, 2 political appointees, [redacted] and the White House are now reviewing all climate related press releases.

Indeed, it became standard for then Assistant Administrator for Public Affairs Glenn Mahone and his deputy, Dean Acosta, at NASA headquarters – as well as the White House – to review press releases dealing with the keywords “global warming.”<sup>149</sup> At times this added a delay of weeks or months to what was usually a three to seven day process, which resulted in scientists simply giving up or in rendering stories – such as the 2005 record-setting temperatures had Hansen not disclosed it – largely obsolete.<sup>150</sup> Furthermore, according to an inside source, 12-15 press releases simply “disappeared,” mostly in the weeks leading up to the 2004 elections.<sup>151</sup> Some were “smothered” or “watered down to inconsequence” by NASA headquarters.

A widely-publicized incident occurred on April 28, 2005, when Columbia University’s Earth Institute issued a press release announcing the publication of Hansen’s *Science Express* article. The press release described Hansen’s ominous findings that the earth’s energy is out of balance and referred the inquiring public to the NASA website for

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<sup>147</sup> Anonymous scientist, interview with Jennifer Freeman (June 27, 2006) *record on file with GAP*. Note that the typical recourse for mismanagement of this sort is notification of the agency’s inspector general. Sixty-two federal agencies have inspectors general authorized by the Inspector General Act of 1978 as “independent and objective units” to “promote economy, efficiency and effectiveness” and investigate “fraud and abuse.” Notwithstanding, Robert W. Cobb’s tenure as NASA IG since his presidential appointment to the position in 2002 was recently subject to a federal probe. The findings of the 10-month investigation have not officially been made public while under review by the President’s Council on Integrity and Efficiency. According to the *Orlando Sentinel*, which obtained a leaked copy of the report, it “outlines allegations that he stifled investigations, mistreated department employees and maintained a close personal relationship with top officials of the agency he was supposed to independently monitor.” Michael Cabbage, “Complaints Fuel Probe of NASA Inspector,” *Orlando Sentinel* (November 20, 2006). The President’s Council has agreed to provide the report to the House Committee on Science and Technology’s Subcommittee on Investigations and Oversight by April 2, 2007. See press release, “administration Agrees to Hand Over Investigative Report on NASA’s Inspector General,” (March 6, 2007) *available at* <http://science.house.gov/press/PRArticle.aspx?NewsID=1708> (last visited on March 24, 2007).

<sup>148</sup> Distinguished Public Lecture Series at the Department of Physics and Astronomy, University of Iowa (October 26, 2004) *available at* [http://www.columbia.edu/~jeh1/dai\\_complete.pdf](http://www.columbia.edu/~jeh1/dai_complete.pdf) (last visited on March 23, 2007)

<sup>149</sup> Anonymous public affairs officer, interview with Maassarani (May 10, 2006) *record on file with GAP*.

<sup>150</sup> Drew Shindell, communications with Maassarani (May 25, 2006) *record on file with GAP*. Rosemary Sullivan, writer at NASA, reported efforts to delay or alter news releases concerning the Jet Propulsion Lab. Andrew Revkin, “Call for Openness at NASA Adds to Reports of Pressure,” *The New York Times* (February 16, 2006).

<sup>151</sup> Anonymous public affairs officer, interview with Maassarani (May 10, 2006) *record on file with GAP*.

more information and images that would be posted after 2:00 p.m. However, the NASA posting was not forthcoming until the next morning, following significant media buzz and a presidential press conference. Furthermore, what is essentially the same press release as that of the Earth Institute, reveals slight language changes that downplay the significance and gravity of Hansen's conclusions.<sup>152</sup> News releases in the NASA online press release archives show that the number of such press releases drop from about four dozen in 2004, to one dozen in 2005, to eight in 2006.<sup>153</sup>

In mid-September 2004, Dr. Drew Shindell, an ozone specialist and climatologist at GISS, submitted a press release to the Goddard Space Flight Center (GSFC) PAO to announce the publication of their *GRL* paper.<sup>154</sup> Together they came up with the title "Cool Antarctica may warm rapidly this century, study finds," which political appointees at headquarters then asked to be "softened." Nonetheless, HQ rejected the next suggestion that Shindell and GSFC offered – "NASA Scientists expect temperature flip-flop at the Antarctic" – and titled it "Scientists predict Antarctic climate changes" over Shindell's objections. Not surprisingly, Shindell commented that it generated relatively little media interest. Another senior climate researcher told us how she worked with the NASA PAO to get a press release out about climate-related floods' impact on agriculture, but it was not approved at higher levels. She eventually got high-level colleagues to lobby on her behalf, and it was then approved.<sup>155</sup>

In the months prior to the 2004 elections, *The New York Times* reported that Mahone told Gretchen Cook-Anderson, formerly in charge of earth-science news at NASA, that a news conference on data from a satellite measuring ozone and air pollution "should not take place until after the election."<sup>156</sup> In a February 4, 2006, article, Revkin went on to write:

Repeatedly that year, public-affairs directors at all of NASA's science centers were admonished by White House appointees at headquarters to focus all attention on Mr. Bush's January 2004 "vision" for returning to the Moon and eventually traveling to Mars.

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<sup>152</sup> Blog by Chris Mooney, "More on the NASA Press Release" (May 2, 2005) at <http://www.chrismooney.com/blog.asp>. For example, the NASA release completely omits the quote "'This energy imbalance is the 'smoking gun' that we have been looking for,' says James Hansen...." and a paragraph on the policy implications of the research. It fails to include the explanation of "thermal inertia," but adds "As the Earth warms it emits more heat. Eventually the Earth will be back in balance, if the greenhouse gas emissions are kept at the same level of today."

[http://www.nasa.gov/vision/earth/environment/earth\\_energy.html](http://www.nasa.gov/vision/earth/environment/earth_energy.html).

<sup>153</sup> See <http://www.nasa.gov/audience/formedia/archives/2006-all-archives.html> (last visited October 2006); Andrew Revkin, "Call for Openness at NASA Adds to Reports of Pressure," *The New York Times* (February 16, 2006).

<sup>154</sup> Drew Shindell, communications with Maassarani (May 25, 2006) *record on file with GAP*. GISS is a small branch of GSFC and thus collaborates with GSFC PAO, as well as NASA HQ.

<sup>155</sup> Anonymous scientist, interview with Jennifer Freeman (June 27, 2006) *record on file with GAP*.

<sup>156</sup> Andrew Revkin, "Call for Openness at NASA Adds to Reports of Pressure," *The New York Times* (February 16, 2006).

Starting early in 2004, directives, almost always transmitted verbally through a chain of midlevel workers, went out from NASA headquarters to the agency's far-flung research centers and institutes saying that all news releases on earth science developments had to allude to goals set out in Mr. Bush's "vision statement" for the agency, according to interviews with public-affairs officials working in headquarters and at three research centers.

Many people working at Goddard Space Flight Center in Greenbelt, Md., and the Jet Propulsion Laboratory in Pasadena, Calif., said that at the same time, there was a slowdown in these centers' ability to publish anything related to climate.

### **EPA and the Department of Interior**

The 2002 *Journal of the Society of Environmental Journalists* published a poll by its First Amendment Taskforce of the regional EPA media policies.<sup>157</sup> The survey found considerable variation, ranging from monitors and routing to simple encouragement of PAO coordination. Few regions came up with up-to-date written policies. Anecdotally, the survey found that access had been more difficult during the Bush administration. This was underscored prior to the 2004 elections when Public Employees for Environmental Responsibility (PEER), a public watchdog group, released a memo from then acting Region V Administrator Bharat Mathur stating, "If you receive any request for information or an interview from a member of the media, you should refer the caller to OPA [i.e. PAO] .... Please refrain from answering such inquires directly. OPA will determine the appropriate response and who should respond after consultation with program staff, and if necessary, after elevating issues for senior-level attention."<sup>158</sup> In 2006, PEER published another leaked memo to all Office of Research and Development staff dated February 2, which stated "We are asked to remind all employees that EPA's standard media procedure is to refer all media queries regarding ORD to Ann Brown, ORD News Director, prior to agreeing to or conducting any interviews.... Support for this policy also will allow reasonable time for appropriate management response."<sup>159</sup>

On June 20, 2006, Cornelia Dean of *The New York Times* reported that James Titus, EPA project manager for sea level rise, was no longer allowed to publicly discuss issues such as beach erosion, and that all such questions were to be routed to the EPA's press office.<sup>160</sup> Aries Keck, producer of the Earth Beat radio show, described arranging an interview with Titus as a "challenging and bizarre experience."<sup>161</sup> EPA public affairs

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<sup>157</sup> Audrey Cooper, "SEJ survey finds EPA information policies vary by region." *Journal of the Society of Environmental Journalists* (Fall 2002) *on file with GAP*. The survey excludes EPA PAO headquarters.

<sup>158</sup> Memorandum by Bharat Mathur (undated) *on file with GAP*.

<sup>159</sup> Email From: Ann Brown; To: ORD-ALL; Date: February 9, 2006; Subject: Media Procedure Reminder *on file with GAP*.

<sup>160</sup> Cornelia Dean, "Next Victim of Warming: The Beaches," *The New York Times* (June 20, 2006). Around the same time, two other reporters were told that Titus was not available for interviews, and were directed to the EPA PAO instead. Rick Piltz, "EPA's global warming communication problem - 1. Censored expertise," *ClimateScienceWatch.org* (June 27, 2006).

<sup>161</sup> Aries Keck, interview with Maassarani (June 20, 2006) *record on file with GAP*.

officials told her there were to be no contacts with Titus ahead of time and that up until the day before it was unclear whether he would be available for the interview at all. When asked about these hurdles on the show, Titus responded that, “to be honest I don’t know anything about it. I just heard about the interview and here I am.” As to whether he could discuss the regulation of carbon dioxide, Titus replied, “I’m not allowed... I can’t talk about what we should do as regards regulations because it’s sort of a different aspect... Since I’m here as an EPA employee I gotta basically stick to my lane which is rising sea levels.”<sup>162</sup>

Another government agency tasked with climate research is the United States Geological Survey, a bureau in the Department of Interior (DOI). Dr. Christopher Milly is a USGS research hydrologist, stationed at GFDL to work more closely with its climate scientists and computer models.<sup>163</sup> He studies the interaction of climate with the global water cycle, analyzing how climate change affects local water supply and floods.<sup>164</sup> In a May 5, 2006, interview, Milly asserted “within the USGS everybody’s trying to do the right thing. Our management is trying to protect the scientific message and objectivity of our scientists.” Nonetheless, Milly has heard that personnel in USGS public affairs consider climate change and energy to be “hot-button” issues for the administration, and that reference to such sensitive issues, outside of scientific papers, is thus handled and edited with care. Incidentally, the USGS Survey Manual requires approving officials to “alert appropriate offices (including the Office of Communications) or officials with regard to policy-sensitive or high-visibility information products that are likely to be of interest or potentially controversial to the Bureau, the Department of the Interior, other Federal agencies; State, local, and/or Tribal governmental organizations; the scientific community; the public; or a specific industry or interest.”<sup>165</sup>

Milly has experienced two incidents of interference with press releases.<sup>166</sup> The first case was in 2002 when a USGS press officer indicated that the subject matter was

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<sup>162</sup> Problems of scientific integrity are longstanding at EPA, which must function simultaneously as a regulatory and science agency. The EPA Inspector General released a report on August 16, 2006, citing two earlier studies, which contended that the EPA “has become affected by politics.” Studies Addressing EPA’s Organizational Structure No. 2006- P-00029 (August 16, 2006), *available at* [http://www.peer.org/docs/epa/06\\_24\\_8\\_ig\\_report.pdf](http://www.peer.org/docs/epa/06_24_8_ig_report.pdf) (last visited on March 23, 2007). On September 29, 2006, representatives from more than 10,000 EPA scientists called on Congress to take immediate action against global warming and the censorship of agency scientists and other specialists on topics of climate change and the effects of air pollution. PEER press release, “EPA Scientists File Mass Petition For Action On Global Warming” (November 29, 2006) *available at* [http://www.peer.org/news/news\\_id.php?row\\_id=789](http://www.peer.org/news/news_id.php?row_id=789) (last visited on March 23, 2007).

<sup>163</sup> Christopher Milly, interview with Maassarani (May 5, 2006) *record on file with GAP*.

<sup>164</sup> The big picture conclusions that can be drawn from these models include that water scarce areas are projected to get drier and vice versa. In North America, the Southwest is projected to be drier (expected 10-20% reduction of stream flow by 2050, with similar projections for the Mediterranean region including Southern Europe and the Middle East), while results for the Mid-West are less clear. According to these models, the Eastern seaboard (as well as Alaska, Canada, Northern Europe, and Asia) will get wetter. On the basis of his research, his opinion is that subtropical decreases in rainfall and runoff may be more driven by globally-forced climate change than by over-grazing or slash-and-burn agriculture. *Ibid.*

<sup>165</sup> *USGS Survey Manual* chapter 502-4 6.D: Fundamental Science Practices: Review, Approval, and Release of Information Products.

<sup>166</sup> Christopher Milly, interview with Maassarani (May 5, 2006) *record on file with GAP*.

sensitive and could cause problems at the White House. DOI declined to issue the release, arguing that it would probably be released by *Nature*. In fact, though *Nature* did issue a release, its decision to do so only occurred after Interior's denial. The second case was in November 2005, when the press release went out but only after the PAO had tweaked and removed words such as "global warming," leaving the scientific content intact but possibly lowering its visibility. In this case, the corresponding paper showed how climate models developed by the international climate science community have predictive skill for dealing with climate change-influenced water availability.

Milly does not know who made the ultimate decision in either case. His only direct contact with (non-USGS) Department of Interior personnel was at a climate-related 2006 meeting between the USGS and the Bureau of Reclamation, attended by Mark Limbaugh, assistant secretary for water and science, and members of his staff.<sup>167</sup> Milly recalls that in the all-day meeting discussing climate change and its consequences for water resources, Limbaugh was engaged and left no negative impressions. Nevertheless, just as with NOAA's relationship to the Department of Commerce, confidential sources outside USGS have blamed DOI political appointees for pulling the strings on sensitive climate issues.<sup>168</sup>

The Department's position towards climate change was recently demonstrated when Secretary of the Interior Dirk Kempthorne proposed listing polar bears as a threatened species while rejecting the analysis in a report by U.S. Fish and Wildlife Service (USFWS) scientists of the relationship between the loss of the polar bears' critical sea ice habitat and climate change.<sup>169</sup> Shortly thereafter, *The New York Times* reported on a leaked directive circulated to biologists and wildlife officials in USFWS' regional Alaska division.<sup>170</sup> Under the words "Foreign Travel – New Requirement – Please Review and Comply, Importance: High," a cover letter to two example memoranda reads:<sup>171</sup>

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<sup>167</sup> *Ibid.*

<sup>168</sup> Anonymous scientist, interview with Maassarani (July 19, 2006) *record on file with GAP*. According to one anonymous respondent in the UCS survey:

I am a researcher at USGS. Generally, research within our research group and choice to pursue to publish new climate related issues is driven at the scientist level. [??] restrictions on agency approval of abstracts, public statements and report review have been implemented. As scientists, we do not believe that this was initiated by agency managers, but rather implemented by the Dept. of Interior and the Bush administration. The new rules are somewhat restrictive, and more importantly, serve to delay dissemination of new information."

Survey of Federal Climate Scientists, UCS Scientific Integrity Program (2006) USGS commentary.

<sup>169</sup> "Interior Secretary Kempthorne to List Polar Bears as Threatened Under Endangered Species Act," Department of Interior Press Release (December 27, 2006) *available at* [http://www.doi.gov/news/06\\_News\\_Releases/061227.html](http://www.doi.gov/news/06_News_Releases/061227.html) (last visited on March 23, 2007)

<sup>170</sup> Andrew Revkin, "Memos Tell Officials How to Discuss Climate," *The New York Times* (March 8, 2007).

<sup>171</sup> FWS memorandum To: FW7 All Users; Subject: Foreign Travel – New Requirement – Please Review and Comply; Date: March 2, 2007.

Please be advised that all foreign travel requests (SF 1175 requests) and any future travel requests involving or potentially involving climate change, sea ice, and/or polar bears will also require a memorandum from the Regional Director to the Director indicating who'll be the official spokesman on the trip and the one responding to questions on these issues, particularly polar bears, including a statement of assurance that these individuals understand the administration's position on these issues.

Below are copies of two memorandums we recently prepared. The first example (FT Hohn) would be an example you could use for someone traveling to a region where these items could be a potential discussion item. The second example (FT Approval Perham) is an example of a justification we recently prepared where the traveler who will specifically be dealing with these issues. Please note you will need these memo's/justifications for all trips to areas where these could be discussion items (i.e. Canada, Russia, Norway, any northern country).

Please ensure any foreign travel requests coming forward that pertain to these issues, or traveling to these potential areas, have this memorandum in the package. Thanks!

## SCIENTIFIC COMMUNICATIONS WITH CONGRESS

When it comes to scientific uncertainties with such profound policy implications as climate change, Congress typically establishes and funds science agencies and programs for the purpose of presenting its membership with the best possible science to inform policymaking. Communication of scientific research to Congress is thus a vital agency function and includes congressional testimony, post-hearing questions and answers (“questions for the record”), technical drafting assistance, and congressionally-mandated reports. Due to its audience of policy-makers, these communications can be highly “threatening” when an administration’s position and policy agenda may be perceived as inadequately responsive to the implications of the science being communicated.

Shortly following the release of the official 2004 media policy, NOAA issued the second edition of its “Procedures Manual for Congressional Communications.”<sup>172</sup> Unlike media contacts, congressional communications can be long, elaborate, and formal; this is reflected in the structure of the 18-page policy. The Office of Legislative Affairs (OLA) is responsible for coordinating congressional communications, including input, review, and clearance by relevant parties. Every type of scientific communication covered in the manual requires clearance by the Department of Commerce (DOC) and, with the exception of congressionally-mandated reports, the Office of Management and Budget (OMB). Housed within the Executive Office of the President, OMB oversees federal agencies with the stated mission of ensuring “that agency reports, rules, testimony, and proposed legislation are consistent with the President's Budget and with administration policies.”<sup>173</sup>

For example, in the case of congressional testimony, the policy states that:

OLA will coordinate NOAA headquarters review and clearance of the testimony and obtain clearance from DOC and the Office of Management and Budget.... OLA will address all clearance comments received from DOC and OMB. Edits and comments not related to policy issues will be handled directly by OLA. When, in the opinion of OLA, clearance comments involve a policy issue, OLA will make every effort to obtain the views of the NOAA witness or a policy official designated to act on behalf of the witness.

From the language of the policy, there seems to be no guidance or limitations on the kinds of edits and comments considered appropriate, or when edits and comments involve a policy issue – especially in the context of scientific information. In practice this policy seems to afford the DOC, OMB, and NOAA management a great deal of latitude in the political review and alteration of scientific content.

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<sup>172</sup> *NOAA Procedures Manual for Congressional Communications* (second edition, September 2004) on file with GAP.

<sup>173</sup> See <http://www.whitehouse.gov/omb/organization/role.html> (last visited on March 23, 2007).

## Testimony and Talking Points

From the perspective of a NOAA lab director, OLA “tend[s] to want to rework the languages of presentations that will be given and [want to] be controlling.”<sup>174</sup> However, according to an inside source, after drafting administration position papers or congressional Q&As in consultation with the scientific experts or their lab directors, these documents are handed up from OLA to the “policy shop,” housed within the Office of the Undersecretary and to personnel in the Assistant Secretary’s Office.<sup>175</sup> Especially when the subject matter is considered sensitive, according to our source, it is edited to downplay certain conclusions, exaggerate uncertainty, and distort the science while also trying to maintain credibility. “Realizing that it is pointless, OLA has often stopped asking certain scientists about what to write in certain circumstances as they are certain to get completely rewritten anyway.”<sup>176</sup>

Two points of contact in the review frequently associated with these offices are Jennifer Sprague, policy advisor and congressional affairs specialist in the Office of the Undersecretary, and Dr. Ahsha Tribble, former technical chief of staff and assistant to the retired DOC Assistant Secretary James Mahoney.<sup>177</sup> GAP’s requests to speak with either contact were not responded to. According to our source, “Jennifer Sprague regularly joined conference calls relating to congressional hearings and does not announce that she has joined, except maybe at the end of the call.” Nonetheless, our source adds:

It is very hard to trace who is initiating certain types of changes. Once an answer (“the administration’s position”) is developed to a particular question, everyone knows that the answer has to be used again whenever the topic is addressed again in the future. It is hard to tell who has developed “the administration’s position” and once it is developed, it is everyone’s job to make sure that all materials are consistent with that position.

Consider an unpublished internal document that, according to our source, emerged recently from the policy shop and that the FOIA record ties to Tribble.<sup>178</sup> It appears that this unpublished internal document was finished by February 2006 and approved at the highest political level in NOAA to prepare Administrator Lautenbacher and other NOAA representatives with an official set of talking points for use in fiscal year 2007 congressional budget hearings, climate hearings testimony, or climate briefings for congressional offices. On page 18 of the document, the Q&As deal with hurricanes

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<sup>174</sup> Anonymous lab director, communications with Maassarani (October 19, 2006) *record on file with GAP*.

<sup>175</sup> Anonymous NOAA officer (May 6, 2006) *record on file with GAP*.

<sup>176</sup> *Ibid.*

<sup>177</sup> Tribble now serves as an executive officer in NOAA’s Tropical Prediction Center.

<sup>178</sup> OAR Q&As on various topics including “Abrupt Climate Change,” “Climate Change Science Project Budget,” “NOAA’s position on climate change,” “Transfer of Research to Operations/Application,” “Article on NASA Muzzling Scientists” (undated). *GAP August 9, 2006, part 3 NOAA FOIA response undated pg 26-75*; Email From: Tribble; To: Eric Webster; Date: February 13, 2006; Subject: NOAA Scientists *GAP May 30, 2006, NOAA FOIA response pg 48, 54-57*; and Email From: Merriam Norris; To: Tribble; Date: February 1, 2006; Subject: Q&A on muzzling scientists *GAP August 9, 2006, part 3 NOAA FOIA response pg. 583, 601*.

and climate change. In response to whether global climate change is responsible for the increased 2005 hurricane activity, the document states that “available research indicates increased hurricane activity can be explained by natural cycles....” Only later in the “background” is it admitted that available research, including from its own GFDL lab, indicates a possible small effect. Interestingly, hurricane and climate change Q&As obtained from summer 2005 more readily highlight that “there is not enough scientific evidence to determine whether the warming has increased the frequency of hurricanes” – though in doing so they ignore the issue of hurricane intensity.<sup>179</sup> By October 5, 2005, PAO talking points distributed to the Climate Program Office and the State Department read: “NOAA supports the view that there is no verifiable link between observed climate change and the intensity and frequency of the most recent Atlantic hurricane season.”<sup>180</sup> According to our source, “I remember that this was about the time NOAA HQ stopped asking for input from our scientists on the topic and the answers seemed to be coming from mysterious sources.”<sup>181</sup>

Another set of internal documents leaked to our investigation affirms that political editing reaches beyond the “mysterious sources” at NOAA senior management. The documents are draft responses to questions for the record (QFRs) submitted by Senators Daniel Inouye (D-HI) and Frank Lautenberg (D-NJ) following an April 26, 2006, Commerce, Science, and Transportation Committee hearing on “projected and past effects of climate change.”<sup>182</sup> They include comments and edits from scientists and from the OMB, the Environmental Protection Agency, the Department of Energy, and the executive Office of Science and Technology Policy (OSTP) compiled by Noel Turner, the NOAA legislative affairs specialist in charge of coordinating clearance and review of congressional communications. In the first draft, suggested text from OMB attributed global warming to increasing water vapor, in reliance on a quote taken out of context from a scientific paper by Drs. Karl and Trenberth.<sup>183</sup> Comments by Dr. James Butler, Deputy Director of GMD, in a subsequent draft attempted to clarify that this is not what

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<sup>179</sup> “Compiled Climate Change Q\_A's and Hurricane Q\_A version 6-22-05 11am” *on file with GAP*.

<sup>180</sup> Email From: Smullen; To: Susan Povenmire; Date: November 3, 2005; Subject: press guidance on climate change & hurricanes *Thacker complete NOAA FOIA p. 144*.

<sup>181</sup> To be sure, CEQ readily suggests agency talking points when communicating policy issues. Around August 2005, CEQ Chief of Staff Dr. Bryan Hannegan forwarded NCDC Director Tom Karl, by way of Ahsha Tribble, a set of talking points in anticipation of media attention surrounding three soon-to-be released papers on temperature trends that confirm global warming. The talking points laud the administration’s support of and commitment to climate change science. Email From: Ahsha Tribble; To: Laborde; Date: August 11, 2005; Subject: Suggested response Subject: NYT story on temperature trends *Thacker complete FOIA response pg. 68-71*.

<sup>182</sup> “Tracked 4 26 06 Climate QFRs OMB-revisions” *on file with GAP*; “Tracked 4 26 06 Climate QFRs OMB” *on file with GAP*. Similarly, CEQ has reviewed and cleared congressional questions submitted to the EPA on climate change. Email From: Stanley Sokul; To: Philip Cooney; Date: May 29, 2003; Subject: FOR COMMENT – another EPA Q&A on climate change *available at* [http://www.whitehouse.gov/ceq/foia/index4/arms\\_729.pdf](http://www.whitehouse.gov/ceq/foia/index4/arms_729.pdf) (last visited on March 23, 2007).

<sup>183</sup> Inouye question #2, comments ADA4 and nt5, “Tracked 4 26 06 Climate QFRs OMB-revisions” *on file with GAP*; Anonymous NOAA lab director, interview with Maassarani (June 1, 2006) *record on file with GAP*.

was meant, but OMB seemed to insist on keeping the language. Finally, OMB appeared to accept a change to the language made by Karl himself.<sup>184</sup>

In a later comment, OMB recommends removing the phrase, “[h]owever, healthy coral reef ecosystems are important to both the fisheries and tourism industries and negative impacts on these ecosystems could affect these industries” because it is deemed redundant and unnecessary after the opening sentence of the paragraph: “The full range and magnitude of the biological and biogeochemical effects of ocean acidification are still so uncertain that a reliable and quantitative estimate of the likely socio-economic effects is not yet possible.”<sup>185</sup>

Comments and emails from other agencies also raise concerns about potentially inappropriate editing, although this may ultimately be a matter of scientific judgment. In comment 7 of the later draft, DOE proposed the following change of wording:<sup>186</sup>

In addition to impacts resulting from ocean acidification, marine ecosystems will also respond to other climate- and human-induced stresses (e.g., increasing sea surface temperature, rising sea level, overfishing, etc.). It is difficult to determine the combined effect these stressors will have, and the precise timing of any impacts. The presumption in these statements is that any increases in sea surface temperature and sea level will be stressors of ocean systems, and by definition of the words stresses and stressors, will have an adverse impact on marine ecosystems. Suggest that the word ‘stresses’ and ‘stressors’ be replaced with a more neutral term such as ‘changes’ because there is still a relatively poor scientific understanding and limited scientific basis for predicting how ocean ecosystems, in general, will respond to changes in temperature, pH, and sea level.

A later question by Lautenberg asks what effect rapid climate change could have on extinctions, and how this contrasts with the effects of slower natural climate cycles.<sup>187</sup> The response given is “Yes, it would be fair to say that survival of many species during glacial cycling likely provides no assurance that there will be few extinctions as a result of warming.”<sup>188</sup> In turn, DOE has Turner make the following minor addition with the effect of completely undermining the original response:<sup>189</sup>

As originally written, this sentence implies it is likely there will be more extinctions. Is this necessarily the case? Does the literature support this? (Indeed, one could argue (and some have) that in a warmer world there will be more biodiversity, not less.) Does this statement just apply to the oceans? Suggest inserting, if appropriate, the parenthetical phrase “(or more)” between “few” and “extinctions” in the sentence above.

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<sup>184</sup> See Inouye question #2, comment ADA6, “Tracked 4 26 06 Climate QFRs OMB-revisions” *on file with GAP*.

<sup>185</sup> Inouye question #5, comment nt10, “Tracked 4 26 06 Climate QFRs OMB-revisions” *on file with GAP*.

<sup>186</sup> Inouye question #4, comments nt7, “Tracked 4 26 06 Climate QFRs OMB-revisions” *on file with GAP*.

<sup>187</sup> Lautenberg question #5, “Tracked 4 26 06 Climate QFRs OMB-revisions” *on file with GAP*.

<sup>188</sup> *Ibid.*

<sup>189</sup> *Ibid.* Comment nt25.

The response to this same question on extinctions continues with “[c]urrent climate conditions are reaching outside of the range (of temperature, precipitation, ocean pH, and atmospheric circulation) experienced during the glacial cycles.” DOE then has Turner change “are” to “may,” justifying the edit solely on the basis of temperature.<sup>190</sup>

The recent NAS [National Academy of Sciences] study had “a high level of confidence” that global temps. [sic] are higher than at any time since 1600 but had “less confidence” in statements that global temps. are higher now than from 900 to 1600 and had “very little confidence” in statements of temps. prior to 900. If in NOAA’s view the NAS report reflects the latest scientific thinking on this issue, suggest changing “are” to “may be” to take this into account. Alternatively, keep “are” but start the sentence with “There is some evidence suggesting that current...”

The process for preparing and presenting written and oral testimony is slow and dominated by non-science staff and high-level management. It rarely allows research scientists to communicate directly and openly to Congress. When direct contact does take place, the agency has also imposed various restrictions. On March 29, 2004, Lautenbacher re-circulated a 2001 memorandum by then Commerce Secretary Donald Evans, which required all communications to be coordinated and monitored by the Office of Legislative Affairs.<sup>191</sup> On April 15, 2005, presumably in response to a budget scandal with the failing National Polar-orbiting Operational Environmental Satellite System, NOAA Chief Financial Officer Maureen Wylie disseminated a memorandum to all NOAA employees applying the media policy to congressional communications.<sup>192</sup> An October 2005 document obtained in our investigations set out procedures specific to direct and/or unplanned congressional communications. The policy requires that “information and materials” and “meetings or phone calls with congressional representatives or staff and presentations where congressional staff have been invited or can reasonably be expected to attend must be cleared through OAR headquarters and sent up through the NOAA Office of Legislative Affairs.”<sup>193</sup>

A comparison of two emails involving congressional site visits to GFDL by New Jersey congressmen shows disparate treatment between Representative Rush Holt (D-NJ) and Senator Lautenberg.<sup>194</sup> Although GFDL is permitted to begin working “informally” on the invitation for the former, Jason Robertson, OLA congressional affairs specialist,

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<sup>190</sup> *Ibid.* Comment nt26.

<sup>191</sup> Email From: Lautenbacher; Date: March 29, 2004; Subject: Congressional Contacts Memorandum *Greenpeace select hurricane NOAA FOIA response pg. 24.*

<sup>192</sup> From Maureen Wylie; Date: April 15, 2005; Subject: Communications with External Groups *NOAA GAP July 31, 2006, part 1 NOAA FOIA pg. 34.* According to an inside source, there has traditionally been little cooperation between the NOAA PAO and OLA, however this may change with the recent hiring of Rande Exler as OAR Communications Director.

<sup>193</sup> “110305 Procedures for Communicating with Congress (OARC)” *on file with GAP.*

<sup>194</sup> Email From: Brian Gross; Date: July 25, 06; Subject: Invitation to Rush Holt for a visit to GFDL and Email From: Jason Robertson, Date: October 5, 2006; Subject: NJ Senator *on file with GAP.*

outlines a “standard operating procedure” to be followed for Lautenberg.<sup>195</sup> This requires GFDL to inform OLA of “which research areas would the lab like to brief the Senator on; what is the relevance to the Senator; and how do they fit into NOAA's priorities?” The email ends, “Also, I'm not sure from your message when you're thinking about scheduling this visit; however, I would suggest aiming for the March or April 2007 recess. There are some pragmatic reasons for my recommendation, which I'd be glad to discuss...” Incidentally, Lautenberg sits on the Senate Commerce, Science, and Transportation Committee, which has jurisdiction over NOAA.

### **Congressional Reports**

NOAA is the lead agency of the U.S. Climate Change Science Program (CCSP), an interagency effort to integrate federal research on climate and global change.<sup>196</sup> Formed in 2002, the CCSP incorporated oversight of both the longstanding U.S. Global Change Research Program (USGCRP) and President Bush's 2001 Climate Change Research Initiative (CCRI), as well as responsibility for compliance with the requirements of the Global Change Research Act of 1990 (GCRA). The GCRA includes requirements for an annual report to Congress and the periodic publication of a ten-year strategic plan for the program. As such, the CCSP is responsible for producing *Our Changing Planet* (OCP), an annual report required by the 1990 Act, and has undertaken the development of 21 Scientific Synthesis and Assessment Reports (SARs) pursuant to a July 2003 *Strategic Plan*.

On June 1, 2005, Rick Piltz, Senior Associate in the CCSP Office, issued a memorandum to the CCSP principals explaining the grounds for his March 11, 2005 resignation.<sup>197</sup> Piltz wrote:

The problem is manifested especially at the points at which the key scientifically based assessments of climate change touch on the arenas of policymaking and research planning. The administration will not accept and use appropriately the findings and conclusions of the national and international climate assessments, and it hinders and even prevents the climate science program from doing so. In 14 years – 10 years working with the program and, before that, with the House Science Committee – I have seen the program and its leadership go through a lot of changes. Each administration has a policy position on climate change. But I have not seen a situation like the one that has developed under this administration during the past four years, in which politicization by the White House has fed back directly into the science program in such a way as to undermine the credibility and integrity of the program in its relationship to the research community, to program managers, to policymakers, and to the public interest.

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<sup>195</sup> These procedures do not seem to be specified in the “Procedures for Communicating with Congress (OARC).”

<sup>196</sup> CCSP's participating departments and agencies include NASA, DOC, EPA, NSF, DOE, USGS, USDA, HHS, DOI, DOD, DOS, DOT, USAID and the Smithsonian Institution. It is overseen by OSTP, OMB, and CEQ.

<sup>197</sup> Rick Piltz, memorandum on “On Issues of Concern About the Governance and Direction of the Climate Change Science Program” (June 1, 2005).

This politicization is manifested in how the high-level CCSP governance process works, especially in the relationship between administration political officials and agency program managers; in how climate science is expressed in program reports; and in how the programs “decision support,” assessment, and communication functions are being framed and developed. There are numerous examples, and some indications that the situation may have worsened since the November 2004 election. I will focus on just a few of them that have been particularly significant in shaping my own view of the program, its direction and leadership, and thus in influencing my decision to object and resign.

Piltz went on to describe how the White House Council on Environmental Quality (CEQ) – most notably its Chief of Staff Philip Cooney, a non-scientist and former oil lobbyist – became inappropriately involved in program governance and editing of its reports in such a way as “to advance the administration's position on climate change politics and policy.”<sup>198</sup> This included 100s of handwritten edits to the first and final drafts of the CCSP *Strategic Plan* and FY2003 OCP prior to clearance by CEQ for publication. A double-digit percentage of the alterations – which became widely publicized once leaked to and published by *The New York Times* shortly after Piltz’ resignation – had the effect of weakening and slanting text about the state of scientific knowledge and introducing or exaggerating uncertainties.<sup>199</sup> Although many of these edits never made it into the published version due to significant push-back from CCSP management, they undoubtedly delayed the process and sent chilling signals to scientists and career bureaucrats. A few days after his role was widely reported in the media, Cooney resigned and took up a position that had already been secured for him at ExxonMobil.

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<sup>198</sup> Piltz also notes the distasteful April 2002 “ouster” by Admiral Lautenbacher and OSTP Director John Marburger of Margaret Leinen, chair of the USGCRP. Earlier in February 2001, the National Resources Defense Council obtained a fax dated February 6, 2001 by ExxonMobil lobbyist Randy Randol to the CEQ urging the dismissal of IPCC chair Dr. Robert Watson and chief scientist at the World Bank, as well as OSTP Associate Director for Environment Dr. Rosina Bierbaum, Jeffrey Miotke of the State Department, and USGCRP senior scientist Dr. Michael MacCracken *available at* <http://www.nrdc.org/media/docs/020403.pdf> (last visited on March 23, 2007). Needless to say, the Bush administration blocked Watson’s reelection as IPCC chairman, failed to renew Bierbaum’s appointment to OSTP, and “harassed” Miotke out of the position. Letter From: MacCracken; To: Raymond (CEO of ExxonMobil); Date: September 26, 2002 *available at* <http://www.climate-science-watch.org/file-uploads/MacCracken-Exxon.pdf> (last visited February 2007). 32% and 15% of UCS survey respondents perceived or experienced, respectively, “[c]hanges/edits during review that change[d] the meaning of scientific findings.” .Survey of Federal Climate Scientists, UCS Scientific Integrity Program (2006) question #19.

<sup>199</sup> Andrew Revkin, “Bush Aide Edited Climate Reports,” *The New York Times* (June 8, 2005); Anonymous NOAA director, interview with Maassarani (June 1, 2006) *record on file with GAP*; Rick Piltz, memorandum on “On Issues of Concern About the Governance and Direction of the Climate Change Science Program” (June 1, 2005). For an example of proposed CEQ text additions that selectively pick from the scientific literature to emphasize uncertainty, see Email From: Bryan Hannegan; To: Jeff Holmstead; Date: June 19, 2003; Subject: Climate Change Text Suggestions *available at* [http://www.whitehouse.gov/ceq/foia/index3/arms\\_753.pdf](http://www.whitehouse.gov/ceq/foia/index3/arms_753.pdf) (last visited on March 23, 2007).

Countering charges at a June 8, 2005, White House press briefing that Cooney's involvement and background may have been inappropriate, Scott McClellan states:<sup>200</sup>

He's one of many people who are involved in the interagency review process, including those 15 federal agencies, and the White House offices like the Office of Science and Technology Policy and the Council on Environmental Quality. And the Office of Science and Technology Policy is very ably led by Dr. Marburger; he is a well-respected scientist. And they are very involved in that interagency review process. And that office not only is involved in the review process, but signs off on these reports before they go out.

In his response to July 20, 2005, questions for the record (QFRs) from Senator John Kerry (D-MA), Dr. James Mahoney, director of CCSP by virtue of his position in NOAA, defended CEQ's proposed edits as appropriate and mere suggestions.<sup>201</sup> Testifying to the matter before the House Oversight and Government Reform Committee on March 19, 2007, Cooney acknowledged that some of the changes were made to "align these communications with the administration's stated policy on climate change."<sup>202</sup> He argued that he had had "the authority and responsibility to make recommendations to the documents in question, under an established interagency review process" and that these "recommendations" largely reflected the findings of a 2001 climate report by the National Academy of Sciences (NAS).<sup>203</sup>

Piltz credited Mahoney's behind-the-scenes support of scientists and his "push back" for the fact that many damaging edits never made it into the final publication. The few sources with a close professional relationship interviewed for these investigations believed that Mahoney, like many NOAA high-level managers, was under tremendous political pressure and may have at times faced difficult, often compromising, decisions pitting science against politics.<sup>204</sup> On June 9, 2005, Representative Henry Waxman (D-CA) and Kerry requested a GAO investigation to evaluate the document changes and other efforts by White House officials and agency political appointees with regard to federally-funded climate science.<sup>205</sup> This was followed by a similar request by Senators Lautenberg (D-NJ) and Harry Reid (D-NV) on June 29, 2005,<sup>206</sup> and again by

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<sup>200</sup> See <http://www.whitehouse.gov/news/releases/2005/06/20050608-2.html#d> (last visited on March 23, 2007).

<sup>201</sup> QFRs from Senators Inouye, Kerry, Lautenberg, and McCain (July 20, 2005) *GAP August 9, 2006, part 2 NOAA FOIA response pg. 27-48*.

<sup>202</sup> Lauren Morello, "House probe turns to role of Cheney's office," *Environment and Energy Daily* (March 20, 2007); Josef Hebert, "Official defends editing of climate papers," *Associated Press* (March 19, 2007).

<sup>203</sup> *Ibid.*

<sup>204</sup> Anonymous NOAA director, interview with Maassarani (June 1, 2006) *record on file with GAP*; Jerry Mahlman, interview with Maassarani (April 6, 2006) *record on file with GAP*; Rick Piltz, interview with Maassarani (March 8, 2006).

<sup>205</sup> Letter From: Kerry, Waxman; To: Comptroller General David Walker; Date: June 9, 2005 *available at* <http://oversight.house.gov/Documents/20050609150303-34992.pdf> (last visited on March 23, 2007).

<sup>206</sup> Specifically, Lautenberg and Reid asked the GAO to "determine the legality of actions" taken by CEQ's Philip Cooney. Press release (June 29, 2005) including Letter to Walker *available at* <http://lautenberg.senate.gov/newsroom/record.cfm?id=254536&&> (last visited on March 23, 2007). According to a FOIAed email from Leah Harrelson, this caused panic at the DOC Office of Legislative and

Representative David Wu (D-OR) on May 2, 2006.<sup>207</sup> These GAO investigations are still pending an outcome.

On July 20, 2006, under the leadership of Chairman Tom Davis (R-VA) and ranking member Henry Waxman, the House Government Reform Committee initiated an inquiry into these actions by the CEQ.<sup>208</sup> By September 20, 2006, in response to CEQ protests that the document requests were too burdensome, the Committee had agreed to limit the time frame, the number of identified officials, and two out of five request criteria. In the following two months, “Committee staff was permitted to conduct an *in camera* review at CEQ offices of a select subset of the documents... that appear to contain evidence of a vigorous effort by senior administration officials to downplay the certainty and negative impacts of global warming.”<sup>209</sup> On January 30, 2007, however, Representatives Waxman and Davis wrote a letter to CEQ Chairman James Connaughton expressing their displeasure that – despite two extensions, a significant narrowing of the scope of their requests, and the identification of specific documents – the CEQ had largely tendered only redacted records previously made public under FOIA.<sup>210</sup> At a February 20 meeting, CEQ aides finally agreed to provide the committee one box of responsive documents per week.<sup>211</sup> That same day, Citizens for Responsibility and Ethics in Washington, a nonprofit legal watchdog, filed a lawsuit against CEQ for failure to respond adequately to its FOIA requests.<sup>212</sup>

The intense media scrutiny, increased Congressional oversight, and resignation of Philip Cooney seem to have produced a climate of greater trust and openness at the CCSP. According to scientists involved in the first Synthesis and Assessment Report released May 2, 2006, there were no inappropriate edits at the final stages of executive

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Intergovernmental Affairs as it was around the time that four DOC nominees were to go through the Senate confirmation process. Email From: Harrelson; To: Wienecke, Cohen, Rayder, Mahoney, Tribble, Anderson; Date: June 30, 2005; Subject: Former White House Climate Change Official May Have Violated Federal Law Say Lawmakers (Press release, 29 June 2005) *GAP August 9, 2006, part 3 NOAA FOIA response pg. 290-98.*

<sup>207</sup> Wu requested that the GAO “investigate reports of incidences and likely effects of imposing political litmus tests (unrelated to their work) for science appointees, the withholding, delay, or politically motivated editing of scientific reports, and the effects on freedom of inquiry for both federal and non-federal scientists.” Press release (May 2, 2006) *available at*

[http://www.house.gov/apps/list/press/or01\\_wu/pr05022006GAO.html](http://www.house.gov/apps/list/press/or01_wu/pr05022006GAO.html) (last visited on March 23, 2007). On May 12, 2006, Wu and Representative Bart Gordon (D-TN) wrote President Bush a letter in which they stated, “At NOAA, the evidence is in that a monumental failure of leadership and management has occurred...We urge you to immediately intervene and replace [NOAA Administrator Conrad] Lautenbacher and [Deputy Undersecretary John J. Kelly, Jr.], holding them accountable for the dismal failure at NOAA.” See [http://democrats.science.house.gov/Media/File/AdminLetters/wh\\_noaa\\_dismissals\\_12may06.pdf](http://democrats.science.house.gov/Media/File/AdminLetters/wh_noaa_dismissals_12may06.pdf) (last visited on March 23, 2007).

<sup>208</sup> Letter From: Davis, Waxman; To: Connaughton; Date: July 20, 2006, *on file with GAP*. Darren Samuelsohn, “House panel to review claims of White House censorship,” *Greenwire* (July 20, 2006).

<sup>209</sup> Henry Waxman, House Oversight and Government Reform Committee memorandum regarding CEQ documents (January 30, 2007).

<sup>210</sup> Letter From: Waxman; To: Connaughton; Date: January 30, 2007 *on file with GAP*; Letter From: Davis, Waxman; To: Connaughton; Date: September 20, 2006, *on file with GAP*.

<sup>211</sup> Letter From Waxman; To Connaughton; Date: February 26, 2007 *on file with GAP*.

<sup>212</sup> “CREW Sues Council on Environmental Quality Over Global Warming Documents,” *U.S. Newswire* (February 20, 2007).

review, which resulted in a robust scientific product.<sup>213</sup> Indeed, as stated in the final prospectus for the report, issued February 2, 2005 – and reflecting similar language to the final prospecti of all subsequent reports – “if [upon review] the CCSP Interagency Committee determines that further revision is necessary, their comments will be sent to the lead agency for consideration and resolution by lead authors.”<sup>214</sup> The CCSP Interagency Committee comprises the NOAA Acting Director, thirteen agency principals, and executive office liaisons such as CEQ, OMB, and OSTP. The prospectus goes on to require clearance from the National Science and Technology Council (NSTC), whose comments “will be addressed by the CCSP Interagency Committee in consultation with the lead and supporting agencies and the lead authors.”<sup>215</sup>

Nonetheless, reflecting the concerns of others in our investigation, Dr. Michael MacCracken – a senior scientist whose nine-year assignment with USGCRP ended in 2002 – continues to be cautious.<sup>216</sup> MacCracken notes that the official revised 2004 Guidelines for Producing Climate Change Science Program (CCSP) Synthesis and Assessment Products (SAPs) still fails to grant lead authors final review, violating at least the spirit of the Federal Advisory Committee Act (FACA).<sup>217</sup> In a lengthy letter to colleagues explaining his February 2005 resignation from the post as CCSP lead author for the U.S. State of the Carbon Cycle Report (SOCCR) SAP 2.2 on the North American Carbon Budget and Implications for the Global Carbon Cycle,<sup>218</sup> Dr. Eric Sundquist wrote that he:<sup>219</sup>

couldn't explain or defend to other scientists the new guidelines for government review and approval of the report as the authors of the study may not retain authority over the final content of the report... Further clarification is needed to determine what aspects of the report might be changed during the final review and approval process, and whether the authors' independent scientific judgment will be retained.

As MacCracken points out – and on which basis he declined an invitation to review the SOCCR SAP – there are, with the 2004 Guidelines unchanged, no assurances

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<sup>213</sup> Tom Wigley, interview with Maassarani (April 5, 2006) *record on file with GAP*. One source did reveal “an incident where one of the panel members, after agreeing to text in Chicago, apparently talked to political or other contacts in DC and forced the advisory committee to have a conference call and this led to some minor changes in the report's abstract--so the way the report was influenced was through one of the members they had appointed to the panel.” Anonymous scientist, communications with Maassarani (June 4, 2006) *record on file with GAP*.

<sup>214</sup> See <http://www.climate-science.gov/Library/sap/sap1-1/sap1-1prospectus-final.htm#6> (last visited on March 23, 2007)

<sup>215</sup> *Ibid.*

<sup>216</sup> Mike MacCracken, communications with Maassarani (May 27, 2006) *record on file with GAP*.

<sup>217</sup> FACA aims to ensure the transparency and independence of information rendered by “[a]ny committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or subgroup thereof... which is... established or utilized by one or more agencies.” 5 U.S.C. App. 2 §3(2)(C).

<sup>218</sup> Note the carbon cycle chapter of the CCSP *Strategic Plan* lays out SOCCR as “a series of increasingly comprehensive and informative reports about the status and trends of carbon emissions and sequestration.” The first SOCCR report was also to serve as SAP 2.2.

<sup>219</sup> Letter from Sundquist to colleagues (undated) *on file with GAP*.

that the prospecti approved by the political appointees for the next Synthesis and Assessment, due in the second quarter of 2008 will retain adequate safeguards.<sup>220</sup> Similarly Dr. Susan Solomon, a senior scientist at NOAA's aeronomy lab and co-chair of the IPCC, has stated that:

[A]uthors must have independence in their work if the reports are to be credible. Agencies, CCSP principals, OSTP, or others should not have oversight, and they certainly should not have a right of final review. Many people can and should participate in providing written review comments, but any oversight mechanisms should involve only distinguished scientists.

“Political editing” is not the only concern shared by Drs. MacCracken, Sundquist, Solomon, and others. Consider a paragraph from the SOCCR SAP 2.2 draft prospectus:<sup>221</sup>

The funding award has been set up such that the U.S. Government will not exert management or control over the activities of the contractor nor will U.S. Government officials play a role in selecting authors, holding meetings, setting the agenda, or drafting the final report. NOAA has determined that this approach to produce SAP 2.2 does not require a FACA committee.

In June 2004, Sundquist and Dr. Lisa Dilling submitted their unsolicited proposal for SAP 2.2, one based on high stakeholder involvement and an open process.<sup>222</sup> Seven months later, managing officials of the CCSP Carbon Cycle Interagency Working Group “strongly urged” them to merge their submission with a draft proposal that had been prepared by a group from Oak Ridge National Laboratory (ORNL).<sup>223</sup> The ORNL draft included an outline of the proposed contents and a list of suggested authors. Some of these authors had been recruited with assurances by ORNL scientists that the proposal was prepared “in response to encouragement from the Department of Energy.”<sup>224</sup> Contrary to Dilling and Sundquist's original unsolicited proposal, the final merged proposal was written in compliance with explicit guidelines from program managers that

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<sup>220</sup> Mike MacCracken, communications with Maassarani (May 27, 2006) *record on file with GAP*; SOCCR invitation letter from Koblinsky to MacCracken (April 26, 2006) *on file with GAP*.

<sup>221</sup> <http://www.climate-science.gov/Library/sap/sap2-2/sap2-2prospectus-final.htm> (last visited on March 26, 2007). Title 48, Code of Federal Regulations (CFR), Chapter 1, Federal Acquisition Regulations, Subpart 15.603(c) states “A valid unsolicited proposal must ... (3) Be prepared without Government supervision, endorsement, direction, or direct Government involvement.”

<sup>222</sup> Eric Sundquist, interview with Maassarani (November 10, 2006) *record on file with GAP*.

<sup>223</sup> *Ibid.* Note that the ORNL draft proposal was submitted to DOE. The DOE “Guide for the Submission of Unsolicited Proposals” states that “an unsolicited proposal may be accepted by DOE if it: ...is independently originated without Government supervision.”

<sup>224</sup> Email From Tom Wilbanks; To: Bob Harriss, Date: December 2003 *on file with GAP*, quoted in (and obtained in response to) Sundquist's public comments on the draft SAP 2.2 prospectus *available at* <http://www.climate-science.gov/Library/sap/sap2-2/sap2-2prospectus-comments.htm> (last visited on March 25, 2007). *See also* Email From: Stan Wullschleger; To: Jennifer Jenkins; Date: December 10, 2003; Subject: An Invitation *on file with GAP*. This “informal solicitation” contradicts the SAP 2.2 prospectus, which provides for unsolicited proposals only. *See* <http://www.climate-science.gov/Library/sap/sap2-2/sap2-2prospectus-draft.htm> (last visited on March 25, 2007).

“encouraged” submitters “to identify content and lead authors as much as is possible.”<sup>225</sup> The guidelines also emphasized that, without this information, the proposal would have to demonstrate how it would conduct a more open process within the schedule taken verbatim from the ORNL proposal that assumed pre-determined authors and content.<sup>226</sup> According to Sundquist, “this degree of agency oversight in the proposal process is not consistent with [the government]’s stated justification for preparing the SOCCR outside of FACA requirements, and has compromised its independence from government influence.”<sup>227</sup>

Although Mahoney had – to OSTP’s displeasure – insisted that the draft SAP reports be posted on the Internet before final review, there is no guarantee that this transparency will hold following Mahoney’s retirement in March of 2006.<sup>228</sup> Moreover, the CCSP office has not been authorized to talk to the press; rather, all questions are referred to NOAA or the CEQ chairman. Finally, there is concern about the potential ability of special interests to legally challenge the compliance of congressional reports with various procedural statutory requirements, and thus to delay or block their completion or dissemination.

Consider the United States National Assessment of the Potential Consequences of Climate Variability and Change (USNA), transmitted to Congress at the end of 2000 pursuant to the Global Change Research Act (GCRA).<sup>229</sup> As the National Research Council of the National Academies noted, the USNA was produced through a process that included “exemplary” stakeholder involvement and exhaustive peer review. Nevertheless, on October 5, 2000, an industry-backed policy group, the Competitive Enterprise Institute (CEI), joined by Senator James Inhofe (R-OK) and other co-plaintiffs, filed suit against President Clinton, OSTP, and NSTC alleging violations of the FACA, the GCRA, and Public Law 106-74.<sup>230</sup> Following Clinton’s departure from

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<sup>225</sup> Compiled comments of CCIWG submitted to NCAR (May 14, 2005) *on file with GAP*; SAR 2.2 Guidance to Proposers (May 14, 2004) *on file with GAP*.

<sup>226</sup> *Ibid.*

<sup>227</sup> *Ibid.* See also Sundquist, Public Review Comments (February 2 – March 7, 2005) on the Draft Prospectus for Synthesis and Assessment Product 2.2 *available at* <http://www.climate-science.gov/Library/sap/sap2-2/sap2-2prospectus-comments.htm> (last visited on March 23, 2007). The final SAP 2.2 report is due to be released March 2007.

<sup>228</sup> Mike MacCracken, communications with Maassarani (May 27, 2006) *record on file with GAP*.

<sup>229</sup> According to its website, CEI is “a pro-market, public policy group committed to advancing the principles of free enterprise and limited government, including a focus on global warming, the EPA, and other environmental issues.” While CEI does not disclose its sources of funding, ExxonMobil has contributed over two million dollars to CEI since 1998, based on the company’s own data. Recently, CEI launched a CO<sub>2</sub> ad campaign promoting the benefits of increased carbon emissions.

<sup>230</sup> In his memorandum, Rick Piltz writes:

The National Assessment was built on a solid foundation of research supported by the USGCRP and went through an extensive four-stage expert and public review. It entrained the contributions of a distinguished National Assessment Synthesis Team and of hundreds of other scientists and produced a set of reports that to this day remains the most comprehensive and authoritative scientifically based assessment of the potential consequences of climate change for the United States. It was a primary basis for Chapter 6 on “Impacts and Adaptation” of the *U.S. Climate Action Report 2002*, which was submitted by the U.S. Government pursuant to the national

office, the case was refilled, naming George W. Bush et al. as defendants. The suit was ultimately settled, with a joint stipulation that the USNA does not and will not serve as the basis for any policies, positions or rules of the federal government, but that it constituted a submission by a non-governmental body and would be considered by policymakers as such.<sup>231</sup> A memorandum by Dr. Rosina Bierbaum, the then-Acting Director of OSTP, clarified for the record that products, even in undisputed compliance with FACA, do not represent government policy. Nothing in the legal record prohibited citation of the scientific document.

Then on July 20, 2001, Peter Backlund of the OSTP senior professional staff informed Rick Piltz that the OSTP Chief of Staff, Richard Russell, had directed that all references to the USNA be deleted from the FY2002 edition of *Our Changing Planet* – the CCSP’s first annual mandatory report to Congress after the USNA was issued.<sup>232</sup> According to Piltz, this incident foreshadowed the disappearance:

of all but the most fleeting and uninformative references to the [USNA] throughout all subsequent publications, including most significantly the CCSP *Strategic Plan*, the OCP 2003 and OCP 2004-2005 reports to Congress, internal documents related to CCSP budget and planning, and documents pertaining to the development of the current prospective CCSP “synthesis and assessment” reports. In any review draft of any of these documents that contained even the briefest discussion of the National Assessment, either the Council on Environmental Quality or an unattributed reviewer (but clearly either from CEQ or OSTP) would call for the text to be deleted.<sup>233</sup>

Dr. Mahoney has confirmed that federal researchers were restricted from referring to the USNA.<sup>234</sup> The March 31, 2003, draft of the CCSP *Strategic Plan* prepared by the science program managers contained 12 references to the USNA.<sup>235</sup> However, the final printed version offered only one single-sentence reference, which did not include the

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reporting requirements of the Framework Convention on Climate Change, after having been approved by all relevant agencies. In spite of this being the most complete and most widely reviewed position statement on climate change by this administration, the *U.S. Climate Action Report 2002* was almost never mentioned after it was issued and for some reason does not appear to be viewed by the administration or the CCSP as an official acceptance of National Assessment findings.

<sup>231</sup> Rick Piltz, memorandum on “On Issues of Concern About the Governance and Direction of the Climate Change Science Program” (June 1, 2005).

<sup>232</sup> Rick Piltz, Declaration in Support of Memorandum of Amici Curiae John Kerry and Jay Inslee (February 8, 2007). In April 2001, USGCRP discontinued the development of informational brochures and CDs that had been prepared to draft form as part of outreach for the USNA. Anonymous scientist, communications with Maassarani (March 4, 2007) *record on file with GAP*.

<sup>233</sup> A March 5, 2002, email exchange between OMB’s Robert Tuccillo and CEQ’s Cooney entitled “Revised Climate Change Report Executive Summary Language” suggests there was coordination between these two offices vis-à-vis such scientific reports. *See* [http://www.whitehouse.gov/ceq/foia/index3/ceq\\_23.pdf](http://www.whitehouse.gov/ceq/foia/index3/ceq_23.pdf) (last visited on March 23, 2007).

<sup>234</sup> *Environmental Science & Technology* online, October 12, 2005.

<sup>235</sup> Rick Piltz, Declaration in Support of Memorandum of Amici Curiae John Kerry and Jay Inslee (February 8, 2007).

actual title of the report or a description of the USNA's process or content and which remained absent from the bibliography.<sup>236</sup> According to one source, Drs. Linda Joyce and Jill Baron – lead author nominees of CCSP SAP 4.4 – had their role in the USNA removed from the bios included in the official prospectus.<sup>237</sup>

Furthermore, information (including statistical information) in government reports is subject to the Information Quality Act (IQA), also known as the Federal Data Quality Act.<sup>238</sup> Enacted without debate in 2001 as part of a consolidated federal budget bill, the IQA requires the Executive Branch to develop guidelines to ensure “the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies,” and to “establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the guidelines.” Although the IQA itself contained fewer than 250 words, it is now embodied in extensive guidelines issued by the OMB, with additional implementation guidelines adopted by each federal department and agency, overseen by OMB and OSTP. Since the implementation of the IQA, many petitions for “correction of information” have reportedly been filed by trade and industry groups seeking to challenge the release of information by federal agencies. Most notably, several petitions were filed by the CEI seeking withdrawal of climate model results used in the USNA, although the IQA had not been passed at the time the report had been drafted.<sup>239</sup>

Although CEI's petitions for correction were denied on the basis of technicalities, a subsequent lawsuit was settled November 4, 2003 – three months after its filing – by a “Stipulation of Dismissal With Prejudice.”<sup>240</sup> This short turnaround presumably preempted the outcome of an investigation by U.S. Attorney General John Ashcroft requested by the Attorneys General of Connecticut and Maine on August 11, 2003. The request was prompted by the documentation of collaborative communications between CEQ's Philip Cooney and CEI's Myron Ebell and raised the issue of whether the “new litigation was an improper product of that close relationship [implicating CEQ] in efforts to undermine the United States' official reports.” Having disputed two of the climate models presented in the USNA and the 2002 *United States Climate Action Report* (CAR), a CEI press release stated “We are pleased to see that the federal government has now put

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<sup>236</sup> In reviewing the *Strategic Plan* through the revision process, the National Research Council noted that “one notable exception [to CCSP's generally good receptiveness to input] is the fact that the revised plan does not acknowledge the substantive and procedural contributions of the [USNA.] The revised plan does not reflect an attempt to address these concerns, and no rationale for this decision has been provided.” NRC Committee to Review the U.S. Climate Change Science Program Strategic Plan, *Implementing Climate and Global Change Research: A Review of the Final U.S. Climate Change Science Program Strategic Plan* (National Academies Press, 2004).

<sup>237</sup> Anonymous scientist, communications with Maassarani (June 4, 2006) *record on file with GAP*. See also <http://www.climate-science.gov/Library/sap/sap4-4/sap4-4prospectus-final.htm> (last visited on March 23, 2007).

<sup>238</sup> Letter from Sundquist to colleagues (undated) *on file with GAP*.

<sup>239</sup> See [http://www.whitehouse.gov/ceq/foia/index3/ceq\\_3.pdf](http://www.whitehouse.gov/ceq/foia/index3/ceq_3.pdf) (last visited on March 23, 2007).

<sup>240</sup> See [http://www.pacinst.org/national\\_assessment/dismissal11403.pdf](http://www.pacinst.org/national_assessment/dismissal11403.pdf) (last visited February 2007).

the public on notice that the National Assessment is propaganda, not science.”<sup>241</sup> As a result of the stipulations, the web posting of the USNA added the qualifier that the document was “not subjected to [Federal] Information Quality Guidelines.”<sup>242</sup> According to a number of sources, administration officials and CCSP principals have dismissed further discussion of the USNA with vague allusions to the “legal requirements” of these settlements.<sup>243</sup>

Although the GCRA requires the CCSP to produce a comprehensive scientific assessment of its national global change research at least every four years, no subsequent USNA has ever been prepared.<sup>244</sup> In its place, the CCSP 10-year *Strategic Plan* released in July 2003 called for the issuance of the 21 Synthesis and Assessment Reports between 2005 and 2007.<sup>245</sup> In addition to the violation of the statutory schedule, a legislative review requested by Senators John Kerry (D-MA) and John McCain (R-AZ) of the Government Accountability Office “concluded in April 2005 that there is no indication that the planned reports will adequately address all the topics required by the GCRA.”<sup>246</sup>

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<sup>241</sup> “White House Acknowledges Climate report is not subjected to sound science laws,” CEI press release (November 6, 2003) available at <http://www.cei.org/utills/printer.cfm?AID=3740> (last visited on March 23, 2007). Ebell was later quoted saying, “To the degree that it has vanished, we have succeeded.” “Finger-pointing persists over White House’s handling of 2000 report,” *Greenwire* (October 3, 2006).

<sup>242</sup> The term “subjected to” as used on the Web site has a very different meaning than the term “subject to” as mentioned by Marburger in a talk on the IQA lawsuit to the American Physical Society on April 17, 2005. It is accurate to say the National Assessment Overview and Foundation reports were not “subject to” the OSTP guidelines because they did not exist when those reports were published. It seems the term “subjected to” may have been deliberately chosen over “subject to” in order to suggest that the guidelines existed when the National Assessment was produced but were not applied to the reports.

<sup>243</sup> Rick Piltz, memorandum on “On Issues of Concern About the Governance and Direction of the Climate Change Science Program” (June 1, 2005). On November 7, a group of notable scientists involved with the USNA wrote a letter to Dr. Mahoney that characterized the disclaimer as “misleading and incorrect” and demanded its retraction. Available at [http://www.pacinst.org/national\\_assessment/Ltr-Jim%20Mahoney-111003.pdf](http://www.pacinst.org/national_assessment/Ltr-Jim%20Mahoney-111003.pdf) (last visited on March 23, 2007). To our understanding, there has been no response.

<sup>244</sup> According to the GCRA, 15 U.S.C. §2936:

On a periodic basis (not less frequently than every 4 years), the Council, through the Committee, shall prepare and submit to the President and the Congress an assessment which - (1) integrates, evaluates, and interprets the findings of the Program and discusses the scientific uncertainties associated with such findings; (2) analyzes the effects of global change on the natural environment, agriculture, energy production and use, land and water resources, transportation, human health and welfare, human social systems, and biological diversity; and (3) analyzes current trends in global change, both human-[induced] and natural, and projects major trends for the subsequent 25 to 100 years.

<sup>245</sup> Senator McCain, QFR question #2 (July 20, 2005) *GAP August 9, 2006, part 2 NOAA FOIA response pg. 42*.

<sup>246</sup> GAO “Climate Change Assessment: administration Did Not Meet Reporting Deadline,” (April 14, 2005). See also John Kerry, letter regarding: “Request for National Assessment of Climate Change Required by the Global Change Research Act of 1990” (August 21, 2006) *on file with GAP*. According to Piltz and meeting notes he originally drafted, Mahoney acknowledged (consistent with his prior representations) that the 21 SAPs were not sufficient to satisfy the Act in an October 13, 2004, meeting of the CCSP principals. However, what became the official “Record of Decisions/Actions” as approved by Mahoney was altered to state the contrary. Rick Piltz, Declaration in Support of Memorandum of Amici Curiae John Kerry and Jay Inslee (February 8, 2007)

Kerry and McCain, echoing Rick Piltz and a number of scientists on the subject, have argued “that the 21 shorter reports cannot substitute for the single, coherent synthesis required by the GCRA to enable Congress and federal agencies to make informed, effective decisions to address the impacts of climate change on the United States.”<sup>247</sup> On November 14, 2006, the Center for Biological Diversity and other environmental groups – later supported by an amicus curiae brief filed by Kerry and Representative Jay Inslee (D-WA) – sued the Bush administration for failing to produce the overdue USNA in violation of the GCRA.<sup>248</sup>

One CCSP assessment product that addresses GCRA goals to promote effective policymaking, SAP 5.2, “Best practice approaches for characterizing, communicating, and incorporating scientific uncertainty in decisionmaking,” has received sharp criticism from the NAS National Research Council:<sup>249</sup>

There are larger issues in that the draft SAP falls short of the requirements set forth in the prospectus. The draft does not address all of the specified audiences, particularly “policymakers, decision-makers, and members of the media and general public with an interest in developing a fundamental understanding of the issue.” In addition, the current draft does not constitute an assessment of the full range of “best practice approaches” for characterizing, incorporating, and communicating uncertainty. It will take a substantial revision of the current document or the production of a companion document, both of which would require the involvement of additional authors, to address these larger issues and additional audiences

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<sup>247</sup> John Kerry, letter regarding: “Request for National Assessment of Climate Change Required by the Global Change Research Act of 1990” (August 21, 2006) *on file with GAP*; Rick Piltz, “Toward a Second U.S. National Climate Change Assessment,” *Eos* (American Geophysical Union, December 2005). Rick Piltz, Declaration in Support of Memorandum of Amici Curiae John Kerry and Jay Inslee (February 8, 2007) at ¶¶ 69-70, 77 in *Center for Biological Diversity et. al. v. Dr. William Brennan et. al.* (N.D. Cal. 2007). John Kerry and Jay Inslee, Memorandum of Amici Curiae In Support of Plaintiffs’ Motion for Summary Judgment (February 8, 2007); Rick Piltz, Declaration in Support of Memorandum of Amici Curiae John Kerry and Jay Inslee (February 8, 2007) contended that their failure to produce the reports “is part of a larger pattern of suppressing climate science.”

<sup>248</sup> For Plaintiffs’ pleadings, amici, and press releases, *see*

<http://www.biologicaldiversity.org/swcbd/programs/policy/energy/national-assessment.html> (last visited on March 23, 2007). As the CCSP had not updated its 2003 *Strategic Plan*, their complaint for declaratory and injunctive relief also alleged a violation of the GCRA requirement to “develop a National Global Research Plan... at least once every three years....” 15 U.S.C. §2934. On December 11, 2006, Inslee, Representative Wayne Gilchrest (R-MD), and 22 House co-signers sent a letter to William Brennan, the Acting Director of the Climate Change Science Program, stating “The failure of the CCSP to produce a National Assessment report within the time frame required by law has made it more difficult for Congress to develop a comprehensive policy response to the challenge of global climate change.” *Available at* <http://www.climate-science-watch.org/file-uploads/House-NA-ltr.pdf> (last visited on March 23, 2007).

<sup>249</sup> Committee to Review the U.S. Climate Change Science Program’s Synthesis and Assessment Product 5.2, National Research Council, “Review of the U.S. Climate Science Program’s Synthesis and Assessment Product 5.2, ‘Best Practice Approaches for Characterizing, Communicating, and Incorporating Scientific Uncertainty in Climate Decisions Making,’” (2007) *available at* <http://www.nap.edu/catalog/11873.html> (last visited on March 25, 2007).

Evidence suggests that CCSP/NOAA congressional products are not the only reports that raise concerns. The 2002 *Climate Action Report* (CAR), which incorporated some of the USGCRP's work, suffered a similar fate as the USNA. Pursuant to the reporting requirements for signatories of the U.N. Framework Convention on Climate Change (UNFCCC), the strongly-worded report was prepared by the EPA, received approval by all the relevant agencies, and submitted to the UNFCCC Secretariat by the State Department. Although it emphasized adaptation to, and not mitigation of, climate change, Andrew Revkin of *The New York Times* wrote that it stood in "sharp contrast to prior statements on climate change by the administration."<sup>250</sup> On June 3, 2002, in an email obtained by FOIA, CEI's Ebell offered to help CEQ's Cooney manage the "crisis" and help "cool things down."<sup>251</sup> Indeed, after the CAR was shipped to the UN with no accompanying press release or announcement, President Bush downplayed the report as having been "put out by the bureaucracy" and it was rarely ever mentioned again.<sup>252</sup> All this despite an op-ed by CEQ chair James Connaughton rebuffing Revkin's assertion that there has been a change in rhetoric.<sup>253</sup>

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<sup>250</sup> Andrew Revkin, "U.S. Sees Problems in Climate Change," *The New York Times* (June 3, 2002). Noting that the "primary impact on the NWS PAOs and scientists is the suggestion in the report that Global Warming is going to have an impact on the U.S. weather, including more heat waves and coastal storms," NWS public affairs chief Carrey Curtis forwarded the article in an email asking staff to "refer all media inquiries about the report or global warming in general to NOAA HQ" Email From: Frank Lepore; To: Jana Goldman; Date: June 6 2002; Subject: Japanese TV inquiry regarding global warming *GAP August 9, 2006, part 3 NOAA FOIA response pg. 97-101*.

<sup>251</sup> Once again suggesting a collaborative relationship, the email goes on to urge Cooney to disavow the Climate Action and National Assessment reports, adding "If it were only this one little disaster we could all lock arms and weather the assault, but this administration has managed, whether through incompetence or intention, to create one disaster after another and then to expect its allies to clean up the mess." Several similar emails on file with the author illuminate Cooney's, as well as Connaughton's, relationship with CEI. See, e.g., [http://www.whitehouse.gov/ceq/foia/index3/ceq\\_4.pdf](http://www.whitehouse.gov/ceq/foia/index3/ceq_4.pdf) (last visited on March 23, 2007). However, CEI was not unique in this regard. In another FOIA document dated June 12, William O'Keefe, President of the George C. Marshall Institute – an ExxonMobil-supported think tank that works to debunk mainstream climate science – faxed Cooney a copy of a letter written to White House Chief of Staff Andrew Card that reads: "I am writing about the recently released national assessment, which seems completely inconsistent with the President's policy and expressed views on the subject" and goes on to suggest that the administration have a senior person on the White House staff to coordinate communications on climate change and make sure everyone was "on the same page, with the same message." [http://www.whitehouse.gov/ceq/foia/index1/gp\\_who\\_4.pdf](http://www.whitehouse.gov/ceq/foia/index1/gp_who_4.pdf) (last visited on March 23, 2007). It was shortly thereafter that Cooney took on a more active role in CCSP governance and editing of reports. Rick Piltz, Declaration in Support of Memorandum of Amici Curiae John Kerry and Jay Inslee (February 8, 2007). See also CEI's "Final Joint Letter to President Bush on Climate Action Report 2002" (June 7, 2002) available at [http://www.whitehouse.gov/ceq/foia/index3/arms\\_202.pdf](http://www.whitehouse.gov/ceq/foia/index3/arms_202.pdf) (last visited on March 23, 2007).

<sup>252</sup> Rick Piltz, memorandum on "On Issues of Concern About the Governance and Direction of the Climate Change Science Program" (June 1, 2005); "Slow Approach to Climate Change" *Associated Press* (July 11, 2002). In fact, the final May 28, 2002, document submitted to the UNFCCC was modified to repeat "two text boxes describing the uncertainty in climate change regional projections and impacts." Talking Points on the U.S. *Climate Action Report* (September 3, 2002) available at [http://www.whitehouse.gov/ceq/foia/index1/gp\\_arms\\_406\\_att\\_1.pdf](http://www.whitehouse.gov/ceq/foia/index1/gp_arms_406_att_1.pdf) (last visited on March 23, 2007).

<sup>253</sup> James Connaughton, "Letter to the Editor," *The New York Times* (June 10, 2002), See also Final Press Guidance (June 6, 2002) cleared by the State Department, CEQ, EPA, NOAA, USDA, and DOE available at [http://www.whitehouse.gov/ceq/foia/index1/gp\\_arms\\_189\\_att\\_1.pdf](http://www.whitehouse.gov/ceq/foia/index1/gp_arms_189_att_1.pdf) (last visited on March 23, 2007). Prior to joining the White House, Connaughton worked in the environmental practice group of Sidley Austin Brown & Wood, which represents a variety of industry groups in environmental criminal defense, regulatory practice, and environmental torts and litigations.

The fourth CAR was required by Article 12 of the UNFCCC no later than January 1, 2006.<sup>254</sup> The review draft of the report – announced by the State Department as publicly-available in the summer of 2005 – is still not forthcoming, though a draft was leaked to *The New York Times* in early March 2007.<sup>255</sup> Although CEQ spokeswoman Kristen Hellmer blamed the delay on the “extensive interagency review process,”<sup>256</sup> GAP’s inside sources complained that any such process is marred by a lack of personnel and adequate transparency.<sup>257</sup> Presumably, the report is still caught up in EOP-level review and clearance due to chapter six, the traditionally “sensitive” section on “Vulnerability Assessment, Climate Change Impacts, and Adaptation Measures”<sup>258</sup> and the government’s failure to fill recently vacated senior staff positions.<sup>259</sup>

In June 2003, the EPA encountered more problems with the publication of its first-ever national *Draft Report on the Environment*, commissioned in 2001 by then administrator Christie Whitman.<sup>260</sup> As reported by *New York Times* journalist Andrew Revkin, who saw early drafts of the climate section and an internal memo from the EPA, White House officials had “eliminated references to studies concluding that warming is at least partially caused by rising smokestack and tailpipe emissions and could threaten health and human ecosystems.”<sup>261</sup> According to House Government Reform Committee staffers permitted to review some of the documents *in camera*, OMB suggested removing a discussion of climate change from the report’s executive summary; OSTP asked to strike a discussion of the human health and ecological effects of climate change; CEQ urged the EPA to “delete climate change or use previously agreed upon material,” and DOE officials contended that atmospheric concentrations of carbon should be dismissed as poor indicators of climate change.<sup>262</sup> In another instance, a citation to a 1999 study

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See <http://www.whitehouse.gov/ceq/connaughton-bio.html> (last visited on March 23, 2007) and <http://www.sidley.com/practice/group.asp?groupid=1117> (last visited on March 23, 2007).

<sup>254</sup> Federal Register: April 8, 2005 (Volume 70, Number 67) Page 18066-18067.

<sup>255</sup> Andrew Revkin, “US sees its emissions growing without letup,” *International Herald Tribune* (March 3, 2007). The leaked draft estimates that U.S. greenhouse gas emissions will grow nearly as fast (11%) through the next decade as they did in the past.

<sup>256</sup> John Heilprin, “Report projects almost 20-per-cent rise in U.S. greenhouse emissions by 2020,” *Associated Press* (March 3, 2007).

<sup>257</sup> Anonymous source, interview with Maassarani (date withheld) *records on file with GAP*.

<sup>258</sup> See <http://www.usgcrp.gov/usgcrp/links/assessments.htm> (last visited on March 23, 2007).

<sup>259</sup> Departed officials include James Mahoney, Michael McCracken, Rick Piltz, and Richard Moss.

<sup>260</sup> OMB has been described by one source as historically being intensely critical of EPA, which it sees as the most activist-minded agency on issues of climate change. Contrast this with NASA, which is more theoretical and disassociated from regulatory activities.

<sup>261</sup> Andrew Revkin with Katharine Seelye, “Report by the E.P.A. Leaves Out Data on Climate Change,” *The New York Times* (June 19, 2003).

<sup>262</sup> Henry Waxman, House Oversight and Government Reform Committee memorandum regarding CEQ documents (January 30, 2007) citing Committee Staff Notes, Documents Numbered WH 19, ARMS 23 Attachment 1, ARMS 34, and ARMS 39 Attachment 5 (EPA Draft Report on the Environment). Other comments noted by committee staff included, “Take care here and be sure to be consistent with administration policy. Let us try to avoid another CAR scenario” (ARMS 39 Attachment 18, referring to the Climate Action Report discussed above). They also noted proposed White House edits such as the deletion of the language that climate change may “alter regional patterns of climate” and “potentially affect the balance of radiation” (ARMS 69 Attachment 2) and replacement of the phrase “changes observed over the last several decades are likely mostly the result of human activities” with “a causal link between the

showing a sharp temperature rise in the last decade compared with the last millennium was replaced with “a reference to a new study, partly financed by the American Petroleum Institute, questioning that conclusion.”<sup>263</sup> In hand-written notes, CEQ Chief of Staff Philip Cooney made a number of his own edits.<sup>264</sup> Emails from CEQ Chairman James Connaughton reveal that he participated directly in the review, requesting to be apprised of every edit made to the EPA draft report.<sup>265</sup>

As reviewers for the 2003 EPA report, Drs. Mahlman and Trenberth independently raised identical objections that unidentified members of CEQ had “heavily censored” the report and EPA officials were part of the problem.<sup>266</sup> Although much of the science came directly from the IPCC report, “it was obvious that senior EPA officials felt compelled to water down the conclusions.” Mahlman pointed this out in his reviews; however the anonymous feedback he received from the EPA in Washington, DC, revealed that they kept making modifications. In a private conversation with an inexperienced staffer, he recalls being told that they did this to make the reports more “Dubya friendly.” A June 2003 memo to the EPA Administrator outlined her three options: 1) accept the edits and weather “severe criticism from the science and environmental community for poorly representing the science;” 2) refuse any further White House changes and “antagonize the White House;” and 3) remove the climate change section entirely from the report as “the only way to meet both WH and EPA needs.”<sup>267</sup> In the end, despite the staff’s preference for no compromise, EPA dropped the whole global warming discussion from the report.<sup>268</sup> In a similar twist of fate starting September 2002, political appointees successfully deleted the climate section of an annual EPA air pollution report that had contained one for the prior six years. The White

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buildup of greenhouse gases in the atmosphere and the observed climate changes during the 20<sup>th</sup> century cannot be unequivocally established.” (WH 15).

<sup>263</sup> Andrew Revkin with Katharine Seelye, “Report by the E.P.A. Leaves Out Data on Climate Change,” *The New York Times* (June 19, 2003).

<sup>264</sup> Henry Waxman, House Oversight and Government Reform Committee memorandum regarding CEQ documents (January 30, 2007) citing Committee Staff Notes, Document Numbered WH 6 (EPA Draft Report on the Environment). Cooney inserted claims that satellite data contradict global warming; deleted the phrase that “regional patterns may be altered [by climate change]” and “climate change has global consequences for human health and the environment”; removed climate change from a discussion of environmental issues with global consequence, as well as references to the National Research Council’s finding of anthropogenic climate change; struck a chart of historical temperature reconstructions and reference to the observation that the eight warmest years on record occurred in the last decade; introduced the word “potentially” in a number of places to increase the uncertainty of scientific assessments; and added “these changes must be made.”

<sup>265</sup> Henry Waxman, House Oversight and Government Reform Committee memorandum regarding CEQ documents (January 30, 2007) citing Committee Staff Notes, Document Numbered ARMS 34 (EPA Draft Report on the Environment).

<sup>266</sup> Jerry Mahlman, interview with Maassarani (April 6, 2006) *record on file with GAP*; Kevin Trenberth, interview with Maassarani (April 6, 2006) *record on file with GAP*.

<sup>267</sup> Henry Waxman, House Oversight and Government Reform Committee memorandum regarding CEQ documents (January 30, 2007) citing Committee Staff Notes, Document Numbered WH 22 (EPA Draft Report on the Environment).

<sup>268</sup> This omission was a common flashpoint of criticism in the nation-wide public meetings that EPA organized in the fall of 2003. *Summary Report of the National Dialogue on the EPA Draft Report on the Environment* (April 2004).

House argues that the administration has extensively addressed the state of the climate elsewhere.<sup>269</sup>

Despite an often troubled tenure with the Bush administration, Christie Whitman left her office four days after the release of the Draft Report on the Environment with no further comments on the incident.<sup>270</sup> Not so for the former EPA administrator under President Richard Nixon and Gerald Ford, Russell Train, who wrote: “In all my time at the EPA, I don’t recall any regulatory decision that was driven by political considerations. More to the present point, never once, to my best recollection, did either the Nixon or Ford White House ever try to tell me how to make a decision.”<sup>271</sup>

At about the same time as the EPA report, one source noted that CEQ had also requested subtle language changes to an EPA climate change brochure, which the EPA decided to ignore.<sup>272</sup> According to our source, because the EPA proceeded to print the brochures without proper approval, they have remained boxed up in a warehouse ever since. The Arctic Climate Impact Assessment (ACIA) suffered a, by now, familiar fate. The ACIA was a major project, commissioned by the U.S. Government along with the other parties to the Arctic Council, funded by CCSP-participating agencies, and chaired by the long-time former chair of the USGCRP interagency committee, with substantial participation of U.S.-based authors and reviewers. The ACIA Overview report was published in late 2004, with policy recommendations withheld until after the election. As Rick Piltz asks,<sup>273</sup>

Why has the CCSP failed to transmit copies of the report that were purchased for distribution to Members of Congress and others? They are still gathering dust in a storeroom, sitting in unopened boxes. What roles have CEQ, the State Department, and the CCSP Director played in what appears to be an administration decision to distance itself from the Arctic Climate Impacts Assessment, which identifies a range of observed and projected adverse impacts of climate change on Arctic ecosystems and communities, with implications for global climate change and potential global consequences, including accelerated sea level rise? The ACIA Chair testifies and gives briefings, but it is on his own. The U.S. government has been sitting out the follow through process, without acknowledging the findings, briefing Congress, or even delivering the report.

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<sup>269</sup> Andrew Revkin with Katharine Seelye, “Report by the E.P.A. Leaves Out Data on Climate Change,” *The New York Times* (June 19, 2003).

<sup>270</sup> “EPA’S Whitman Submits Resignation Letter,” *CNN* online (May 21, 2004). One scientist, speaking on a condition of anonymity, observed that “this administration seems to want to make environmental policy at the White House.... I suppose that is their right. But one has to ask: on the basis of what information is this policy being promulgated? What views are being represented? Who is involved in the decision making? What kind of credible expertise is being brought to bear?” Interview with EPA scientist (named withheld upon request) conducted by Seth Shulman (January 2004) in *Scientific Integrity in Policymaking*. Cambridge, MA: Union of Concerned Scientists.

<sup>271</sup> *Russell Train*, letter to *The New York Times* (September 22, 2003) available at <http://www.grist.org/comments/soapbox/2003/09/22/epel/> (last visited on March 23, 2007)

<sup>272</sup> Anonymous EPA scientist, interview with Maassarani (June 2006) *record on file with GAP*.

<sup>273</sup> Rick Piltz, memorandum on “Censorship and Secrecy” (June 2005) *on file with GAP*.

The Natural Resources Conservation Service (NRCS) of the U.S. Department of Agriculture (USDA) was blocked in September 2003 from reprinting a popular informational brochure about carbon sequestration in the soil and what farmers could do to reduce emissions of heat trapping gases.<sup>274</sup> According to one current government official familiar with the incident, the brochure was widely viewed as one of the agency's successful efforts in the climate change field. The NRCS had already distributed some 325,000 of the brochures and sought a modest update, as well as proposing a Spanish edition. William Hohenstein, director of the Global Change Program Exchange in the USDA Office of the Chief Economist, acknowledged that he passed the request on to CEQ, as he says he would, "for any document relating to climate change policy."<sup>275</sup> As a result of CEQ's objections about the brochure, staff at the NRCS dropped their proposal for a reprint. "It is not just a case of micromanagement, but really of censorship of government information," a government official familiar with the case noted. "In nearly 15 years of government service, I can't remember ever needing clearance from the White House for such a thing."<sup>276</sup>

### Congressional Involvement

In exercising Congress' legislative oversight authority vis-à-vis the Executive Branch, members of Congress acting individually or in committee may request information disclosures, order investigations by the Government Accountability Office (GAO) or Inspector General, and push for reforms that re-align agency management with their statutory obligations. For example, on September 19, 2006, Representative Henry Waxman, who was at that time the ranking minority member of the House Committee on Government Reform, wrote and publicized a letter to Department of Commerce Secretary Carlos Gutierrez requesting internal documents and an explanation regarding that summer's global warming/hurricane media scandals.<sup>277</sup> Likewise, on June 13, 2006, Senator Joseph Lieberman (D-CN) sent Vice Admiral Lautenbacher a letter requesting that NOAA develop an improved media policy and investigate "reports that NOAA officials are discouraged from making the results of their work public."<sup>278</sup> Most recently, 14 senators wrote a letter to the Inspectors General of NOAA and NASA requesting "a formal investigation into continuing political interference with the work of scientists...."<sup>279</sup>

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<sup>274</sup> USDA official (name withheld upon request), interview with Seth Shulman (January 2004) in *Scientific Integrity in Policymaking*.

<sup>275</sup> William Hohenstein, interview with Seth Shulman (January 2004) in *Scientific Integrity in Policymaking*. According to a June 20, 2002, email this "policy" may have started after the release of the 2002 *Climate Action Report*. Hohenstein forwards a USDA press release to CEQ's Philip Cooney, noting "It will be important to make sure the communications staffs in USDA, the WH, and DOC are aware of the Ag document's contents and status before it is released" available at [http://www.whitehouse.gov/ceq/foia/index3/arms\\_249.pdf](http://www.whitehouse.gov/ceq/foia/index3/arms_249.pdf) (last visited on March 23, 2007).

<sup>276</sup> USDA official (name withheld upon request), interview with Seth Shulman (January 2004) in *Scientific Integrity in Policymaking*.

<sup>277</sup> Letter From: Henry Waxman; To: Carlos Gutierrez; Date: September 19, 2006, *on file with GAP*.

<sup>278</sup> Letter From: Lieberman; To: Lautenbacher; Date: June 13, 2006, *on file with GAP*.

<sup>279</sup> See Lautenberg press release, "Democrats Call for Formal Investigation of Bush Political Appointees Blocking Legit Science Research on Dangers of Global Warming" (September 29, 2006) available at <http://lautenberg.senate.gov/newsroom/record.cfm?id=264104&&> (last visited on March 23, 2007).

Unfortunately, some congressional committee chairmen have also used their oversight authority to target mainstream scientists and their science. In the summer of 2005, at the urging of the American Petroleum Institute, Representative Joe Barton (R-TX) – chairman of the House Committee on Energy and Commerce – disputed the methodology and statistics employed by university climatologist Dr. Michael Mann in constructing the historical temperature record into a “hockey stick”-shaped graph that was adopted by the IPCC Third Assessment Report. Barton relied heavily on studies published in *Geophysical Research Letters* and *Energy and Environment* by mining executive Stephen McIntyre and environmental economist Ross McKittrick that attempted to discern flaws in the work of Drs. Mann, Raymond Bradley, and Malcolm Hughes.<sup>280</sup> *Energy and Environment* is not a science journal and does not appear in Journal Citation Reports, which lists all peer-reviewed journals.<sup>281</sup> Despite the fact that it is not peer-reviewed, studies in *Energy and Environment* have been regularly cited by Republican senators and congressmen to undermine the science of climate change during congressional debates.<sup>282</sup>

In turn, Chairman Barton demanded that Mann and colleagues provide in detail a list of all their studies and funding sources, the location of data archives, and information about their use of data, their computer code, and their role in the IPCC – vast amounts of information that was not always relevant to their studies.<sup>283</sup> In response, the National Academy of Sciences, the American Association for the Advancement of Science, as well as fellow Congress members, have sent Barton letters of concern. On July 19, 2006, Barton called a hearing on climate change in which he largely attacked Mann’s “hockey stick” work. According to Lauren Morello of the *Environment and Energy Daily*, the hearing was scheduled for a time when the committee knew that Mann could not attend.<sup>284</sup>

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<sup>280</sup> In 2006, Congress took an interest in the “hockey stick graph” controversy. Representative Sherwood Boehlert, chairman of the House Science Committee, commissioned a report by a special committee of the National Research Council, which upheld some of McIntyre and McKittrick’s critiques, but found that this had only a small effect on Mann’s conclusions about recent unusually warm temperatures. At the same time, Representative Barton commissioned three statisticians to prepare an ad hoc committee report, which found McIntyre and McKittrick’s work “valid and compelling,” thus appearing to undercut Mann’s basic conclusions. The report also suggested that a close-knit community of paleoclimatologists might be preventing rigorous review of research results. NCAR scientists Drs. Thomas Wigley and Caspar Ammann, who reviewed the studies and reports, concluded that the NRC report missed some crucial recent work and that the statistical findings of the McIntyre and McKittrick study did not disconfirm Mann’s conclusions.

<sup>281</sup> Paul D. Thacker “Skeptics get a journal,” *Environmental Science & Technology* (August 31, 2005).

<sup>282</sup> The independence of McIntyre has also been brought into question by reports of his previously undisclosed ties to CGX Energy, an oil and gas exploration company. Paul D. Thacker “How the Wall Street Journal and Rep. Barton celebrated a global-warming skeptic,” *Environmental Science & Technology* (August 31, 2005).

<sup>283</sup> Letter From: Barton; To: Mann; Date: June 23, 2005 *on file with GAP*.

<sup>284</sup> Lauren Morello, “Scientists clash with Barton, others on cause of global warming,” *Environment and Energy Daily* (July 20, 2006).

Senator James Inhofe (R-OK) is Barton's counterpart global warming "skeptical."<sup>285</sup> In a September 28, 2005, Environment and Public Works committee hearing on global warming, chairman Inhofe called in science-fiction author Michael Crichton as an expert witness. Crichton attempted to undermine peer-reviewed climate science.<sup>286</sup> On an earlier occasion, Inhofe invited Drs. Willie Soon and Sallie Baliunas, authors of a study that claimed 20<sup>th</sup> century global warming to be unremarkable compared to other climate shifts. However, this study had been heavily criticized. According to media reports, even the editors of the journal that published it called their analysis "deeply flawed," and three of them subsequently resigned.<sup>287</sup> The publisher, Dr. Otto Kinne, and an editor (later Editor in Chief) Dr. Hans von Storch, both said the paper should not have been published.<sup>288</sup>

On February 24, 2006, Inhofe requested the National Science Foundation, which funds the National Center for Atmospheric Research (NCAR), for detailed information regarding NCAR's employees, research projects, and funding sources. NCAR scientists and spokesperson Lucy Warner have declined to comment on the matter.<sup>289</sup> This was preceded by a similar information request of the Climate Change Science Program.<sup>290</sup> Together, Barton and Inhofe have received nearly \$2 million in contributions from the oil and gas industry.<sup>291</sup>

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<sup>285</sup> Senator Inhofe has declared on the record that, "With all of the hysteria, all of the fear, all of the phony science, could it be that man-made global warming is the greatest hoax ever perpetrated on the American people? It sure sounds like it." Andrew Revkin, "Politics Reasserts Itself in the Debate Over Climate Change and Its Hazards," *The New York Times* (August 5, 2005).

<sup>286</sup> See [http://epw.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing\\_ID=eea2d515-9548-466b-996b-43d186d0d13c](http://epw.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=eea2d515-9548-466b-996b-43d186d0d13c) (last visited on March 23, 2007). Crichton is on record saying, "...there may in fact be more constraints on what an American tabloid can publish than what the UN IPCC can publish."

<sup>287</sup> Andrew Revkin, "Politics Reasserts Itself in the Debate Over Climate Change and Its Hazards," *The New York Times* (August 5, 2005); Lauren Morello, "House probe turns to role of Cheney's office," *Environment and Energy Daily* (March 20, 2007).

<sup>288</sup> Andrew Revkin, "Politics Reasserts Itself in the Debate Over Climate Change and Its Hazards," *The New York Times* (August 5, 2005).

<sup>289</sup> Tom Wigley and Caspar Ammann, interview with Maassarani (April 5, 2006) *record on file with GAP*; Lucy Warner, communication with Maassarani (April 28, 2006) *record on file with GAP*.

<sup>290</sup> Letter From: James Mahoney; To: Inhofe; Date: November 14, 2005 *available at* <http://www.whitehouse.gov/ceq/foia/ccsp/ceq5.pdf> (last visited March 23, 2007).

<sup>291</sup> Seth Shulman, *Smoke, Mirrors, and Hot Air* (Union of Concerned Scientists, January 2007).

## COMMUNICATIONS WITH THE PUBLIC AND THE SCIENTIFIC COMMUNITY

Public and professional communications represent a catch-all category for what does not neatly constitute media or congressional communications: scientific publications, presentations, and agency websites and mission statements. According to our investigations, these have not encountered as significant interference in either frequency or magnitude as media and congressional forms of communication. Nonetheless, a number of notable examples and patterns exist.

### Scientific Publications

Publication in peer-reviewed journals represents the pinnacle of the scientific enterprise. Indeed, none of the over twenty scientists across four agencies personally interviewed for our investigation claimed to have experienced interference with the publication of their research in scientific journals. As one lab director and author of numerous scientific publications stated, “There has been no interference by NOAA in, or attempts to change text in, any of the research publications my Laboratory has produced since I have been there (6 years). Since this is our ‘primary product,’ that is a plus.”<sup>292</sup>

Nonetheless, a few minor incidents have appeared in the FOIA record and news archives.<sup>293</sup> On March 15, 2006, Dr. Al Powell, Director of NOAA's Center for Satellite Applications and Research (STAR), a division of NOAA's National Environmental Satellite Data and Information Service (NESDIS), called a meeting with Assistant Administrator for Satellite and Information Services Gregory Withee and other Data Center directors “to discuss our (NESIDS) concerns about the free inquiry of scientific research within our Center and other data centers in NESDIS.”<sup>294</sup> At issue was an article on the subject of temperature trends observed in the troposphere co-authored by STAR scientist Norman Grody, whose title, according to Powell, “NOAA had attempted to change... so that the phrase ‘global warming’ did not appear.” Similarly, an anonymous UCS survey response by a U.S. Department of Agriculture climate scientist attested:<sup>295</sup>

<sup>292</sup> Anonymous lab director, communications with Maassarani (October 19, 2006) *record on file with GAP*.

<sup>293</sup> Dr. Mahlman who, referring to only a couple of the approximately 1,200 NOAA scientists, has said:

It is this core of climate-science leaders in NOAA who are regularly submitting, and publishing, climate-relevant manuscripts to these high-prestige scientific journals. It is also the attempts of these highly respected scientists to submit manuscripts to any of these journals that have been “vetted” by the administration's political appointees who have been concerned that the content of these submitted manuscripts is somehow “threatening” to those in the current administration.

Jerry Mahlman, interview with Maassarani (April 6, 2006) *record on file with GAP*.

<sup>294</sup> Email From: Al Powell; To: Zdenka Willis, Thomas Karl, Christopher Fox, Michael Fortune, Susan Devine; Date: March 15, 2006; Subject: Meeting with Greg on 4/10 @ 2pm *GAP May 30, 2006, NOAA FOIA response pg 79*.

<sup>295</sup> Survey of Federal Climate Scientists, UCS Scientific Integrity Program (2006) USDA commentary. 33% and 20% of UCS survey respondents perceived or experienced, respectively, “[p]ressure to eliminate the word(s) ‘climate change’ and/or ‘global warming,’ and/or similar terms. Question #20. See also Email From: Dixon; To: Gross; September 30, 2003; Subject: Science paper protocols? *Greenpeace select hurricane NOAA FOIA response pg. 132*; Email From: Gross; To: Dixon; Date: September 30, 2003;

Much of my “experience”... has mostly been related to the internal review of publications before release. These were laws on the books that were largely unenforced before 2001, and now it mostly just seems like the only thing they’re looking for us to be sure you say “climate change” instead of “global warming,” for example.

Whatever the incidence and gravity of political editing, these once-unenforced “laws” – i.e. the official policies governing the review and clearance of scientific papers – often establish the preconditions for such practices. A 2004 internal draft policy document – reviewed and approved by Powell himself – on the public release of scientific and technical papers requires NOAA management approval and grants it “ultimate authority to determine whether official papers may be publicly released.”<sup>296</sup> At the same time, this proposed agency-wide policy fails to provide an author with the right of last review – the opportunity to inspect and approve any changes that result from the review and clearance process. The policy also requires review for unofficial papers – those written in an employee’s private capacity – that relate to NOAA interests. According to the NSB investigation and a heavily-redacted April 3, 2003, email by Tribble, it appears that this administrative order, though still in draft form is intended to replace the earlier policy (NAO 201-32G) dated February 1993, which incidentally does not mention management review and clearance.<sup>297</sup> In December 2004, the Assistant Administrator of NOAA Research also introduced a system for notifying leadership of significant papers that may attract media attention, which involves reporting the status of

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Subject: Science Paper *Greenpeace select hurricane NOAA FOIA response pg.131*; Email To: Gross; Date: November 5, 2003; Subject: Heads Up... *Greenpeace select hurricane NOAA FOIA response pg. 128-30*.

<sup>296</sup> “Public Release of Scientific and Technical Papers,” dated: ?? 18, 2004 *GAP May 30, 2006, NOAA FOIA response pg 9-14*. Official papers has a notably broad definition that includes:

any scientific or technical paper, book, manuscript, article, abstract, conference, presentation preprint, or other related document [that is] authored or co-authored by a NOAA employee: a. at the direction of a NOAA official superior to the NOAA employee; b. substantially [sic] during the official working hours of the NOAA employee; c. with the assistance of other Government employees on official duty; or d. with the use of Government facilities, resources, or supplies.

In response to a question from GFDL, Goldman affirms that “‘official and non-official’ pretty much covers every possible publication... especially in the current political ‘climate.’” Email From: Stouffer; To: Delworth, Dixon; Date: July 6, 2004; Subject: Noaa media policy *Greenpeace select hurricane NOAA FOIA response pg. 16-18*.

<sup>297</sup> Email From: Tribble; To: Scott Rayder, Jack Kelly, Conrad Lautenbacher; Date: April 3, 2006; Subject: Publication and Media Policies *GAP July 31, 2006, NOAA FOIA response pg. 95*; “NOAA Response to NSB” (March 23, 2006) *GAP July 31, 2006, NOAA FOIA response pg. 98*. According to a February 2006 email by Ahsha Tribble, they “could not get it approved because it conflicted with statements in the DAO [DOC Administrative Order]. So the DAO had to be revised and that is where we stand.” Email From: Eric Webster; To: Tribble; Date: February 2, 2006; Subject: protocol for public presentations *GAP July 31, 2006, NOAA FOIA response pg. 73*.

any such papers every two months.<sup>298</sup> This contrasts to the policy in July 2004 asking only for a “heads-up” to the PAO when papers were accepted for publication.<sup>299</sup>

A survey of the publication policies submitted to the NSB specific to individual NOAA divisions and laboratories demonstrates patterns in the development and distribution of management/PAO clearance provisions. It suggests that mandatory approval by NOAA agency headquarters, as opposed to laboratory directors or division chiefs, has only occurred since the 2004 media and draft publication policies and then only in certain divisions.<sup>300</sup> Consider the following documents from the FOIA record:<sup>301</sup>

Name	Date	NOAA Division	Agency Mgmt/PAO clearance?	Description
Instructions for Clearance and Review of ARL Manuscripts	November 2005	Air Resources Laboratory	Yes	Requires internal review and HQ PAO clearance of all scientific articles/books/reports whether published in print or online.
Publication Review and Approval Guidelines	December 2003	NESDIS National Climatic Data Center	No	Director approval required for non-peer reviewed articles and deputy director approval for peer-reviewed articles. Note disclaimer: “May be superseded by NOAA policy under development.”
Administrative Procedures for Clearance and Publication	April 2003	National Geodetic Survey	No	Journals, scientific articles, and web content requires clearance from division chief and/or director.
Science Quality Assurance Program Fisheries Science Center Accreditation Standards	February 2002	National Marine Fisheries Service	No	Includes section (pg. 24) on communication and publication, which calls for a policy that reflects a commitment to the dissemination of clear, accurate, and consistent science.

<sup>298</sup> Email From: Brian Gross; To: OAR GFDL all; Date: Dec. 23, 2004; Subject: Significant Papers *Greenpeace NOAA FOIA summary pg. 38-39.*

<sup>299</sup> Email From: Stouffer; To: Delworth; Date: July 6, 2004; Subject Noaa media policy *Greenpeace NOAA FOIA response pg. 40-42.*

<sup>300</sup> In contrast, the official DOC policy on media and publications (DAO 219-2) issued in 1980 and applicable to all units in Washington, DC, and vicinity, requires publication review and clearance by OPCIA.

<sup>301</sup> “NOAA Response to NSB” (March 23, 2006) *GAP July 31, 2006, NOAA FOIA response pg. 97-125.* While NOAA reported almost 50 documents related to “data release and communication of research results,” less than 15 such records were disclosed by NOAA pursuant to our FOIA request.

PMEL In-House Review Manuscript Status Sheet	January 2000	Pacific Marine Environmental Laboratory	No	Division leader and director review required.
National Centers for Ocean and Coastal Science	March 1999	National Centers for Ocean and Coastal Science	No	Statement of commitment to aggressive disclosure of research to public and media.
Policy of the CSD of ESRL regarding peer-reviewed publications	Undated	Earth System Research Laboratory Chemical Science Division	No	Lists the criteria for publications: paper must be within NOAA’s scope of research and non-policy prescriptive – as determined by CSD program leaders and senior staff.
Status Sheet for Submitting GFDL Co-Authoring Manuscripts	Undated	Geophysical Fluid Dynamics Laboratory	Unclear	Requires submission to GFDL staffers, Marsha Duggins and Gail Haller, before submissions for publications; then notification of PAO after acceptance.
NSSL/CIMMS policy for conference papers, journal articles, and MOU reports	Undated	National Severe Storms Laboratory/ Cooperative Institute for Mesoscale Meteorological Studies	No	Generally, formal papers require approval by division chief/director prior to submission.

Table of publication policies at various NOAA divisions and their associated clearance requirements

**Presentations**

Scientists have the opportunity to communicate their research directly – albeit to a limited audience – to the public and other scientists at conferences, talks, and other public fora. Even here, written speeches may require review and clearance because they are treated as communications subject to publication or media policies.<sup>302</sup> As with media and publication policies, prior to 2004 it does not seem that an official policy formally applied to presentations. For example, in July 2002, Dr. David Evans, Assistant Administrator for NOAA OAR, responded to a speech given by Dave Goodrich of NOAA Climate Observations and Services Program on air quality and climate change at

<sup>302</sup> E.g., the pending NOAA publication policy discussed above. This uncertainty is underscored by an email in which Dr. Karl corrects Laborde with regard to clearance for a talk and paper prepared for a science association presentation. He argued that notification of NOAA senior management (i.e. Ahsha Tribble) was required but that “approval” was not. Email From: Karl; To: Laborde; Date: Jan. 18, 2006; Subject: press materials *Thacker complete NOAA FOIA response pg. 167-68.*

the annual Air and Waste Management Association conference: “But did anyone know what he would say? Or look at the slides? Or inform Mahoney or others downtown?”<sup>303</sup>

On June 20, 2004, Knutson was invited to give a lecture on global warming and hurricanes as part of a science seminar series on Capitol Hill sponsored by the American Meteorological Society. After being cleared with the NOAA PAO and Legislative Affairs, he was asked to provide a copy of his PowerPoint slides a few days in advance for approval.<sup>304</sup> An email string from a few days earlier reveals Scott Carter, NOAA legislative affairs officer, asking Tribble:<sup>305</sup>

I have a copy of his present and it is a huge file so I did not send. However, I wanted to get your thoughts on him using the term global warming. His title slide is “Global Warming and Hurricanes.” I see the event does ask that, and I am no scientist, but I know that term is sensitive, so any problem in him using the term?

Indeed, Knutson remembers being cautioned against the use of the words “Global Warming” in the title of his presentation: “Just a heads-up... wouldn’t want the higher ups coming down on you. There is discomfort in the administration with these terms.”<sup>306</sup> In this case, Knutson ignored the advice. He also remembers an October 2004 press conference at Harvard where NOAA emailed him talking points that stated there is “no strong evidence for a trend in Atlantic hurricanes.”

Later in 2005, the Scientific Program Committee for the Seventh International Carbon Dioxide Conference (September 25-30) – composed of international scientists and chaired by Dr. Pieter Tans from NOAA’s Boulder lab – had prepared a special opening session on energy use and the carbon cycle. According to Tans, the Boulder lab director, Dr. David Hofmann told him it should be cancelled due to its “policy implications.”<sup>307</sup> According to one source, and corroborated by the FOIA record, agencies that funded the conference, including NOAA’s then Climate Monitoring and Diagnostics Laboratory (now GMD), had stipulated the conference be restricted to carbon dioxide measurements and modeling rather than climate change and climate modeling.<sup>308</sup> Tans’ determination to highlight the dominant role that his research suggested carbon dioxide plays as a “forcing agent” in climate change was met with opposition on a number of fronts. His draft abstract, asserting that “CO<sub>2</sub> is now generally recognized to be the main driver of climate change” was edited down and there was an attempt to

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<sup>303</sup> Email From: David Evans; To: Jana Goldman; Date: July 9, 2002; Subject: NOAA research-Air quality and Climate Topic of Goodrich Presentation *GAP August 9, 2006, part 3 NOAA FOIA response pg 112.*

<sup>304</sup> Tom Knutson, interview with Maassarani (April 13, 2006) *record on file with GAP.*

<sup>305</sup> Email From: Jennifer Sprague; To: Ahsha Tribble; Date: June 17, 2005; Subject: Upcoming AMS Seminar (From Tony Socci and Gina Eosco) – “New Orleans, Hurricanes and Climate Change: A Question of Resiliency” – Monday, June 20, 2005 *on file with GAP.*

<sup>306</sup> Tom Knutson, interview with Maassarani (April 13, 2006) *record on file with GAP.*

<sup>307</sup> Pieter Tans, interview with Maassarani (March 9, 2006) *record on file with GAP.*

<sup>308</sup> Anonymous NOAA director, interview with Maassarani (June 1, 2006) *record on file with GAP;* Email From: Jana Goldman; To: Rori Marston; Date: February 17, 2006; Subject: Hofmann distillation re: tans *GAP August 9, 2006, part 3 NOAA FOIA response pg. 650.*

remove all mention of the words “climate change” in any presentation title of the poster displays and oral presentations at the conference.<sup>309</sup>

According to Dr. Tans, it only became clearer several months later – when he was told by his director and subsequently by the deputy director – that anything dealing with climate change had to be pre-approved at the White House level, including his laboratory’s website content.<sup>310</sup> “It is probably for this reason that the webmaster for the conference had been ordered by the lab’s director to remove any links coupling climate change to CO<sub>2</sub> increase, and NOAA curtailed the ability of participants to submit material for posting on the conference website.” Indeed, while 450 scientists convened on a subject of great contemporary importance, the conference remained largely outside of the public view. As Tans perceived it, several months before the conference, Jana Goldman of Public Affairs had drawn up an ambitious media plan, but nothing much actually happened after that.<sup>311</sup> A press conference had been scheduled on the first day of the conference, for which only a few local newspapers showed up. When Tans later asked a number of journalists, including reporters from *The New York Times*, *Washington Post*, and *Wall Street Journal*, about the conference, none could remember having been notified.<sup>312</sup>

### On the World Wide Web

The internet is growing as one of the most accessible and widely-used sources of public information. Indeed, NOAA registered more than a billion hits in 2004 and hosted 3.9 million unique users during the height of Hurricane Katrina.<sup>313</sup> It is thus a concern that the carbon dioxide conference does not represent the only example of political control over internet content. Online announcements or media advisories are often derived from the same press releases that require high-level review and clearance – as demonstrated by an email from OPCIA Director Jordan St. John stating, “This was the CEQ-approved release that went on the NOAA web site earlier this week.”<sup>314</sup> As early as July 2001, the FOIA record shows one GFDL research meteorologist complain to public affairs on behalf of the laboratory:<sup>315</sup>

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<sup>309</sup> Pieter Tans, interview with Maassarani (March 9, 2006) *record on file with GAP*.

<sup>310</sup> Pieter Tans, interview with Maassarani (March 9, 2006) *record on file with GAP*. Perhaps this is why, around the same time, it appears to have taken over six weeks for Dr. Feely to obtain clearance to participate in an American Meteorological Society science seminar series on Capitol Hill dealing with CO<sub>2</sub> concentrations and changes in ocean acidity. Email From: Feely; To: Dennis Moore, Eddie Bernard; Date: September 30, 2005 *Thacker complete NOAA FOIA response pg. 114-16*.

<sup>311</sup> Note: GAP’s FOIA request for “Any documents and communications concerning the press releases and other publicity materials prepared by NOAA public affairs for the 7<sup>th</sup> International Carbon Dioxide Conference in 2005” received no responses.

<sup>312</sup> Pieter Tans, interview with Maassarani (March 9, 2006) *record on file with GAP*. David Shukman of the *BBC* also told GAP that he had not been directly notified. Communications with Maassarani (October 24, 2006) *record on file with GAP*.

<sup>313</sup> Josh Belzman, “Online, but under the radar,” *MSNBC* (September 24, 2005).

<sup>314</sup> Paul D. Thacker, “Bush’s climate-controlled White House,” *Salon.com* (September 19, 2006).

<sup>315</sup> Email From: Keith Dixon; To : Jana Goldman; Date: July 26, 2001; Subject: GFDL Web Info *GAP August 9, 2006, part 3 NOAA FOIA response pg 73-74*.

we were dismayed to see that the NOAA web pages have a link to “Greenhouse Warming Links” that directs one to <http://www.noaa.gov/greenhouse.html>.... and that GFDL is not listed on this page. If someone from the press (or government or a student or interested taxpayer) goes to [the site] thinking he/she will find out what NOAA is doing in relation to the greenhouse warming issue, I do not feel that that page is up to the task. Would you happen to know who is in charge of that page, so that we might lobby to get a link added....?

It took a long time for the website to begin openly reflecting sensitive science. A September 28, 2005, email by this same scientist is illustrative.<sup>316</sup>

Perhaps you too will be pleasantly surprised when you see the link on the main NOAA web page to <http://www.noaanews.noaa.gov/stories2005/s2512.htm>...

For me, it was encouraging to see NOAA actually highlight something related to GHGs [greenhouse gases], and to do so without over-emphasizing uncertainties.

Note the words “scientifically unambiguous” appear in the text. Imagine that!

It includes a quote from the NOAA/CMDL director that refers to “the success or failure of future efforts to curb carbon dioxide and other greenhouse gas increases” (yes... natural and human-engineered processes are given equal weight in the statement, but hey, it’s still more than I would have expected.)

Also, the authors went out of their way to include the K-word Kyoto! in order to explain why the reference year is 1990. It would not have been hard to omit that bit of info. since I’m not sure that the reason for why a particular year is a reference year is so important [as] to merit inclusion in a short piece such as this. So it suggests to me that either very little editing was done [sic] with an eye towards not potentially offending greenhouse contrarians and their comrades –or– someone managed to successfully fight back such efforts.

So anyway, I took this as an encouraging sign that GHG-relate [sic] stuff can find its way onto the NOAA radar screen. Sure, it may not get the coverage of runaway dolphins, whales trapped in fishing lines, or surveys of Civil War era ironclad wrecks, but it’s something!

The last sentence was a reference to the fact, as reported by Josh Belzman of *MSNBC*, that NOAA.gov featured an August 24 story about “how the agency’s historians had debunked a 142-year-old Civil War legend involving a cannon and a cat” at the time that Katrina strengthened into a Category 5 monster and local and federal officials pleaded with Gulf Coast.<sup>317</sup> A few weeks later, while Hurricane Rita threatened the coast

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<sup>316</sup> Email From: Keith Dixon; To: John Sheldon, Brian Gross, Tom Delworth, et al.; Date: September 28, 2005; Subject: Pleasantly surprised by NOAA’s web page *GAP August 9, 2006, part 3 NOAA FOIA response pg 352*.

<sup>317</sup> Josh Belzman, “Online, but under the radar,” *MSNBC* (September 24, 2005).

and website traffic increased four-fold, the homepage's top story was the rescue of four dolphins that Katrina had washed into the Mississippi River. At the time, "the storm topping NOAA's National Hurricane Center web site was Tropical Storm Philippe, a small system forecast to bypass the United States by more than 1,000 miles."

Even when sensitive science makes it up onto NOAA's website, it is often not without delay. For instance, a website on abrupt climate change created by the NOAA Paleodata Center in 2004 was briefly delayed on account of "White House concern about the subject's political sensitivity and the timing of the site launch on the same day as the movie 'The Day After Tomorrow,'" according to sources familiar with the website.<sup>318</sup> According to *Greenwire*:<sup>319</sup>

Mark McCaffrey, a NOAA science communications specialist and lead author of the site, said the site was originally scheduled to go live early last week, but on Wednesday McCaffrey said it had been placed on an "indefinite hold" by higher-ranking officials within the Bush administration. When contacted yesterday, however, McCaffrey said the hold had been lifted. One official familiar with the project said officials decided to put the site up following media inquiries from *Greenwire* and other outlets.<sup>320</sup>

NOAA is not alone.<sup>321</sup> Without explanation, the State Department "retired" the Climate Change section of its "Global Issues" web page, which had provided current news about the issue. According to Rick Piltz, "there was no explanation, so we can only speculate as to why this was done, but it is worth noting that the second to last story posted was entitled 'Global Warming Topped Natural Cycles in Fueling 2005 Hurricanes.'"<sup>322</sup> Moreover, the EPA websites dealing with Global Warming and the Global Change Research Program, actively updated prior to 2002, saw few if any updates thereafter. Piltz noted a few examples:<sup>323</sup>

On the "About the Site" page, there is no mention of the U.S. Climate Change Science Program, which since 2002 has been the name of the program through which EPA and other federal agencies coordinate their climate and global change research.

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<sup>318</sup> Andrew Freedman, "Proposed budget cuts would eliminate abrupt climate change program," *Greenwire* (June 3, 2004); "NOAA website goes online following administrative delay," *Greenwire* (May 28, 2004).

<sup>319</sup> "NOAA website goes online following administrative delay," *Greenwire* (May 28, 2004).

<sup>320</sup> In Grist, "The Day After Tomorrow Never Dies," (June 3, 2004), McCaffrey adds "Whatever source of authority imposed the delay had a change of heart. As a media storm gathered around the film and NOAA was hit with repeated inquiries about the abrupt-climate-change website rumored to be in development, the agency finally got the green light from above."

<sup>321</sup> 23% and 22% of UCS survey respondents, respectively, perceived or experienced "[d]isappearance/unusual delay in the release of websites, press releases, reports, or other science-based materials." Survey of Federal Climate Scientists, UCS Scientific Integrity Program (2006) question #22.

<sup>322</sup> Rick Piltz, "The State Department's disappearing Climate Change web page," *ClimateScienceWatch.org* (July 10, 2006).

<sup>323</sup> Rick Piltz, "EPA's global warming communication problem – 2. Censored websites," *ClimateScienceWatch.org* (June 28, 2006).

On the "Publications" page, essentially all publications listed are from the 1989-2001 period. The sole exception appears to be the May 2002 U.S. *Climate Action Report* to the Framework Convention on Climate Change.

On the "News and Events -- Speeches" page, the most recent statement by an EPA official is by former administrator Christie Whitman in February 2003.

On the "News and Events -- Inside the Greenhouse" page, billed as "a state and local resource on global warming," the last entry is dated summer 2002.

Since Piltz' June 28, 2006 posting, the EPA, in collaboration with other federal agencies has resurrected and updated the site – renaming it the "Climate Change" website – according to an October 16, 2006, EPA press release. Although the website has substantial new material, the former CCSP official continues to raise a number of contentions. First, the website "cherry picks" quotes from the 2001 National Research Council report (*Climate Change Science: An Analysis of Some Key Questions*) that was commissioned by the White House – extracting those parts that tend "to create an enhanced sense of scientific uncertainty." Second, the site remains outdated, relying heavily on the IPCC Third Assessment Report (2001) at the expense of 5-6 years of more recent research – much of it supported by the CCSP.<sup>324</sup> Third, the website continues to make little reference to or use of the U.S. *National Assessment* and the "Impacts and Adaptations" chapter of the U.S. *Climate Action Report*. Referring specifically to the website's "State of Knowledge" page, Mahlman asserts that certain statements range from being "scientifically incorrect" to seeming "to have been written by a non-scientist..."<sup>325</sup> Furthermore, two sources have recently notified us that Michael Catanzaro, a new communications officer from the White House, has been "monkeying" with the website, changing both content and font.<sup>326</sup>

In spite of this, the EPA website represents a vast improvement when compared to the EPA Global Change Research Program website, which has not seen any signs of revitalization since the fall of 2002 (though it states it is updated daily). As Piltz points out:<sup>327</sup>

Look at the "News Reel" trailer on the home page -- it refers to a report on a workshop on climate change and water quality in the Great Lakes region that is dated August 2003! And that appears to be just about the only noticeable addition to the site since October 2002, e.g., on the Research Projects page, the Publications and Presentations page, and the Newsletters page. Between 1999 and

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<sup>324</sup> The first sentence of the EPA news release announcing the unveiling of the revamped website says that its purpose is "to provide the public with the most up-to-date information on climate change."

<sup>325</sup> Jerry Mahlman, communications with Maassarani (Oct. 31, 2006) *record on file with GAP*.

<sup>326</sup> Anonymous EPA scientist, interview with Maassarani (March 3, 2007) *record on file with GAP*; Anonymous government official, communications with Maassarani (March 1, 2007) *record on file with GAP*.

<sup>327</sup> Rick Piltz, "EPA's global warming communication problem – 2. Censored websites," *ClimateScienceWatch.org* (June 28, 2006).

2001 the EPA program put out 37 issues of Global Change Research News -- but none since 2001.<sup>328</sup>

### Mission Statements

Mission statements hold out the essence of an agency's function to the public and provide guidance for an agency with its own goals and objectives. On February 6, 2006, the Bush administration removed the phrase "To understand and protect our home planet" from the NASA mission statement in the budget and planning documents submitted to Congress.<sup>329</sup> David Steitz, NASA spokesman, says that it was "pure coincidence" that James Hansen repeatedly used the phrase during the controversy over his being "muzzled" in the months prior but, according to *The New York Times*, Hansen suggested that the White House ordered the change to "shift the spotlight from global warming."

Unlike the deliberative process that added the line to the mission statement in 2002 – seen as appropriate due to NASA's increased involvement in environmental monitoring since its inception in 1958 – in this case NASA researchers were neither informed nor consulted ahead of time. According to Andrew Revkin, "the shift in language echoes a shift in the agency's budgets toward space projects and away from earth missions, a shift that began in 2004 – the year Mr. Bush announced his vision of human missions to the Moon and beyond."<sup>330</sup> One anonymous scientist from NASA stated, "I view the removal of this mission directive as retaliation. Because of the importance of the mission statement in justifying individual research, the removal of this from the NASA mission statement will be very effective at reducing NASA climate research."<sup>331</sup> Another GISS scientist has noted that re-naming the research mission from Earth Systems research to Earth-Sun system has had a "huge and demoralizing impact" and that she has been in many meetings where scientists are urged to repackage their whole research programs in terms of the new nomenclature and buzzwords.<sup>332</sup>

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<sup>328</sup> Piltz goes on to state:

The EPA Global Change Research Program has a \$20 million annual budget to contribute to the overall U.S. Climate Change Science Program with a "primary emphasis on evaluating the potential consequences of global change (particularly climate variability and change) on air quality, water quality, ecosystems, and human health in the United States." In the CCSP reports to Congress on research activities in 2003 (pp. 113-115) and 2004-2005, EPA listed numerous global change research projects underway and reports to be published on these topics. But on the EPA global change program website we look in vain for publications, or even current project descriptions, since 2002 that would document the progress and results of this research agenda.

<sup>329</sup> Andrew Revkin, "NASA's Goals Delete Mention of Home Planet," *The New York Times* (July 22, 2006). See also Letter From: Collins, Lieberman; To: Griffin; Date: July 31, 2006 on file with GAP.

<sup>330</sup> Revkin reports that in December 2004, a NASA Jet Propulsion Laboratory scientist "had been pressured to say in a news release that his oceanic research would help advance the administration's goal of space exploration."

<sup>331</sup> Survey of Federal Climate Scientists, UCS Scientific Integrity Program (2006) NOAA commentary.

<sup>332</sup> Anonymous scientist, interview with Jennifer Freeman (June 27, 2006) record on file with GAP.

Nonetheless, not all scientists necessarily give in. The above-quoted scientist has ignored the changes. A USDA climate scientist adds:<sup>333</sup>

In general, climate change science is continuing at government agencies, and I believe we continue our world-recognized pre-eminence that we had in the 1990's. However, much of our work continues more clandestinely as we've had to amend our project titles and descriptions to get rid of key buzzwords that are not focused by the current Bush administration. For example, our new project plans no longer mention our ??? [sic] carbon budget studies in project plan tasks, even though individual scientists labs are continuing their work in this area.

The most pervasive such linguistic shifts was best captured by an interview request from an "On Language" columnist for *The New York Times Magazine* who, according to Kent Laborde at the NOAA PAO, wondered why the term "global warming" had migrated to "climate change" in the past few years and whether there is "a technical/scientific difference or is it a semantic issue that one sounds better than the other?"<sup>334</sup> The request was forwarded to Ahsha Tribble who asks NOAA Deputy Administrator Mahoney to handle the interview, leading Mahoney and Laborde to discuss:

A question for Kent: has this been reviewed by our EOP [Executive Office of the President] colleagues?

I've not spoken with them yet. It seems like the explanation of the word changes could be done without the jeopardy of having to explain policy decisions. I can make a call to CEQ to get their approval on this if you would like.

Kent – Yes, it is necessary to have EOP on board. The two terms are policy-laden, and were developed by specific interests.... If we're agreeable with EOP, I can do a phone interview tomorrow morning from home.

### **A Note on Interference with Scientific Research**

We reiterate that none of our investigation's primary sources experienced or perceived direct interference with their research. Nonetheless, anonymous surveys have uncovered incidents and trends of note. Consider, for example, the over 21% of climate scientist survey respondents that believed federal climate research was not independent and impartial.<sup>335</sup> When sampling from NOAA scientists generally, not just in the field of climate science, UCS found that 53% of 460 NOAA scientists say they know of cases in which commercial interests have induced reversal or withdrawal of scientific conclusions through political intervention.<sup>336</sup> Keep in mind that general survey encompassed agency

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<sup>333</sup> Survey of Federal Climate Scientists, UCS Scientific Integrity Program (2006) USDA commentary.

<sup>334</sup> Email From: Mahoney; To: Ahsha Tribble, Kent Laborde; Date: July 26, 2005; Subject: [redacted] interview request *Thacker complete FOIA response pg. 55, 63-64.*

<sup>335</sup> Survey of Federal Climate Scientists, UCS Scientific Integrity Program (2006) question #7.

<sup>336</sup> 58% know of cases in which administrators or appointees have altered NOAA Fisheries' determinations.

divisions such as the National Marine Fisheries Service, which have regulatory functions that are more attractive to political influences.

The UCS climate science survey suggests that interference with research has been internalized due to the political climate and perhaps the signals that experienced and perceived interference with communications has sent. For example, 31% of respondents either experienced or perceived “Self-induced pressure to change research or reporting in order to align findings with agency policy or to avoid controversy” as well as “Fear of retaliation for openly expressing concerns about climate change inside my agency.”<sup>337</sup> Indeed, one EPA scientist commented that the former “is the biggest issue for our program. This is followed by bureaucratic [barriers] to communication via websites.”<sup>338</sup> Sixteen percent of climate scientists surveyed perceived or experienced an “Implicit expectation by officials for scientists to provide incomplete, inaccurate, or misleading information to the public.” Twenty-five percent perceived or experienced “Situations in which scientists have actively objected to, resigned from, or removed themselves from a project because of pressure to change scientific findings.”<sup>339</sup>

According to an EPA scientist, “The perception that something that we (climate scientists) might find and write might be considered controversial is a strong one that comes down from management. It’s not clear that there’s a real reason for it or what the consequences would be. This perception should be actively discouraged from the highest levels!”<sup>340</sup>

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Forwarding the AP news story that mentions this statistic to colleagues, a GFDL scientist asks, “But that could never happen here, right?” Email From: John Sheldon; To: Brian Gross, Keith Dixon, John Lanzante, Steve Gamer; Date: June 29, 2005; Subject: NOAA Scientists Say Reports Altered *GAP August 9, 2006, part 3 NOAA FOIA response pg 289*; Jeff Barnard, “NOAA Scientists Say Reports Altered,” *Associated Press* (June 29, 2006).

<sup>337</sup> Survey of Federal Climate Scientists, UCS Scientific Integrity Program (2006) question #23, 24.

<sup>338</sup> Survey of Federal Climate Scientists, UCS Scientific Integrity Program (2006) EPA commentary.

<sup>339</sup> Survey of Federal Climate Scientists, UCS Scientific Integrity Program (2006) question # 31.

<sup>340</sup> Survey of Federal Climate Scientists, UCS Scientific Integrity Program (2006) EPA commentary.

## AGENCY MISREPRESENTATION

Viewed in its totality, interference with media, congressional, and public communications of science results in a misrepresentation of science by the relevant agencies and the White House.<sup>341</sup> To illustrate this effect, we will explore how NOAA represented the science on all fronts regarding the climate change and cyclonic activity after the landfall of Hurricane Katrina. We take no position on the science itself and proceed from the premise that debate on an unsettled area of science should be represented fairly and openly to all aspects of the public.

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<sup>341</sup> Consider also statements from the chief executive that are sorely misaligned with his agencies' basic scientific understandings. In response to a question about global warming at a March 29, 2006 press briefing, the President stated, "Well, first of all, the globe is warming—the fundamental debate, is it manmade or natural?" *available at* <http://www.whitehouse.gov/news/releases/2006/03/20060329-6.html> (last visited on March 23, 2007). More recently, Cheney echoed Bush in an exclusive February 23, 2007, interview with ABC, "Cheney on Global Warming: Vice President's Views at Odds with the Majority of Climate Scientists" *available at* <http://abcnews.go.com/Technology/story?id=2898539&page=1> (last visited on March 23, 2007). In February 7, 2007, web posting, OSTP's Marburger and CEQ's Connaughton reaffirmed a statement by White House Press Secretary Tony Snow that the U.S. was doing better than Europe in reducing its greenhouse gas emissions. Their "Open Letter on the President's Position on Climate Change," claimed that:

our emissions performance since 2000 is among the best in the world. According to the International Energy Agency, from 2000-2004, as our population increased and our economy grew by nearly 10%, U.S. carbon dioxide emissions increased by only 1.7%. During the same period, European Union carbon dioxide emissions grew by 5%, with lower economic growth.

However, this data was carefully selected to support the administration's statement. As Peter Gleick notes:

When *any year other than 2000* is selected as the base year, the performance of the European Union is better than the United States, and over the entire period from 1990 to 2004, the difference is stark. During those 15 years, U.S. greenhouse gas emissions grew more than 15% while emissions from the 15 countries of the European Union (the EU-15) declined by around 1%. Moreover, calculating the index of emissions for any set of years between 1990 and 2004 other than 2000-2004, European greenhouse gas emissions either grew more slowly than U.S. emissions or actually declined.

Peter Gleick, "The Political and Selective Use of Data: Cherry-Picking Climate Data in the White House" (March 12, 2007) *on file with GAP*. The White House is not the only source of scientific misrepresentation. In defending against a lawsuit filed by Friends of the Earth et al. against the Export-Import Bank and the Overseas Private Investment Corporation for providing financial assistance to oil and other fossil fuel projects without first evaluating their global warming impacts, the Department of Justice turned to outspoken global warming skeptic Dr. David Legates, director of the Center for Climatic Research at the University of Delaware, for expert opinion. Writing the science brief for the plaintiffs was Dr. MacCracken, a former scientist for the official U.S. Global Change Research Program, who relied on conclusions of the government-supported US National Assessment and IPCC. "Global Warming Skeptic Argues U.S. Position in Suit," *Science* (April 22, 2005) *available at* <http://www.heatisonline.org/contentserver/objecthandlers/index.cfm?id=5172&method=full> (last visited on March 23, 2007). 23% and 18% of UCS survey respondents, respectively, perceived or experienced "[s]tatements by officials at [their] agency that misrepresent[ed] scientists' findings." Survey of Federal Climate Scientists, UCS Scientific Integrity Program (2006) question # 29.

## Media Contact Favoritism

It appears that initially – in the media storm that followed Katrina – a scientist such as Tom Knutson freely conducted interviews on the relationship of hurricanes to global warming provided they gave notice and recap to their PAO.<sup>342</sup> Soon, however, Department of Commerce officials, whose approval was required, became hesitant about anyone speaking to the media on the subject.<sup>343</sup> This included scientists such as Dr. Chris Landsea and meteorologist Max Mayfield, director of the National Hurricane Center, who were outspoken proponents of natural variability being the only significant explanation for the recent upswing in hurricane activity.<sup>344</sup> These were then the first scientists to obtain re-approval. On September 23, 2005, OPCIA Director Jordan St. John forwarded Chuck Fuqua, Deputy Director of Communications at the Department of Commerce, one such media request, explaining: “This is like many of the other. Landsea will talk about the 20-30 natural cycle as the cause and wave off the climate connection as he has in a score of other interviews like this.” Fuqua approves, saying, “okay on this one. Please be careful and make sure Chris is on his toes. Since [redacted] went off the menu, I’m a little nervous on this one, but trust he’ll hold the course.”<sup>345</sup>

On the morning of October 16, 2005, Knutson received a request to appear on the CNBC show “On the Money.”<sup>346</sup> Knutson called the PAO for approval. FOIA emails track how Kent Laborde forwarded the request to Chuck Fuqua, who responded, “what is Knutson’s position on global warming vs. decadal cycles? Is he consistent with Bell and

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<sup>342</sup> Email From: Knutson; To: Laborde; Date: Sept. 8, 2005; Subject: recent media contacts *Thacker complete FOIA response pg. 91-93*; Email From: Knutson; To: Goldman, Laborde; Date: September 12, 2005; Subject: reporter contacts *Thacker complete FOIA response pg. 94*; Email From: Knutson; To: Goldman; Date: September 15, 2005; Subject: [redacted] interview request *Thacker complete FOIA response pg. 95*.

<sup>343</sup> Email From: Catherine Trinh; To: Smullen; Date: Sept. 19, 2005; Subject: Landsea for [redacted] 9-19 *Thacker complete FOIA response pg.96-98*. This email string also suggests that CEQ was involved in clearance decisions.

<sup>344</sup> Email From: Smullen; To: Trinh; Date: Sept. 21, 2005; Subject: #2 *Thacker complete FOIA response pg. 105-06*; *Thacker NOAA FOIA summary pg. 3-4, 8*. A September 28, 2005, email from a DOC senior policy analyst Chris Scheve to Jennifer Sprague affirms that scientific perspectives were indeed at stake. The email states: “Here is the thing I referenced from Kerry Emanuel. While the first line is good, the rest of it is definitely a different perspective than what Landsea has been saying.” Subject: Kerry Emanuel *GAP August 9, 2006 part 2 NOAA FOIA pg. 61*.

<sup>345</sup> Email From: St. John; To: Fuqua; Date: Sept. 23, 2006; Subject: R-3 [redacted] hurricanes-cause-climate change *Thacker NOAA FOIA response pg. 6-7*. Later that afternoon, St. John proposes tracking down Landsea to answer a request “for a NOAA scientists to discuss links between climate change and hurricanes” and obtains immediate approval from Fuqua. Email From: St. John; To: Fuqua; Date: Sept. 23, 2005; Subject: R-5 9-23 [redacted] hurricanes and CC-Goldman *Thacker complete FOIA response pg. 111-12*. Around this time, two email subject lines requesting clearance from DOC read: “clearance #[], g. warming not causing intense hurricanes...” *Thacker complete FOIA response pg. 96-99*.

<sup>346</sup> Tom Knutson, interview with Maassarani (April 13, 2006) *record on file with GAP*; Antonio Regalado and Jim Carlton, “Statement Acknowledges Some Government Scientists See Link to Global Warming,” *Wall Street Journal* (February 16, 2006); and Clayton Sandell, “Government Accused of Censorship Over Global Warming E-Mails Suggest Officials Stopped Scientist From Talking About Global Warming,” *ABC News* (September 20, 2006).

Landsea?”<sup>347</sup> Knutson remembers that Laborde soon called back to question Knutson about what he planned to say – especially with regard to any trends in hurricane activity – and “supplied a guarded response.” Laborde then wrote to Fuqua “that he is consistent, but a bit of a different animal. He isn’t on the meteorological side. He’s purely a numerical modeler. He takes existing data from observation and projects forward. His take is that even with worse case projections of green house gas concentrations, there will be a very small increase in hurricane intensity that won’t be realized until almost 100 years from now.” Two minutes later Fuqua responded, “Why can’t we have one of the other guys on then?” Laborde answers: “Bell is unavailable because of other commitments and Landsea is busy at the hurricane center with Wilma.” Knutson soon received a voicemail notifying him that the interview had been rejected.

Fuqua seems to have been quite busy at this time. In an email to Kent Laborde regarding a media request for Landsea to appear on NewsHour With Jim Lehrer two days later, he writes:<sup>348</sup>

please make sure Chris is on message and that it is a friendly discussion. I don’t want our people in a precarious position or subject to an ugly scene. I’m not completely comfortable with this, but feel its better than him not going on. I need a report on how it goes. Thanks.

Also, the interview you reference was done without our knowledge and I trust that won’t happen again. Thanks.

On October 19 – with Hurricane Wilma measuring in as the strongest cyclone to have hit the Atlantic Basin – Fuqua blankly rejects a request for an interview with Landsea on “why so many Cat..5s/global warming?” by the *Orlando Sentinel*.<sup>349</sup> He explains, “I’d prefer that we not do this while dealing with a hurricane coming at us,” but it is unclear what other work the DOC PAO would have to do at this time.

Soon thereafter DOC began granting Landsea immediate approvals, and the NOAA PAO automatically steered reporters towards Landsea when hurricane-climate change inquiries came in.<sup>350</sup> This occurred even when another scientist was specifically

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<sup>347</sup> Email From: Fuqua; To: Laborde; Date: Oct. 19, 2005; Subject: media request for tonight with Knutson *Thacker complete NOAA FOIA pg. 120, 122, 131-32, 135-36.*

<sup>348</sup> Email From: Fuqua; To: Laborde; Date: Oct. 19, 2005; Subject: on Lehrer request... kent labored will [redacted?] *Thacker complete NOAA FOIA pg. 121, 124.* Originally, Fuqua had required the interview, which involved another scientist who did not share Landsea’s views, to go “back-to-back.”

<sup>349</sup> Email From: Fuqua; To: Laborde; Date: Oct. 19, 2005; Subject: climate/hurricane interview request *GAP August 9, 2006, part 3 NOAA FOIA response pg 392.* It is possible that public relations officials with no scientific background such as Chuck Fuqua did not immediately grasp the distinction in scientific perspectives. *Cf.* Email From: Trinh; To: Smullen; Date: Sept. 20, 2005; clearance #7 – global dimming papers – science for Dutton 9-10 *Thacker complete NOAA FOIA response pg. 102-04.*

<sup>350</sup> *E.g.*, email From: Trinh; To: Laborde; Date: Oct. 27, 2005; Subject: #4 hurricanes media inquiry *Thacker complete NOAA FOIA response pg. 142*; Email From: Goldman; To: Laborde; Date: Oct. 19, 2005; Subject: hurricanes and global warming *Thacker complete NOAA FOIA response pg. 137*; Email From: Fuqua; To: Laborde; Date: Oct. 19, 2005; Subject: climate/hurricane interview request *GAP August 9, 2006, part 3 NOAA FOIA response pg 392*; Email From: David Miller; To: St. John, Smullen, Laborde;

requested. After Emanuel publicly charged NOAA with gagging its scientists, the *Providence Journal* tried to arrange an interview with Tom Knutson. Reporter Peter Lord writes:<sup>351</sup>

Calls to NOAA's public-affairs office led to Kent Laborde, who was described as the public-affairs person who focuses on climate-change issues.

Laborde made it clear that the NOAA has discounted the research tying global warming to worsening hurricanes.

“What we've found is, if you look at a couple segments of science, observational or modeling, there is no illustrated link between climate change and hurricane intensity,” Laborde said. “We actually have periods of intensity followed by periods of lower intensity. We have evidence of periods going back to the 1930s. It follows a clear pattern.”

Laborde was asked if he would approve an interview with Knutson.

“What is the topic?” he asked.

“Emanuel's theories linking climate change to worsening hurricanes.”

“Chris Landsea would be better. He's an observational scientist,” Laborde said.

Furthermore, at least one scientist seems to have recognized the agency's preferences. In a November 17 recap, Hurricane Research Division meteorologist Dr. Stanley Goldenberg emphasizes, “the interview went well & dealt w/ the reasons for the busy season, climate fluctuations, global warming NOT being the primary reason for the activity, etc.”<sup>352</sup> Indeed, Goldenberg was recommended for future interviews. In a November 28 email, Tom Hayden from National Geographic requests interviews with “some of the guys at HRD” while he is in Miami. OPCIA head St. John asks Goldman, “any of them climate experts as far as the long term activie/less [sic] active cycles?” Goldman responds “Stan Goldenberg is one of the main authors on the 2001 paper in *Science* that says we are in a natural cycle of more active hurricanes.”<sup>353</sup>

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Date: Nov. 4, 2005; Subject: [redacted] Global Climate Change & Impact on hurricane frequency *Thacker complete NOAA FOIA summary pg. 145-46.*

<sup>351</sup> Peter B. Lord, “Hurricanes are getting worse because of global warming,” *Providence Journal* (March 26, 2006).

<sup>352</sup> Email From: Stanley Goldenberg; To: Jana Goldman; Date: November 17, 2005; Subject: Media Update: Ada Monzon -- Univision Puerto Rico *GAP August 9, 2006, part 3 NOAA FOIA response pg. 503.*

<sup>353</sup> Email From: Goldman; To: St. John, Smullen, David P. Miller; Date: November 28, 2005; Subject: media request from [redacted] *GAP August 9, 2006, part 3 NOAA FOIA response pg. 516.* Goldenberg also expresses no concerns about political interference stating that “some of us NOAA scientists who are considered the experts on hurricane climate variability do not in any degree feel that we are being hindered in any way from honestly looking at and analyzing the data – arriving at what we feel are the appropriate conclusions based on the science as we know it.” Email From: Stanley Goldenberg; To: Jana Goldman; Date: March 28, 2006; Subject: Talking points concerning GW/Natural Variability and Hurricanes *GAP August 9, 2006, part 3 NOAA FOIA response pg. 720-21*

Media contact favoritism can create the impression of an agency consensus in the hurricane-climate change debate; however even prior to Hurricane Katrina this false consensus was made explicit. Shortly after resigning from the IPCC in protest over the “critical problem with the IPCC process,” Dr. Christopher Landsea forwarded a media request that he had received from a French source to Goldman.<sup>354</sup> Goldman then asked Landsea and the PAO headquarters to review a draft response claiming that “NOAA supports the view that there is no verifiable link between observed climate change and the intensity and frequency of the most recent Atlantic hurricane season.”<sup>355</sup> From the FOIA record, only Landsea responds: “I think your response looks fine.... There have no papers (NOAA or other folks) that have made any link between today’s hurricane activity and observed global warming.” This was less than five months after GFDL researcher Tom Knutson published his work on the impacts of CO<sub>2</sub>-induced warming on simulated hurricane intensity and precipitation.

### Press Conferences and Congressional Hearings

At the November 29, 2005, press conference marking the end of hurricane season, Drs. Max Mayfield and Gerry Bell were present to answer reporters’ questions on NOAA’s behalf. As director of the Tropical Prediction Center/National Hurricane Center (NHC) and founding meteorologist of NOAA’s seasonal Atlantic hurricane outlooks respectively, this line up was not, in itself, inappropriate. On the other hand, the NHC and the Climate Prediction Center, where Bell is stationed, fall under the National Weather Service and deal primarily with short-term climate variability and forecasting. Thus, neither scientist was a specialist in long-term climate dynamics; nonetheless they fielded all inquiries concerning global warming and hurricanes. Indeed, one NOAA official noted in an email that “Max won’t believe the research until it is unanimous.”<sup>356</sup>

As reported in the *New Republic*, when asked about recent reports at the press conference that “global warming may have been responsible for the intensity of the storms,” Bell states categorically “we see absolutely no indication whatsoever that greenhouse warming is causing any of it.” Instead the storms’ intensity was “part of the multi-decadal signal that we see. It’s not related to greenhouse warming.”<sup>357</sup> Officially representing NOAA in interviews or speeches in the fall of 2005, this same position has

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<sup>354</sup> Email From: [Redacted], To: Peter Ortner, Judy Gray, Grank Marks, Evan Forde, Jana Goldman, Date: January 19, 05, Subject: Hurricanes, Global Warming and the IPCC *Thacker complete NOAA FOIA response pg. 2*; Email From: Landsea, To: Jana Goldman, Date: February 9, 2005, Subject: IPCC *Thacker complete NOAA FOIA response pg.5-7*.

<sup>355</sup> *Ibid.*

<sup>356</sup> Email From: Webster; To: Rayder; Date: June 1, 2006 *GAP NOAA August 9, 2006, part 1 NOAA FOIA response pg. 363-367*.

<sup>357</sup> John Judis, “The Government’s Junk Science,” *The New Republic* (November 2, 2006). One of our sources has noted that NOAA had never before taken an official position on such a raging scientific controversy.

been put forward by Mayfield on CBS's "Face the Nation" and by the NOAA Administrator at Weldon Springs, Missouri.<sup>358</sup>

Mayfield has also addressed the issue of climate change and hurricanes in front of Congress.<sup>359</sup> On September 20, 2005, Mayfield told the subcommittee of the Senate Commerce Committee that "The increased activity since 1995 is due to natural fluctuations and cycles of hurricane activity, driven by the Atlantic Ocean itself along with the atmosphere above it and not enhanced substantially by global warming." According to an email eight days before the hearing, the NOAA OAR's Legislative Analysis Team was working with Landsea to come up with answers to the "Global Warming Question" and connected with Jennifer Sprague to discuss it.<sup>360</sup> In early 2006, NOAA had developed an internal set of hurricane and climate change talking points – emphasizing natural variability – for congressional hearings.<sup>361</sup>

However, with the publication of a number of damaging news articles and Congressional attention building up to the summer of 2006, this position became untenable.<sup>362</sup> In a June 1 email response to the House Subcommittee on Environment, Technology and Standards staff director pointing to the leaked talking points, head of legislative affairs Eric Webster writes: "I personally put [mention of an ongoing debate] in the last couple of speeches for the Admiral, put it in Max Mayfield's written and oral statements."<sup>363</sup> A June 5 email shows Jennifer Sprague updating General Johnson's scheduled July 7 oral testimony "to reflect the ongoing debate on hurricanes and climate change and will be sending to Ahsha for her thoughts."<sup>364</sup>

## Websites

In the November 2005 posting of NOAA Magazine Online, the headline story reads: "NOAA Attributes Recent Increase in Hurricane Activity to Naturally Occurring Multi-Decadal Climate Variability;" a later news item is entitled: "Consensus Among NOAA Hurricane Researchers and Forecasters."<sup>365</sup> In February, GFDL director Ants

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<sup>358</sup> Sometime toward the end of 2005, Lautenbacher was personally provided with a PowerPoint by GFDL scientists, outlining the current understanding of climate change effects on hurricanes and including Tom Knutson's research. *GAP August 9, 2006, part 3 NOAA FOIA undated response pg. 85-91.*

<sup>359</sup> Similarly, a March 30, 2006, email suggests that Dr. Landsea was also encouraged to attend a Hill briefing and was approved to attend without the typical requirement of a formal invitation. Email From: Landsea; To: Ferguson; Date: March 30, 2006; Subject: briefing on the Hill *GAP NOAA August 9, 2006, part 2 NOAA FOIA response pg. 82.*

<sup>360</sup> Email From: Lartigue; To: Sprague; Date: September 12, 2005; Subject: language to specific questions *GAP NOAA August 9, 2006, part 2 NOAA FOIA response pg. 52.*

<sup>361</sup> OAR Q&As (undated). *GAP August 9, 2006, part 3 NOAA FOIA response undated pg 26-75*

<sup>362</sup> Email From: Webster; To: Bagley; Date: May 22, 2006; Subject: the scientists oral presentation *GAP NOAA August 9, 2006, part 1 NOAA FOIA response pg. 293.*

<sup>363</sup> Email From: Webster; To: Rayder; Date: June 1, 2006 *GAP NOAA August 9, 2006, part 1 NOAA FOIA response pg. 363-367.*

<sup>364</sup> Email From: Webster; To: Sprague; Date: June 5, 2006 *GAP NOAA August 9, 2006, part 1 NOAA FOIA response pg. 368, see also 292.*

<sup>365</sup> Available at <http://www.magazine.noaa.gov/stories/mag184.htm> (last visited March 23, 2007). The news item references a sole paper by Christopher W. Landsea, Stanley B. Goldenberg, Alberto M. Mestas-Nunez, and William M. Gray.

Leetmaa expressed his disappointment to NOAA senior management over the media outcry that this incident had stirred up. “This is an embarrassment that NOAA could have easily avoided by inserting something like ‘impacts of global warming can not be precluded’ in the various press releases and Hill testimonies.”<sup>366</sup> A few GFDL scientists also began crafting a letter to Mahoney explaining their views on the subject and requesting that the posting be updated to “reflect a more complete view of the potential factors involved in the decadal scale changes in hurricane activity” or “more clearly state that this assessment is a view of a subset of research scientists within NOAA.”<sup>367</sup> Caught in the brewing controversy, Ahsha Tribble confided to Jennifer Sprague, Chris Scheve and Leah Harrelson of DOC, and NOAA Chief of Staff Scott Rayder, “what we are trying to say is that statement that was posted in the online NOAA Magazine was not an official NOAA position.... internally, we know that is was a statement drafted by public affairs that slipped through the system.”<sup>368</sup>

Soon enough a footnote disclaimer was added at the end of the on-line magazine explaining that:

The consensus in this on-line magazine story represents the views of some NOAA hurricane researchers and forecasters, but does not necessarily represent the views of all NOAA scientists. It was not the intention of this article to discount the presence of a human-induced global warming element or to attempt to claim that such an element is not present. There is a robust, on-going discussion on hurricanes and climate change with NOAA and the scientific community.

Nonetheless, on February 17, 2006, six GFDL scientists wrote to Spinrad of NOAA OAR saying that by leaving the body of the text unaltered, the disclaimer was not enough to overcome the public’s perception of a consensus position.<sup>369</sup> Spinrad responds that he will bring their message to the leadership at a set of meetings on the subject scheduled for that day.<sup>370</sup> As of March 22, 2007, the online posting had not changed.

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<sup>366</sup> From: Leetmaa; To: Koblinsky; CC: Mahoney, Rayder, Spinrad, Rosen, Atlas, Glackin; Date: February 12, 2006; Subject: Head’s up: NOAA in the news/New Republic article on hurricanes and global warming *Greenpeace NOAA FOIA response pg.14-30*. Dr. Leetmaa also warns that a similarly-misleading public denial of a climate change connection may arise “if significant droughts develop over the next year or so.”

<sup>367</sup> From: Delworth; To: Knutson; Date: February 13, 2006; Subject: Junk Science *Greenpeace NOAA FOIA response pg. 8-9*.

<sup>368</sup> Email From Webster; To: Tribble; Date: February 10, 2006; Subject: Q&As in preparation for the Dep Sec’s House Science Hearing *GAP July 31, 2006 NOAA FOIA response pg. 88-89*.

<sup>369</sup> Email From: Ronald Stouffer; To: James Hansen; Date: February 16, 2006; Subject: WSJ piece *GAP August 9, 2006, part 3 NOAA FOIA response pg. 646-47*.

<sup>370</sup> Email From: Richard Spinrad; To: Tom Delworth et. al.; Date: February 17, 2006; Subject: Hurricanes and Climate Change *GAP August 9, 2006, part 3 NOAA FOIA response pg. 651-53*.

## Fact Sheets

It was ultimately one year after Hurricane Katrina, and with seeming reluctance, that NOAA took an affirmative step to counter its own misrepresentation of the science. A summary of the February 17 Senior Management Meeting mentioned above came up with the following recommendations for NOAA Administrator Conrad Lautenbacher:

We need to do a much better job anticipating issues that will generate media interest and get out in front of them. We should have worked a ‘one NOAA’ position on hurricanes/climate change last spring given the seasonal forecast. Chet will take the lead to develop this position now and will institute a process to anticipate other issues (e.g. La Nina and drought) and be pro-active with PA....

The WMO statement on climate change and hurricanes is a good statement. Ahsha is drafting talking points to be used by PA when their press release goes out on Monday. This will emphasize the current state of flux of our knowledge and point to CCSP Synthesis and Assessment Products that are designed to answer these very questions.

Definitive statements about the state of understanding of complex science issues demand a rigorous process that draws from a broad knowledge base and employs independent review. This is being used in IPCC and in CCSP Synthesis and Assessment Products.

As reported in *Nature*, what ensued was the “creation of an internal seven-member panel charged with preparing a consensus statement on the views of NOAA researchers on hurricane science.”<sup>371</sup> The final document was finalized in mid-May in preparation for the start of hurricane season in June, but according to records obtained by *Nature*’s Jim Giles, was held up at DOC:<sup>372</sup>

When asked about the document, NOAA Administrator Conrad Lautenbacher told *Nature* that it was simply an internal exercise designed to get researchers to respect each other’s points of view. He said it could not be released because the agency cannot take an official position on a field of science that is changing so rapidly. But panel members contacted by *Nature*, including Leetmaa, disagree strongly with this interpretation. Internal NOAA and Commerce-Department e-mails also discuss the timetable for the document being “cleared” for “distribution”. The draft states that it refers to the “current state of the science” and does not contain “any statements of policy or positions of NOAA”.

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<sup>371</sup> Jim Giles, “Is US hurricane report being quashed?” *Nature* (September 26, 2006). Incidentally, responding to an email by Jennifer Sprague inquiring as to his participation in a near final version of the fact sheet, Dr. Landsea expresses that he was involved reluctantly because he preferred not to “try to summarize what is going on in the field.” *Oveta NOAA Aug 9 pt 2 FOIA response pg. 83*

<sup>372</sup> An “Issue Assessment” in our records suggests the final draft may have been ready and awaiting approval as early as April 28, 2006. *GAP August 9, 2006, part 3 NOAA FOIA response pg. 813*; See also Email From: Webster; To: Rayder; Date: June 1, 2006 *GAP NOAA August 9, 2006, part 1 NOAA FOIA response pg. 367*.

The fact sheet was finally posted days after Giles' article was published. There appeared to be no major changes between it and an earlier April 13 draft obtained in our investigations.<sup>373</sup> Neither draft cites CCSP or IPCC products. Moreover, as recently as August 8, 2006, NOAA issued a press release stating:<sup>374</sup>

According to Gerry Bell, Ph.D., NOAA's lead seasonal hurricane forecaster, the major climate factors expected to influence this year's activity are the ongoing multi-decadal signal, which produces wind and atmospheric pressure patterns favorable for hurricane formation, along with ongoing warmer-than-normal sea surface temperatures. NOAA attributes these same factors to the current active Atlantic hurricane era that began in 1995.

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<sup>373</sup> Compare <http://hurricanes.noaa.gov/pdf/hurricanes-and-climate-change-09-2006.pdf> (last visited on March 23, 2007) with NOAA Fact Sheet (April 13, 2006) *NOAA August 9, 2006, NOAA FOIA response pg. 638-40*. In an October 4, 2006, letter, House Science Committee ranking member Gordon wrote Lautenbacher: "It is hard to know how to come to any meaningful conclusion except that the Department of Commerce sat on this report in its review process. NOAA reviews had been completed by early May; only Commerce's review stood between this consensus report and the public. Your personal approval of its contents was apparently insufficient to see the report released." Available at [http://sciencedems.house.gov/Media/File/AdminLetters/noaa\\_hurricane-faq\\_letter\\_04oct06.pdf](http://sciencedems.house.gov/Media/File/AdminLetters/noaa_hurricane-faq_letter_04oct06.pdf) (last visited on March 23, 2007). Noting "the inconsistencies between your story as portrayed in *Nature* and the story implicit in your staffer's e-mail and Leetmaa's contention," Gordon requests that Lautenbacher provide detailed information about the development of the FAQ by October 13. "Fundamentally, I am baffled at the proliferation of non-scientists in public affairs offices—many of whom are political appointees with no scientific qualifications, but perfect partisan credentials—continuing to insert themselves into shaping what the public can hear from our federal scientists."

<sup>374</sup> Available at <http://www.publicaffairs.noaa.gov/releases2006/aug06/noaa06-068.html> (last visited on March 23, 2007).

## THE CHAIN OF COMMAND

Congressional correspondences, complaints from scientists and lab directors, and internal emails that forward damaging media reports to agency leadership demonstrate – though often discounted to be solely a problem of perception or poorly-implemented policy – that officials up to the highest levels are aware of problems in their agency.<sup>375</sup> At NOAA this includes Administrator Lautenbacher, Chief of Staff Scott Rayder, former Deputy Administrator Mahoney, Deputy Undersecretary John J. Kelly Jr., OAR Assistant Administrator Dr. Rick Spinrad, Director of the Climate Program Office Chester Koblinsky, Director of NOAA's Aeronomy Laboratory Dr. Daniel Albritton, policy advisors Jennifer Sprague and Tribble, as well as OPCIA staff Jordon St. John and Scott Smullen, and communications officer Randee Exler.

Although we contacted these individuals for comment, most of them never responded. One exception was Spinrad, who noted:<sup>376</sup>

As for the issue of scientific integrity and free speech, I am firmly convinced that our organization stands by and adheres to the strongest principles of open and free exchange of scientific research results.

When asked about the complaints from scientists, Sr. Spinrad added:

I am well aware of these concerns and am working with our lab directors and scientists to try to address these concerns. I believe much of the problem in perception stems from not having well-understood and easily applied processes for working with the media.

The FOIA record shows that senior management largely dismissed reports of interference. Richard Hirn, General Counsel for the National Weather Service's Employees' Organization, concurs:

Our union... has been keeping a keen eye on this issue in NOAA, where we represent five different bargaining units of employees, including NOAA's hurricane research scientists. Frankly, though it may come as a surprise to those who do not trust the Bush administration generally (myself very much included - I am a partisan active Democrat and serve on the Kerry campaign), NOAA's

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<sup>375</sup> See, e.g., Email From: Jeffrey Donald; To: Scott Ryder, Conrad Lautenbacher; James Mahoney, Kelly; St. John, Fuqua, Godfrey, Barnett, Martin, Tribble; Date: February 10, 2006 *GAP May 30, 2006 NOAA FOIA response pg. 35-37* (circulating the *Washington Post* article); Email From: Eric Webster; To: Jennifer Sprague, Ahsha Tribble, Richard Spinrad; Date: March 27, 2006; Subject: Providence Journal article on hurricanes and global warming "NOAA hiding truth..." *GAP May 30, 2006 NOAA FOIA response pg. 83-87* (circulating the Peter Lord article, Webster writes, "This is not good."). See also Email From: Jordan St. John; To: James Mahoney; Date: March 27, 2006; Subject: hurricanes and climate change information story in Sunday Rhode Island Journal *GAP August 9, 2006, part 3 NOAA FOIA response pg. 715-19*; Email From Mary Glackin; To: Conrad Lautenbacher; Date: February 17, 2006; Subject: Hurricanes and Climate Change Communication & other issues *GAP August 9, 2006, part 3 NOAA FOIA response pg. 667*.

<sup>376</sup> Richard Spinrad, communication with Maassarani (October 11, 2006) *record on file with GAP*.

leadership has not interfered with or "muzzled" its employees in any way on this issue. While NOAA has issued advice to its employees that it should work through NOAA's Office of Public Affairs when speaking formally on behalf of the agency which is certainly the agency's legal prerogative, it has also assured employees, in writing, that they are free to speak to the press and to Congress without limitation when expressing their own views (as opposed to formal agency views) or when expressing the views of the union.

Admittedly, scientists may be part of problem.<sup>377</sup> Dr. Robert Atlas, head of AOML, contends:<sup>378</sup>

I think part of the problem is that many scientists were unaware of NOAA's policy on publications and media interviews. In addition, some individuals might think that any review by management is an attempt to stifle their work or conclusions. My experience in NOAA is completely to the contrary, with review by NOAA only serving to ensure that the conclusions are based upon solid science. On the specific issue of whether the increase in hurricane activity that was observed in 2004 and 2005 is due to natural fluctuations or anthropogenic global warming, most of the scientists involved believe very strongly (almost religiously) in their conclusions. In some instances they may be unwilling to acknowledge the limitations of their studies, and that may be where the perceptions come from.

In addition, media editorials often fail to capture the nuance and context of a particular story. Insofar as misperceptions do exist, members of the media and public interest community have been guilty of perpetuating and aggravating them; generalizing, and exaggerating a few isolated incidents and the testimony of a few individual scientists to create the impression that there is a conspiracy of "censorship." It is the hope of this report to sharpen legitimate criticism and target it to where it is due.

To be sure, it is evident from the actual experiences of scientists, the FOIA record, other inside sources, and factual news reports that a rough pattern of inappropriate interference with the communication of science does exist, and may ultimately politicize the work environment so as to influence scientific research itself. In contrast to headquarters and executive leadership, mid- and low-level and regional administrative support for "sensitive" research results and sympathy for the scientists' concerns seems to run high.<sup>379</sup> At the beginning of the Bush administration, a NOAA staffer wrote to Jana

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<sup>377</sup> Glen Talia, General Counsel for NOAA Administrator's office, believes management philosophy puts science and transparency first. "I was never involved in a situation where we change the facts [rather] people perpetuate a rumor.... Scientists are a myopic bunch. [They are] impatient and don't understand there is a process or legal requirements." Interview with Maassarani (July 19, 2006) *record on file with GAP*.

<sup>378</sup> Robert Atlas, communication with Maassarani (October 12, 2006) *record on file with GAP*.

<sup>379</sup> See Email From: Jana Goldman; To: Debby Kay; Date: January 18, 2001; Subject: New Scientist: An ill wind *GAP August 9, 2006, part 3 NOAA FOIA response pg 14*; Email From: Goldman; To: David Goodrich, Stephanie Harrington; Date: October 8, 2002; Subject: CNN.com – Climate change costs \$150 bln a year: report – Oct. 8, 2002 *GAP August 9, 2006, part 3 NOAA FOIA response pg. 149* (forwarding

Goldman at the OAR PAO accompanying a January 20, 2001, *New Scientist* article, “Jana; this has some good info in it concerning Bush’s cabinet choices and their skepticism against our Global Warming programs.”<sup>380</sup> Years later, Mrs. Goldman sent a casual email to a colleague forwarding the April 10, 2005, *Raw Story* article, “this may give you a bit of insight on what’s going on. Thanx [sic] for your indulgence and understanding.”<sup>381</sup>

Our investigation suggests that incidents of interference and restrictive policies largely originate in the Council on Environmental Quality, Office of Management and Budget, Office of Science and Technology Policy, Department of Commerce, various headquarters offices, and politically-appointed agency staff.<sup>382</sup> Documents recently obtained by the House Oversight and Government Committee also suggest some collaboration with the Office of the Vice President.<sup>383</sup> In an April 23, 2003, memo, former CEQ Chief of Staff Philip Cooney discussed the controversial Soon-Baliunas study refuting climate change with Kevin O’Donovan, an aide to Dick Cheney. According to the committee chairman, Cooney wrote, “we plan to begin referring to this study on administration communications on climate change... It represents an opening to potentially reinvigorate debate on the actual climate history of the past thousand years.”<sup>384</sup> At the same time, the administration has not always consulted its own high-level federal scientists on controversial scientific issues.<sup>385</sup>

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article on climate change); Email From: Stouffer; To: Delworth, Dixon; Date: July 6, 2004; Subject: NOAA media policy *Greenpeace NOAA FOIA response pg. 40-42*; Thomas Delworth, interview with Maassarani (April 13, 2006); Email From: Goldman; To: Steven Carson; Date: February 1, 2001; Subject: GRL paper *GAP August 9, 2006, part 3 NOAA FOIA response pg. 28* (press officer supportive of press release).

<sup>380</sup> Email From: Ann Thomason; To: Jana Goldman; Date: October 5, 2005; Subject: Welcome to my world *GAP August 9, 2006, part 3 NOAA FOIA response pg. 369*.

<sup>381</sup> *Ibid.*

<sup>382</sup> On June 13, 2006, Sen. Lieberman (D-CN), chair of the Senate Homeland Security and Governmental Affairs Committee, sent a letter to Marburger stating that “the occurrence of allegations across four different government agencies raises the possibility that negative signals regarding scientific openness, particularly as regards climate change, might be traveling from a central source of authority to multiple Executive Branch departments” and urging Marburger to “investigate that possibility and report your findings to me.” Available at [http://hsgac.senate.gov/\\_files/Dem\\_Files/060613Marburger.pdf](http://hsgac.senate.gov/_files/Dem_Files/060613Marburger.pdf) (last visited March 23, 2007). Marburger, a scientist and lifelong Democrat, responded that these incidents resulted from “lower level employees not effectively articulating the administration’s position on matters of scientific openness,” and that “high-level” policy officials were concerned by their actions. Letter dated November 16, 2006. Lieberman also wrote to Lautenbacher asking him to develop a “detailed policy outlining mechanisms for public dissemination of scientific findings at NOAA.” He further requested that Lautenbacher “determine whether NOAA officials have been operating according to any unofficial guidance on managing the public dissemination of findings reached by the agency’s climate scientists and ascertain the origin of that guidance.... If evidence of any such guidance is not discovered, investigate and determine why the conduct referenced in the first paragraph of this letter nevertheless appears to have occurred.”

<sup>383</sup> Lauren Morello, “House probe turns to role of Cheney’s office,” *Environment and Energy Daily* (March 20, 2007).

<sup>384</sup> *Ibid.*

<sup>385</sup> According to the *Washington Monthly*, this has included Dr. Bierbaum, a Clinton administration appointee who served into the first year of Bush’s term at OSTP. Nicholas Thompson, “Science friction: the growing – and dangerous – divide between scientists and the GOP-Republican Party, George W. Bush and scientific policy.” *Washington Monthly* (July/August 2003). The article also notes that it took

Executive office supervisors, political appointees, and staff hired for their party loyalty may have an ideological basis for downplaying “sensitive” science. Consider the following individuals that have been identified earlier in this report.

According to *Raw Story*, Jim Teet “had supported Karen Hughes’ defense of then Governor George W. Bush’s National Guard record” before he took up a position as a regional NOAA PAO director and re-interpreted the 2004 media policy to require blanket pre-approval.<sup>386</sup> Before being appointed press officer at NASA headquarters, where he rejected Hansen’s media requests, the 24-year old George Deutsch worked for the Bush/Cheney reelection campaign.<sup>387</sup> Similarly, DOC press officer Chuck Fuqua used to be the Director of Media Operations for the 2004 Republican National Convention.<sup>388</sup> Michael Catanzaro, who is currently an aide to EPA Deputy Marcus Peacock and has been accused of cozying up to industry,<sup>389</sup> served earlier as deputy environmental policy director for the Bush-Cheney reelection team.<sup>390</sup> In between these positions, Catanzaro served at CEQ, where he held close ties with CEI,<sup>391</sup> and as a communications director for Inhofe’s Senate Environment and Public Works Committee.<sup>392</sup> Political appointees of all stripes, including James Mahoney, Christie Whitman, John Marburger, and Jordan St. John, have likely encountered a conflict between the integrity of the science they represent and their political affiliations.

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seven months to choose a White House science adviser for the Office of Science and Technology Policy. Once Bush had appointed a head of OSTP, he demoted the rank of the position, moved the office out of the White House, and cut the number of associate directors from four to two... Moreover, Bush appointed to one of the two associate director positions Richard Russell, a Hill aide credentialed with only a bachelor's degree in biology, and let him interview candidates for the job of director. “It bothers me deeply [that he was given that spot], because I don't think that he is entirely qualified,” says Allen Bromley, George H. W. Bush's science adviser, who worked for some of his tenure out of prime real estate in the West Wing of the White House. “To my astonishment, he ended up interviewing some of the very senior candidates, and he did not do well. The people he interviewed were not impressed.”

<sup>386</sup> Larisa Alexandrovna, “Commerce Department tells National Weather Service media contacts must be pre-approved,” *The Raw Story* (October 4, 2005).

<sup>387</sup> Andrew Revkin, “A Young Bush Appointee Resigns his Post at NASA,” *The New York Times* (February 8, 2006).

<sup>388</sup> See Democracy in Action, the Republican National Convention 2004 available at <http://www.gwu.edu/~action/2004/convs/rconvorg.html> (last visited on March 23, 2007).

<sup>389</sup> Frank O'Donnell, “Don't Bet Your Lungs on This,” *Tompaine.com* (August 24, 2006). According to O'Donnell, emails in EPA's official regulatory docket reveal a mining association lobbyist sending Catanzaro “legal briefs,” “responses to your questions,” and “a follow-up to yesterday's conversation.”

<sup>390</sup> Darren Samuelsohn, “Lieberman aide to lead Duke enviro institute,” *Greenwire* (February 23, 2005). Before this, he was a columnist for “The National Conservative Weekly,” writing such articles as “Kyoto, Iraq, Global Warming, and Political Blackmail,” “No Global Warming Consensus,” “Green Alarmist Fantasy,” and “Glaciers, ‘Global Warming,’ and NY Times Hysteria.” See [http://www.humaneventsonline.com/search.php?author\\_name=Michael+Catanzaro](http://www.humaneventsonline.com/search.php?author_name=Michael+Catanzaro) (last visited on March 23, 2007).

<sup>391</sup> See Email From: Marlo Lewis; To: Michael Catanzaro; Date: May 27, 2005; Subject: EIA numbers available at [http://www.whitehouse.gov/ceq/foia/cei/2\\_ex\\_142.pdf](http://www.whitehouse.gov/ceq/foia/cei/2_ex_142.pdf) (last visited on March 23, 2007).

<sup>392</sup> Cf. <http://epw.senate.gov/pressitem.cfm?party=rep&id=213589> (last visited on March 23, 2007).

In turn, long-term, professionally-minded career bureaucrats at all levels can be expected to act upon ideological signals in order to “fit in” and satisfy their supervisors. As one lab director stated:<sup>393</sup>

An environment of “avoidance of discussion of global warming issues” somehow does pervade the Agency. Part of this probably does come down from DOC and above, part of it probably originates in the fact that Admiral Lautenbacher himself is not a “fan” of global warming and research and modeling in general. His sense of priorities no doubt consciously or unconsciously affects the staff around him.

Although as far as I know and can tell, there have been no administration/NOAA directives to say that the words “global warming” cannot be used, middle managers in instances that I know of have attempted to suppress the use of these words in communications – my guess is that such folks for the most part are overzealous and self directed; however, this also shows lack of policy guidance on this matter by NOAA.

Nonetheless, our investigation has uncovered numerous instances where mid- and low-level officials are directly ordered to carry out actions that interfere with the communication of “sensitive” science. These internal directives largely avoid official channels and follow an opaque chain of command such that personnel who are not directly involved often remain unaware of them.<sup>394</sup> Consider the testimony of Mr. X, a public affairs officer whose name and agency have been withheld to protect his anonymity.<sup>395</sup>

Mr. X had assumed a position at the agency PAO that his predecessor had “begged to be reassigned” from. He describes a role that was extremely pressure-filled, often finding himself forced to do things he would otherwise be unwilling to carry out. When the movie the “Day After Tomorrow” came out and heightened the debate on climate change, “We had scientists at that time who were speaking to the press of their views from a scientific standpoint and my boss told me you are not to substantiate this; make it look like the scientists are out there on a limb, the agency is not backing them up.” On another occasion, he was told, “You make him be quiet... get that guy to stop speaking to the public.... It’s your job... I cannot believe you cannot control that person.” In cases like this, Mr. X was warned to be careful that nothing was in writing. Rather “I was usually summoned to XXX’s office, usually with XXX [both top officials] there and the door closed.”

At times, Mr. X sat in on phone calls from his superior’s office to the White House, including the Office of Science and Technology Policy (OSTP), where he would need to explain “the situation.” According to Mr. X, interference was effectively top-down with the political appointees giving orders that career employees would follow in

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<sup>393</sup> Anonymous lab director, communications with Maassarani (October 19, 2006) *record on file with GAP*.

<sup>394</sup> Cf. Andrew Revkin, interview with Maassarani (June 1, 2006); Andrew Revkin, “NASA Chief Backs Agency Openness,” *The New York Times* (February 4, 2006).

<sup>395</sup> Anonymous public affairs officer, interview with Maassarani (May 10, 2006) *record on file with GAP*.

order to keep their jobs. He found himself in a particularly tough position since he was the pivotal person between the political appointees directly above him and the scientists with whom he interacted as well as all the mid-level PAO employees that he managed.

Mr. X had to inform his superiors of any interview requests from major news outlets (e.g. *USA Today*, *New York Times*) concerning climate change. They would require minute details about whom and what the interview involved, and then get into whether or not the interviewee was a “loose cannon” or someone who would “go along with the company line.” If the former, Mr. X was asked to convince reporters to talk with someone else, often by saying “Oh, such and such is not going to be available, but I’ve got such and so.” As regards interview monitoring, Mr. X recalls that “we were supposed to tell them that we would do it to make sure of no misquotes.” Although he admits there may be some truth to this, it has only happened twice while he was there.

When it came to climate-related press releases mentioning “global warming,” “warming,” “melting,” and “glaciers,” Mr. X’s superiors added an extra step to the ordinary press release procedures. Although his superiors only had final review in the normal review and clearance process, Mr. X was told to bring “sensitive” draft releases first to them. Further, Mr. X was instructed not to email the drafts, but rather to print them out and hand-deliver them to their offices. When the superiors did not fancy certain press releases, Mr. X was supposed to tell the researchers that submitted them that they were not news-worthy, that there were too many press releases on this particular topic already, or “some other excuse.” When laboratory directors were already aware of the drafts and it was too conspicuous for them to be rejected in this way, Mr. X’s superiors undermined them by having another press officer mark them up so that they would require heavy reworking. By being sent back for editing often over multiple iterations, press releases died of lack of timeliness.

How similar are Mr. X’s experiences to those in the other climate-science agencies? Across agencies and programs, the evidence presented in this report suggests that isolated and informal lines of communication tie White House officials and top political appointees to the deliberate interference with media, congressional, and public dissemination of climate science. In addition, consider our express FOIA requests for any and all communications dealing with public affairs officials. The resulting documents disclosed constant communications between scientists, media, and press officers – and references to upper-level, departmental, and White House review – but almost no actual communications between press officers and the entities from which pre-approval was required with regard to media requests, press releases, congressional testimony, and other public appearances presentations.<sup>396</sup> Moreover, PAO sources working outside of headquarters did not themselves know who and how pre-approval was

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<sup>396</sup> Note that NOAA withheld a number of documents under exemption 5(b) of the Freedom of Information Act, which protects “pre-decisional, intra and inter agency deliberative communications” It is our understanding that this covers advice, recommendations, and opinions made in the decision-making process, but not actual clearance decisions themselves.

actually attained.<sup>397</sup> Political sensitivities transmitted down an opaque chain of command from the highest ranks offers an explanation for the varying conceptions of the problem among scientists and administrative personnel at different levels of the agency.

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<sup>397</sup> Jana Goldman, interview with Maassarani (October 7, 2006) *record on file with GAP*; Anonymous public affairs official, interview with Maassarani *record on file with GAP*.

## RECENT DEVELOPMENTS

### NASA

On February 4, 2006, shortly following Hansen's allegation of "muzzling," NASA Administrator Michael D. Griffin issued the following agency-wide statement:<sup>398</sup>

I want to make sure that NASA employees hear directly from me on how I view the issue of scientific openness and the role of public affairs within the agency.

First, NASA has always been, is, and will continue to be committed to open scientific and technical inquiry and dialogue with the public. The basis for this principle is codified in the Space Act of 1958, which requires NASA to "provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof."

Second, the job of the Office of Public Affairs, at every level in NASA, is to convey the work done at NASA to our stakeholders in an intelligible way. It is not the job of public affairs officers to alter, filter or adjust engineering or scientific material produced by NASA's technical staff. To ensure timely release of information, there must be cooperation and coordination between our scientific and engineering community and our public affairs officers.

Third, we have identified a number of areas in which clarification and improvements to the standard operating procedures of the Office of Public Affairs can and will be made. The revised policy, when complete, will be disseminated throughout the agency.

I want to encourage employees to discuss this issue and bring their concerns to management so we can work together to ensure that NASA's policies and procedures appropriately support our commitment to openness.

On March 30, 2006, Administrator Griffin issued a new "policy on the release of information to the news and information media," crafted by a working group comprising representatives from science, engineering, law, public affairs and management.<sup>399</sup> House Science Committee Chair Sherwood Boehlert lauded the policy as "a model for the entire federal government."<sup>400</sup> OSTP head John Marburger has since urged all federal agencies and departments to adopt similar media contact policies.<sup>401</sup> The policy supports

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<sup>398</sup> Available at [http://www.nasa.gov/audience/formedia/features/communication\\_policy.html](http://www.nasa.gov/audience/formedia/features/communication_policy.html) (last visited on March 23, 2007).

<sup>399</sup> *Ibid.* More than 140 NASA scientists, engineers and other civil servants signed a statement applauding Griffin's revision of the media policy. Andrew Revkin, "Call for Openness at NASA Adds to Reports of Pressure," *The New York Times* (February 16, 2006). "His subsequent actions have reinforced his words," the statement said.

<sup>400</sup> See <http://www.house.gov/science/press/109/109-218.htm> (last visited in February 2007).

<sup>401</sup> See Letter From: Bart Gordon, Brad Miller; To: Stephan L. Johnson (EPA Administrator); Date: March 15, 2007.

principles of openness and establishes a commitment to disseminate important research findings in a timely and transparent manner. It clarifies the relevant procedures, provides for an explicit “personal views exception,” prohibits public affairs from editing scientific content, anticipates the development of approval criteria, and establishes a dispute resolution mechanism “to ensure that all parties have a route of appeal in communicating scientific and technical information.”

The policy falls markedly short in some respects. The policy continues to require pre-approval by NASA headquarters public affairs and denies scientists’ “final right of review” for all “press releases, media advisories, news features, and web postings [with] the potential to generate significant media, or public interest or inquiry.”<sup>402</sup> Moreover, the responsibility for this clearance, the timing of the clearance, the development of approval criteria, and the consideration and resolution of disputes lies with the politically-appointed assistant administrator of public affairs. As discussed in the legal section below, GAP has found that this policy violates the First Amendment, Anti-Gag Statute, and Whistleblower Protection Act (WPA).<sup>403</sup>

Nonetheless, for GISS scientist Shindell, it was important that Administrator Griffin spoke out about openness and emphasized that his scientists should not be prevented from talking to the press.<sup>404</sup> Shindell subsequently noted positive changes in his work environment. “I’ve had much better experiences recently, and the press corps at GSFC is no longer reluctant to use phrases like ‘climate change’ or ‘global warming,’ which they were before as they had the feeling that that would ‘doom’ a release.” This sentiment has been echoed by a number of scientists both inside and outside of NASA.<sup>405</sup> However, GISS scientist Shindell questioned whether the new policy will, in practice, be fundamentally different.<sup>406</sup>

We go through the same procedures basically, with in fact another layer of “scientific approval” where scientists look over the material first before public affairs. These are good people and seem to do a good job, but it’s just yet another layer of bureaucracy. As far as I know, the political appointees are also still there, but lying low for the present.

According to a NASA FAQ, Griffin’s working group is currently overseeing the development of new procedures implementing the policy that will be available in the “near future.”<sup>407</sup>

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<sup>402</sup> The directive excludes scientific and technical reports, web postings designed for technical or scientific interchange, and technical information presented at professional meetings or in professional journals.

<sup>403</sup> See *Legal Analysis* section below.

<sup>404</sup> Drew Shindell, communications with Maassarani (May 25, 2006) *record on file with GAP*.

<sup>405</sup> Anonymous NOAA director, interview with Maassarani (June 1, 2006) *record on file with GAP*; Anonymous scientist, interview with Jennifer Freeman (June 27, 2006) *record on file with GAP*.

<sup>406</sup> Drew Shindell, communications with Maassarani (May 25, 2006) *record on file with GAP*.

<sup>407</sup> NASA Public Affairs Policy FAQ at pg. 5 *available at*

[http://www.nasa.gov/audience/formedia/features/communication\\_policy.html](http://www.nasa.gov/audience/formedia/features/communication_policy.html) (last visited on March 24, 2007).

## NOAA

At about the same time that Administrator Griffin stated NASA's commitment to scientific openness, NOAA Administrator Lautenbacher sent an agency-wide announcement entitled "encouragement of scientific debate and transparency":

There have been several print and internet articles recently that have tried to make a case that NOAA scientists are being muzzled. For example, a few recent media reports have (incorrectly) asserted that some NOAA scientists have been discouraged from commenting on the question of whether human caused global warming may be influencing the number or intensity of hurricanes. Let me state in the most direct terms that I am a strong believer in open, peer reviewed science as well as the right and duty of scientists to seek the truth and to provide the best scientific advice possible. When I answer questions on NOAA missions, my answers are formed on the basis of the scientific papers that I have personally read, or have been informed by you in the course of NOAA business.

Peer reviewed science speaks for itself and doesn't need me or anyone else to interpret or modify the results. For those of you who know me personally, you realize that I encourage and actively pursue vigorous debate on all topics, particularly including science related to NOAA's mission. The purpose is to get as close to the truth and the facts as possible. I expect my management team to adhere to this policy of scientific openness as well.

Our media standards also reflect an open policy. We encourage our public affairs staff to keep abreast of media interests. I encourage our scientists to speak freely and openly. Dozens of you every day are talking to the media and providing the results of peer reviewed science across a wide variety of NOAA topics. We ask only that you specify when you are communicating personal views and when you are characterizing your work as part of your specific contribution to NOAA's mission. Also, I ask that you respect, and seek to understand, each other's work within NOAA. We have many disciplines and centers of excellence within NOAA, all contributing substantially to the body of earth science knowledge. Be tolerant of each other as would your colleagues around the nation and the world. "One NOAA" should apply to our work as scientists as well as our management structure!

Unlike with NASA, the Administrator took no action to address scientists' concerns and review NOAA's 2004 media policy, which contradicted his own statement's provision of a "personal views exception."<sup>408</sup> Despite this new source of confusion, damaging media coverage, congressional pressure, and internal complaints, NOAA seemed to register no reservations about its guiding policy. On April 19, 2006, in response to a *Washington Post* article criticizing the agency for muzzling its scientists, Administrator Lautenbacher published an editorial that held steadfastly to the defense that no political appointees had influenced research on climate change and "that the Bush

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<sup>408</sup> "Message from the Undersecretary" (October 3, 2006).

administration has supported scientists in the form of significant budget increases.”<sup>409</sup> In a March 31, 2006, email, Eric Webster, OLA director, responded to an inquiry about revisiting NOAA’s policy in light of NASA’s reform by the Democratic Senior Counsel to the Senate Commerce, Science, and Transportation Committee:<sup>410</sup>

Thanks for the email. As you know, NOAA already has a media policy which is open but requires folks to tell the Public Affairs office before an interview.... I have forwarded your message to Rick Spinrad, Jack Kelly and others letting them know of your interest and concern. I will follow up on any decisions. I know that Rick has done some internal examinations but do not know the [sic] if there will be any changes based on the results. Again, I believe folks were okay with the media policy in its current form.

Webster’s response stemmed from the understanding reached at a Senior Management Meeting summarized in a February 17, 2006, communication written by Mary Glackin, Assistant Administrator for NOAA’s Office of Program Planning and Integration, to Dr Lautenbacher, the agency, and lab leadership.

Admiral –

I wanted to bring you up to date with some of the actions underway regarding communication of information on climate change and hurricanes and associated issues. Several of the individuals copied on this email met with Dr. Mahoney this afternoon and confirmed [that] NOAA has a good policy. However, we could do more to explain the policy and the implementation procedures associated with it. Rick Spinrad will take the lead working with PA to develop material in this regard.

That same day, Senator Barbara Mikulski (D-MD) requested a GAO investigation of the policies and practices of key federal science agencies to ensure openness in communication of federally-supported science results.<sup>411</sup> By April 10, 2006 – upon the House Science Committee’s request – NOAA had established plans to review its media policy.<sup>412</sup> In an email to Nat Wienecke, Assistant Secretary for DOC Legislative and Intergovernmental Affairs, Eric Webster at NOAA Office of Legislative Affairs, explained: “This is the plan for NOAA’s review of the Media Policy - - it will go to the Department [of Commerce] right after NOAA NEP/NEC process is complete”. The email includes a target date for beginning employee trainings for the new policy on June

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<sup>409</sup> Conrad Lautenbacher, “We’re Funding Climate Science, Not Muzzling It,” *Washington Post* (April 19, 2006).

<sup>410</sup> Email From: Eric Webster; To: Margaret Spring; Date: March 31, 2006; Subject: NASA policy on Release of Public Information *GAP May 30, 2006, NOAA FOIA response pg. 98-99.*

<sup>411</sup> Letter to Comptroller General *available at* <http://mikulski.senate.gov/record.cfm?id=25171> (last visited on March 23, 2007). This investigation is still underway.

<sup>412</sup> Email From: Brian Gross; To: Ronald Stouffer; Date: April 10, 2006; Subject: Revisions to NOAA’s media Policy *GAP August 9, 2006, part 3 NOAA FOIA response pg. 735-39;* Email From: Garret Graves; To: Eric Webster; Date: April 12, 2006; Subject: Climate change hearing and detailee *GAP July 31, 2006, NOAA FOIA response pg. 68-69.*

1, 2006.<sup>413</sup> Prepared responses to congressional Q&As dated April 27, 2006, stated that “NOAA is working with the Department of Commerce to evaluate our media policy to make sure that is [sic] appropriate for NOAA.”<sup>414</sup> Department of Commerce had long been aware of problems with the media policy. As early as July 2005, the FOIA record shows that Ahsha Tribble had relayed headquarter PAO concerns up “the chain to DOC level to get their firepower in brokering more autonomy to make decisions... particularly addressing the problem of media...”<sup>415</sup>

It is now 2007 and what has happened to the policy revisions? According to inside sources, NOAA opposes a DOC-proposed “one-size-fits-all” media policy “because [it was] not well tailored to NOAA’s needs.”<sup>416</sup> Questioned under oath at a January 30, 2007, hearing on climate science integrity before the Senate Commerce, Science, and Transportation Committee, NOAA Deputy Assistant Secretary of Commerce for International Affairs and acting CCSP Director Dr. William Brennan stated that a new NOAA media policy would be announced within a couple of weeks.<sup>417</sup> As of the date of publication, no new policy has been released, leaving the 2004 media policy issued by NOAA Administrator Lautenbacher in place as the agency’s formal position.<sup>418</sup>

Another significant delay facing NOAA and the CCSP is the appointment of a new Assistant Secretary of Commerce for Oceans and Atmosphere and NOAA Deputy Administrator – a single post that has been left vacant since the departure of Dr. Mahoney at the end of March 2006. In late 2006, the President nominated Jane C. Luxton, a corporate lawyer with no graduate science education who represents U.S. and foreign industry clients on national and international environmental regulatory matters for the

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<sup>413</sup> Email From: Webster; To: Wienecke; Date: April 12, 2006; Subject: NOAA Media Policy *GAP May 30, 2006, NOAA FOIA response pg. 115*; Email From: Webster; To: Wienecke; Date: April 13, 2006; Subject: NOAA Media Policy *GAP July 31, 2006, NOAA FOIA response pg. 63-65*. The NOAA Executive Council is the agency’s highest level executive management body, chaired by Lautenbacher and consists of the 13 principals and 7 supporting members. See Email From: Lautenbacher; Date: March 6, 2003; Subject: Message from the Under Secretary – Introducing NOAA’s Executive Council *Greenpeace select hurricane NOAA FOIA pg. 21-22*.

<sup>414</sup> Question #15, NOAA’s Media Policy, response prepared for the Senate Commerce Disaster Prediction and Prevention Subcommittee Hearing on Drought and NIDIS *GAP August 9, 2006, part 3 NOAA FOIA response pg. 801*.

<sup>415</sup> Email From: Goldman; To: Laborde; Date: July 5, 2005; Subject: fodder *Thacker complete NOAA FOIA response pg. 43-45*.

<sup>416</sup> Anonymous NOAA officer (May 6, 2006) *record on file with GAP; Jana Notes*

<sup>417</sup> In a letter to NOAA management, delivered March 8, 2007, GAP offered its assistance in developing a more effective, coherent, and trust-enhancing media policy.

*Available at* [http://whistleblower.org/doc/0100\\_001.pdf](http://whistleblower.org/doc/0100_001.pdf) (last visited on March 24, 2007). GAP has received no response.

<sup>418</sup> GAP is not aware of media policy reforms at any other federal science agencies. In the wake of the recently publicized USFWS memoranda barring scientists from freely discussing “climate change, polar bears, and ice,” House Committee on Science and Technology Chairman Bart Gordon (D-TN) and Investigations and Oversight Committee Chairman Brad Miller sent letters to the Secretary of Interior and administrators of 11 other federal agencies inquiring about their science media policies. See press release (March 15, 2005) *available at* <http://sciencedems.house.gov/press/PRArticle.aspx?NewsID=1730> (last visited March 24, 2007).

position formerly held by Mahoney.<sup>419</sup> The Senate Commerce, Science and Transportation Committee had planned to consider her nomination on December 5, 2006. However, several members of the committee intervened in response to concerns about the appropriateness of her nomination. Chairman Ted Stevens (R-AK) subsequently removed Luxton's nomination from the agenda for that Congress.<sup>420</sup>

## Improvements

Despite evident shortcomings, there was a sense among many scientists and public affairs officials contacted in the summer and fall of 2006 that things have generally improved, a fact that is often attributed to the recent pressure brought to bear by outspoken scientists, the media, Congress, and watchdog organizations.<sup>421</sup> Consider the following statements from the UCS survey:

Recently a Bush appointee to the position of Public Information Officer attempted to muzzle Jim Hansen, Director of GISS. This PIO was sacked and the NASA Administrator made it clear that such political meddling would not be tolerated. This was excellent leadership at the top and set the tone for [the] lower echelons [that] may not otherwise have been this strong. Michael Griffin is a great improvement over his recent precedents [sic].

As of March 2006 there was a marked change in NASA, and I have spoken out freely on climate change, including a NASA-approved press release. I believe scientists at other agencies (e.g. NOAA) still have restrictions.

Major damage has been inflicted upon NOAA and NASA. Fortunately, the "scientists" backlash forced a return to scientific integrity in NOAA and NASA.

Nonetheless, Mahlman is skeptical that:

systematic and lasting improvements have been achieved in NOAA's handling and support of climate research and/or its communication to the public. I don't think that this statement would be easily endorsed and accepted within NOAA today, even though the NOAA research scientists that I talk to now agree that they have earned an encouragingly improved level of scientific freedom to converse with the press, and talk on the phone to whoever they wish. Personally, I admit to still being somewhat wary of the questionable and partisan ethics of the political appointees within NOAA.

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<sup>419</sup> See her biography at <http://www.kslaw.com/portal/server.pt?space=KSPublicRedirect&control=KSPublicRedirect&BioId=5497> (last visited on March 24, 2007).

<sup>420</sup> Anonymous source, communication with Rick Piltz.

<sup>421</sup> The issue has remained a hot topic. On December 11, 2006, UCS announced that "a statement by Nobel Laureates and other leading scientists calling for the restoration of scientific integrity to federal policy making has now been signed by 10,600 scientists from all 50 states." Press Release, "10,600 Scientists Condemn Political Interference in Science."

## Spotlighting the CCSP

Despite improvements in the flow of information at the agency level, there remain serious, albeit neglected, issues in the communication of science at CCSP, the umbrella body responsible for coordinating the multi-agency federal climate science research agenda. Formerly chaired by Mahoney, CCSP is governed by a committee of principals comprising 13 other senior agency officials and liaisons for the Executive Office of the President, including OSTP, CEQ, and OMB. CCSP governance is further structured into several interagency working groups covering both scientific and operational subject matter. Pursuant to the *CCSP Strategic Plan*, the Communications Interagency Working Group (CIWG) was established in FY2004 to “disseminate the results of CCSP activities credibly and effectively [and] make CCSP science findings and products easily available to a diverse set of audiences.”<sup>422</sup> To this end, the *Strategic Plan* required the development of an implementation plan, which has since been adopted and approved to guide CIWG’s activities through FY2006. Under the plan, CIWG was to produce a number of deliverables “on climate change science fundamentals such as “Frequently Asked Questions” and educational fact sheets, a series of information pieces about CCSP and its activities, fact sheets and other outreach materials and activities on quarterly featured topics that focus on cross-agency research efforts, and ancillary outreach material to accompany research products issued by CCSP working groups.”<sup>423</sup>

It is worth noting that since 2004, CCSP has cautiously produced and posted on its website only five fact sheets and two research summaries, all ranging from two to four pages in length. It issued eight press releases – three of which were administrative announcements – and held one workshop on November 14-16, 2005. Furthermore, with the exception of three press releases, CCSP has not produced any new material as of January 2006.<sup>424</sup> In light of earlier findings in our investigations, one ready explanation for these shortcomings is the process for approval and clearance of CCSP information. The CIWG Implementation Plan and Terms of Reference all require proposed communications and products to be approved by the working group, a 30-member committee that conspicuously includes two representatives of OMB, one from OSTP and one from CEQ, as well as NOAA policy and press officers Jennifer Sprague, Kent Laborde and Scott Smullen.<sup>425</sup> The proposal then goes to the CCSP principals, including their representatives from OMB, OSTP, and CEQ.<sup>426</sup> This two-level approval process involving numerous “schedule C” appointees must then be repeated for the finished

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<sup>422</sup> <http://www.usgcrp.gov/usgcrp/ProgramElements/communications.htm> (last visited on March 23, 2007).

<sup>423</sup> *Ibid.* See also Marburger’s letter to Udall (April 19, 2005) *record on file with GAP*.

<sup>424</sup> To their credit, CCSP’s February 16, 2007, press release brought attention to CCSP’s “contribut[ion] to the IPCC’s increased confidence attributing much of the temperature increase since the mid-20th century to human activities.” “U.S. Climate Change Science Program Provides Key Contributions To IPCC Fourth Assessment,” Press Release *available at* <http://www.climatechange.gov/Library/pressreleases/pressrelease16feb2007.htm> (last visited on March 24, 2007)

<sup>425</sup> Enclosure, Mahoney Letter to Inhofe (November 14, 2005) *available at* <http://www.whitehouse.gov/ceq/foia/ccsp/ceq6.pdf> (last visited on March 24, 2007).

<sup>426</sup> *Ibid.*

product, in addition to final clearance by the head of OSTP.<sup>427</sup> Further restrictions at CCSP include routing of all media and public contacts to the NOAA PAO or CEQ Chair Connaughton.<sup>428</sup>

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<sup>427</sup> Anonymous source, interview with Maassarani (November 20, 2006).

<sup>428</sup> Phone call by Maassarani to CCSP Washington, DC office (July 19, 2006).

## LEGAL ANALYSIS<sup>429</sup>

### Media Policies and the First Amendment

The findings of the GAP investigation underscore how critical media policies are to the ability of employees in the federal climate science agencies and programs to communicate sound information to policymakers and the public. Currently, media policies often have the effect of silencing these employees. This highlights the pressing need to articulate a theory of the First Amendment that provides protection for the scientific speech of government employees.

The Supreme Court has recognized that government employees retain First Amendment protections for certain speech both inside and outside the workplace,<sup>430</sup> while noting that the First Amendment does not “constitutionalize the employee grievance.”<sup>431</sup> This is sometimes a difficult balance to strike. Public employees are often in the best position to offer candid and informed views of governmental activities and to expose flawed or corrupt programs. On the other hand, as employers, government agencies may need to exercise some control over their employees for the efficient provision of public services.

The Supreme Court arrived at a balance for these competing aims in the landmark case of *Pickering v. Board of Education*.<sup>432</sup> In deciding whether First Amendment protection attaches to a government employee’s speech, a court must first determine whether that speech addresses a matter of public concern. Only speech that is of public concern is afforded First Amendment protection. The court must then inquire whether the employee’s free speech interests, and those of the public in hearing what the employee has to say, are outweighed by legitimate employment-related concerns, such as secrecy, privacy, efficiency, or other genuine countervailing interests.<sup>433</sup>

Using the *Pickering* balancing test to assess the constitutionality of media policies, courts have overturned, among others, regulations that prevented officers or

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<sup>429</sup> Written by Jay Dyckman of the National Coalition Against Censorship with contributions from GAP Legal Director Tom Devine, Legislative Representative Adam Miles, and Maassarani.

<sup>430</sup> See *Givhan v. Western Line Consolidated School District*, 439 U.S.410 (1979).

<sup>431</sup> *Connick v. Myers*, 461 U.S. 138 (1983).

<sup>432</sup> 391 U.S. 563 (1968).

<sup>433</sup> After Congress passed the 1978 Civil Service Reform Act (CSRA), the Supreme Court held in *Bush v. Lucas* (462 U.S. 367 (1983)), “[Because] petitioner’s claims arise out of an employment relationship that is governed by comprehensive procedural and substantive provisions giving meaningful remedies against the United States, it would be inappropriate for this Court to supplement that regulatory scheme with a new nonstatutory damages remedy.” This decision limited covered federal employees’ right to seek remedies in retaliation and other employment cases citing government violations of their First Amendment rights. While federal employees covered by the CSRA do not lose First Amendment rights in accepting employment with the government, they are forced to rely on the statutory remedies of the 1989 Whistleblower Protection Act (WPA), which amended the CSRA, when challenging government retaliation for protected speech.

employees from receiving any honorarium in connection with speaking engagements,<sup>434</sup> a rule that prohibited employees from receiving compensation for their speaking engagements,<sup>435</sup> a regulation requiring that an employee obtain permission from an agency's media affairs office prior to speaking to the media,<sup>436</sup> and media affairs regulations that do not contain a definitive timeline for the release of information.<sup>437</sup>

In *Garcetti v. Ceballos*, however, the Supreme Court clarifies that *Pickering* does not protect complaints made by public employees, in the course of their official duties, about government decisions.<sup>438</sup> Briefly, Richard Ceballos was a deputy district attorney in the Los Angeles County District Attorney's Office.<sup>439</sup> After a defense attorney contacted Ceballos concerning the validity of a search warrant used to gain access to critical evidence in an upcoming criminal case, Ceballos concluded that the affidavit upon which the warrant had been based contained serious misrepresentations. Consequently, Ceballos alerted his supervisors to the discrepancies and prepared a memo detailing his findings. A meeting was held to determine the validity of Ceballos' conclusions and it was decided that those conclusions were unfounded and that the office would proceed with the contemplated prosecution. Subsequently, Ceballos claimed that he was reassigned from his position in retaliation for speaking out about the deficiencies of the warrant and notifying the defense.

The *Garcetti* decision has unclear implications for federal scientists speaking to the media or public, particularly if this is viewed as a part of their job duties. Scientific speech about climate change under *Pickering* would arguably be treated as a significant matter of public concerns. Yet, in finding that Ceballos did not have a First Amendment cause of action, the Supreme Court avoided the *Pickering* test altogether. The Court never addressed whether Ceballos' speech was a matter of public concern; rather, it shifted the focus to the employee's job description and granted protections only if the

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<sup>434</sup> *United States v. NTEU*, 513 U.S. 454, 467 (1995). Of significance in *NTEU* is that the court struck down "a wholesale deterrent to a broad category of expression by a massive number of potential speakers," which gave rise to far more serious concerns than a single supervisory decision. *NTEU* suggested that restrictions found in media policy regulations would be scrutinized more strictly than an isolated disciplinary action would be.

<sup>435</sup> *See EPA v. Sanjour*, 56 F.3d 85 (1995). The EPA regulation was struck down because the purported government interest – the prevention of unjust enrichment of employees – was found to preclude individuals from speaking about matters of public concern.

<sup>436</sup> *See Harmon v. City of New York*, 140 F.3d 111 (1998). The Second Circuit rejected the city's argument that these regulations by the Child Welfare administration were necessary to protect confidential information, finding rather that they operated as an unconstitutional prior restraint on speech: "While the government has special authority to proscribe the speech of its employees, vigilance is necessary to ensure that public employers do not use authority over employees to silence discourse, not because it hampers public functions but simply because superiors disagree with the content of employees' speech."

<sup>437</sup> *See, e.g., FW/PBS, Inc. dba Paris Adult Bookstore II v. City of Dallas*, 493 U.S. 215, 223-224 (1990) (without a time frame a regulatory scheme creates an "impermissible risk of suppression of ideas" whenever applied); *Harman v. City of New York*, 140 F.3d at 120, (objecting to a policy which allows the employer to "destroy the immediacy of the comment").

<sup>438</sup> 126 S.Ct. 1951 (2006).

<sup>439</sup> *Ibid.*

speech did not fall within it.<sup>440</sup> This doctrine has spread beyond formal government settings, even being used to limit statutory whistleblower rights for private employees.<sup>441</sup> If *Garcetti* is not confined to the type of internal communications at issue in Ceballos, the doctrine may apply to the public communications of federal employees as well.<sup>442</sup>

There are strong indications, however, that scientific speech about climate change would be treated as a significant matter of public concern under both *Pickering* and *Garcetti*. Notably, the *Garcetti* opinion highlighted the special concerns of scholarly speech:

There is some argument that expression related to academic scholarship or classroom instruction implicated additional constitutional interests that are not fully accounted for by this Court's customary employee-speech jurisprudence. We need not, and for that reason do not, decide whether the analysis we conduct today would apply in the same manner to a case involving speech related to scholarship or teaching.<sup>443</sup>

This caveat suggests that the protection afforded scientific and scholarly speech by government employees might be analyzed differently under First Amendment principles than the internal speech that routinely takes place inside other kinds of government offices. Indeed, such an approach would be necessary to bring First Amendment analysis into accord with the congressionally-mandated missions of federal science agencies, which uniformly direct such agencies to provide the best possible scientific information to inform the public and policy-makers.

The *Garcetti* decision thus leaves many important questions unanswered, but does not foreclose the possibility that more expansive free speech rights will apply to government scientists given the unique nature of their work and the public's interest in maintaining the integrity of the scientific process, which depends on the full and free exchange of ideas. Certainly, strong policy considerations militate in favor of such a construction.

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<sup>440</sup> *Ibid.* The opinion devoted much attention to Ceballos' duties as a calendar deputy "fulfilling a responsibility to advise his supervisor about how best to proceed with a pending case." This was the determining factor, as the government action then "simply reflects the exercise of employer control over what the employer itself has commissioned or created."

<sup>441</sup> See Bonnie I. Robin-Vergeer, "Surviving *Garcetti* v. Ceballos," and Thad Guyer, "Surviving *Garcetti* v. Ceballos: Arguments to Save First Amendment cases after *Garcetti*," papers presented at the National Employment Lawyers Association seminar: Representing Workers in Whistleblower and Retaliation Cases, (March 16-17, 2007).

<sup>442</sup> A significant aspect of the *Garcetti* opinion is that the case was remanded to the Ninth Circuit to determine whether any of Ceballos' speech outside of the memo should qualify for First Amendment protection. Notably, Ceballos had also addressed his concerns at a bar meeting, which would appear to place him farther outside the court's "course of employment" criterion.

<sup>443</sup> The dissent did not miss the significance of the opinion's potential breadth: "This ostensible domain beyond the pale of the First Amendment is spacious enough to include even the teaching of a public university professor, and I have to hope that today's majority does not mean to imperil First Amendment protection of academic freedom in public colleges and universities, whose teachers necessarily speak and write 'pursuant to official duties.'"

We can now turn to the specific media policy guidelines at NASA and NOAA.<sup>444</sup> In examining these guidelines, it is helpful to keep in mind the Supreme Court's acknowledgment that the "government may certainly choose to give additional protections to its employees beyond what is mandated by the First Amendment."<sup>445</sup> Constitutional rights are the bare minimum that employees must be afforded. Although judicial decisions are tempered by the deference appropriately owed to the executive branch, there are strong policy reasons – grounded in the First Amendment – for agencies to expand the reach of employees' free speech rights.

## **NASA and the First Amendment**

### *Types of Speech Covered by the Policy*

NASA's media policy restrictions cover "information in any form provided to news and information media," including press releases, media advisories, news features, and web postings.<sup>446</sup> The policy does not cover scientific and technical reports, web postings designed for technical or scientific interchange, and technical information presented at professional meetings or in professional journals.<sup>447</sup> Hence, scientists are generally allowed to share information with their colleagues without going through the public affairs office's political appointees.

What type of communication the media policy covers and does not cover is not clearly defined. For example, if a scientist were to post on the web information about his work, would that fall under the "web postings" definition of "public information," in which case it must adhere to the policy? Or would it constitute "web postings designed for technical or scientific interchange" and thus not fall within the policy's purview? NASA has included a "Frequently Asked Questions" (FAQ) pamphlet to accompany the policy that attempts to clarify this situation:<sup>448</sup>

The same policy applies to the Web as to standard release of public information. All public information posted on a NASA website is subject to this policy. However, scientific and technical reports, scientific data and technical information for professional interchange and peer-reviewed research are not included.

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<sup>444</sup> This section will focus on the media policies at NASA and NOAA, though – as documented elsewhere in this report – problems persist at other agencies as well. It is also significant that, whereas both NASA and NOAA have issued written policies, restrictions on communication continue to be transmitted through verbal orders and directives that fall outside of these policies.

<sup>445</sup> See *Waters v. Churchill*, 511 U.S. 661, 674 (1994).

<sup>446</sup> "Scope," NASA 2006 media policy at pg. 1.

<sup>447</sup> *Ibid.*

<sup>448</sup> NASA Public Affairs Policy FAQ at pg. 2 available at [http://www.nasa.gov/audience/formedia/features/communication\\_policy.html](http://www.nasa.gov/audience/formedia/features/communication_policy.html) (last visited on March 24, 2007).

Despite NASA's attempt to parse the categories of what is and is not covered by the media policy, several questions remain. For example, how broad is the category of scientific and technical reports? This is a significant question left open because scientific and technical reports or scientific data posted to a non-NASA website would appear to fall outside the policy. Also, only public information intended for "nationwide release" must be reviewed and cleared by NASA Headquarters. Public information that is "institutional in nature, of local interest or deemed by NASA headquarters not to be a Headquarters release" may be released without review and clearance.<sup>449</sup> The first two categories are incredibly broad and give little guidance as to what would be covered. The last criterion is paradoxical. If the public information at issue is deemed to be a non-headquarters release, then it must have first been reviewed in order to make that determination.

### *Notice and Timing*

NASA's media policy contains a notification element that states:

NASA employees may speak to the media and the public about their work. When doing so, employees shall notify their immediate supervisor and coordinate with their public affairs office in advance of interviews whenever possible, or immediately thereafter, and are encouraged, to the maximum extent practicable, to have a public affairs officer present during interviews."<sup>450</sup>

The notice requirement by itself does not constitute an objectionable prior restraint.<sup>451</sup> Although the notice requirement appears to allow employees to respond to impromptu or breaking news interview requests without having to send formal notice first, the FAQ obfuscates the notice requirement by stating that though "NASA employees are not required to notify public affairs to express their opinions," they are asked to notify if they "participate in media activities related to their professional responsibilities."<sup>452</sup>

Although the media policy states that public information will be released "promptly, factually, and completely," there is no timeline set forth.<sup>453</sup> Restrictive policies that lack a timeline have been struck down by other courts.<sup>454</sup> Hence, it is

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<sup>449</sup> "Public information coordination and concurrence," Section (d), NASA 2006 media policy at pg. 4.

<sup>450</sup> The policy also calls for coordination among the public affairs bureaucracy that also requires a similar notification element. This analysis, however, will concentrate on notification elements for the employee scientists.

<sup>451</sup> *Latino Officers Association v. Safir*, 170 F.3d 167, 172 (2d Cir. 1999) (upholding a policy requiring notice and reporting, as plaintiffs failed to show how it threatens unpopular speech).

<sup>452</sup> NASA Public Affairs Policy FAQ at pg. 4 *available at* [http://www.nasa.gov/audience/formedia/features/communication\\_policy.html](http://www.nasa.gov/audience/formedia/features/communication_policy.html) (last visited on March 24, 2007).

<sup>453</sup> "Principles," Section (b), NASA 2006 media policy at pg. 1.

<sup>454</sup> *See, e.g., FW/PBS, Inc. dba Paris Adult Bookstore II v. City of Dallas*, 493 U.S. 215, 223-224 (1990) (without a time frame a regulatory scheme creates an "impermissible risk of suppression of ideas" whenever applied); *Harman v. City of New York*, 140 F.3d at 120, (objecting to a policy which allows the employer to "destroy the immediacy of the comment"). *But see Weaver v. United States Information*

possible that this part of the policy would not survive scrutiny. The policy also includes a dispute resolution process, but it similarly excludes a timeline, thereby raising some of the same concerns as above. A written explanation for the PAO decision, however, will be provided if requested.

### *Content Restriction*

Although the requirement to provide notice has been upheld, courts are far less willing to allow a policy that requires content review and approval prior to speaking.<sup>455</sup> The NASA media policy requires “review and clearance by appropriate officials” for “all NASA employees involved in preparing and issuing” public information.<sup>456</sup> The policy also allows the PAO to “edit any information to ensure that public information products are well written and appropriate for the intended audience. However, such editing shall not change scientific or technical data, or the meaning of programmatic content.”<sup>457</sup> Thus public information appears to be safe from content editing during review and approval, but not necessarily from delay or rejection on the basis of its content.

Furthermore, the policy designates an entire content area as off-limits: “Only a designated NASA spokesperson may speak to the media on budget, policy or programmatic issues.”<sup>458</sup> Employees are often in the best position to offer opinions on these matters of public concern, especially since “programmatic issues” can be interpreted broadly enough to encompass any non-administrative matters.<sup>459</sup> These provisions also appear to conflict with another section of the FAQ.<sup>460</sup>

Q: When issues of official NASA policy or budget are discussed, or other matters beyond the scope of the interviewee’s duties, may the person being interviewed provide their opinions even though they may not be the official agency spokesperson on the matter?

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Agency, 87 F.3d 1429 (DC Cir. 1996) (upholding pre-publication review requirement without a timeline provision because it was not sufficiently alleged that the review period would be “lengthy.”)

<sup>455</sup> *Latino Officers Association v. Safir*, 1997 U.S. Dist. LEXIS 10983 (S.D.N.Y. 1997). (temporary injunction against policy requiring reporting, supervision, notice, and approval), vacated, 170 F.3d 167 (2d Cir. 1999) (upholding policy pared down to notice and reporting).

<sup>456</sup> “Public information coordination and concurrence,” Sections (a) and (b), NASA 2006 media policy at pg. 3-4.

<sup>457</sup> “Responsibilities,” Sections (c), NASA 2006 media policy at pg. 2. The FAQ appears to bolster this by claiming that the PAO can “never” edit or alter scientific information. NASA Public Affairs Policy FAQ at pg. 3.

<sup>458</sup> “Interviews,” Sections (a), NASA 2006 media policy at pg. 4.

<sup>459</sup> *See, e.g., Waters v. Churchill*, 511 U.S. at 666, 674 (protecting an employee’s speech commenting on policy as she was in the best position to identify problems).

<sup>460</sup> NASA Public Affairs Policy FAQ at pg. 3 *available at*

[http://www.nasa.gov/audience/formedia/features/communication\\_policy.html](http://www.nasa.gov/audience/formedia/features/communication_policy.html) (last visited on March 24, 2007).

A: Yes. However, they must clearly state that this is their personal opinion and does not reflect the views of the agency....[and make sure] government resources shall not be used toward that activity.<sup>461</sup>

The FAQ is difficult to reconcile with the policy. Such contradictions as between the overall “personal views” exception and its various loopholes may only be compounded by the pending release of implementation guidelines.<sup>462</sup> It is GAP’s concern that this uncertainty leaves the policy open to varying interpretations depending on the prevailing political climate.

### **NOAA and the First Amendment**

NOAA is contemplating a revision of its current media policy, one that suffers from vague directives and ambiguous language. The policy includes a recognition that:<sup>463</sup>

Well-planned media relations programs help earn public support of missions, functions, and services performed by NOAA. A principal goal of public, constituent, and intergovernmental affairs activities is to increase understanding of NOAA and its mission by increasing public exposure to, and understanding of, NOAA’s programs.

This stated purpose is significant because the application of *Pickering* requires the court to consider the congruence between the stated purpose of a policy and the interests in a speech restriction asserted at trial.<sup>464</sup> Hence, the state actor must demonstrate that the policy rectifies real harms in a direct and material way.<sup>465</sup>

#### *Types of Speech Covered by the Policy*

The Office of Public, Constituent, and Intergovernmental Affairs (OPCIA) is responsible for coordinating and approving media communications involving NOAA, including advisories, press releases, interviews, and other related media contacts. Mandating approval as a pre-clearance requirement carries a heavy presumption against its constitutional validity.<sup>466</sup> The types of “media communications” enumerated by the policy are quite expansive. This can weigh against finding the policy constitutional, as

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<sup>461</sup> Documents obtained by FOIA indicate that interviews or other activities in an unofficial capacity exceeding 5-10 minutes per day are no longer considered “paid free time.” Email From: Erica Rule; To: Judy Gray, Michael Black, et al.; Date: October 20, 2005 *on file with Dyckman*. Without further judicial guidance, it is our contention that government employees should have *at least* 20 minutes of “paid free time,” the equivalent of two short breaks.

<sup>462</sup> NASA Public Affairs Policy FAQ at pg. 5 *available at* [http://www.nasa.gov/audience/formedia/features/communication\\_policy.html](http://www.nasa.gov/audience/formedia/features/communication_policy.html) (last visited on March 24, 2007).

<sup>463</sup> “Stated purpose,” NOAA 2004 media policy, NAO-219-6, at pg. 1.

<sup>464</sup> *Sanjour v. EPA*, 56 F.3d 85, 96 (D.C. Cir. 1995).

<sup>465</sup> *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 664 (1994).

<sup>466</sup> *Southeastern Promotions Ltd. v. Conrad*, 420 U.S. 546, 559 (1975).

overly broad policies create a chilling effect on unpopular or dissenting speech by their “very existence.”<sup>467</sup>

OPCIA’s responsibilities include media communications concerning the following:<sup>468</sup> (1) announcement of the release of official NOAA data, research, positions, and statements;<sup>469</sup> (2) announcement of activities of NOAA or Department leadership which pertain to NOAA policy, science, research, missions, projects, and partnerships; (3) announcement of the release of contracts, grants, and grants-in-aid of \$500,000 or more, or others of any amount which may have significant public interest or other public value or significance; (4) activities that may have policy-making implications; and (5) announcing official scientific and technical papers authored or co-authored by NOAA employees that result or may result in media interest.

In *NTEU*, the Supreme Court faulted a government policy preventing employees from giving speech unrelated to their jobs for being over-inclusive.<sup>470</sup> Hence, terms such as “media interest” present a problem because they are especially vague.<sup>471</sup> NOAA public affairs professionals are responsible for ensuring that reporters get timely and accurate answers to pertinent questions.<sup>472</sup> Similar to the lack of objective standards for approval, the lack of a concrete time limit for approval weighs against the employer’s interest, as it allows the employer to destroy the newsworthiness of the speech.<sup>473</sup>

### *Notice*

Notice must be given for virtually all forms of communication, including proposed news conferences, proposed contacts with major news media, and official and non-official scientific and technical papers authored or co-authored by NOAA employees that may result in media interest.<sup>474</sup> Furthermore, all employees must notify the PAO before responding to news media inquiries whenever the inquiries are of national news interest, concern regulatory issues, concern controversial issues, pertain to science having policy implications, or involve a crisis situation.<sup>475</sup>

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<sup>467</sup> *Kessler v. City of Providence*, 167 F.Supp.2d 482, 490 (D. R.I. 2001), citing *International Association of Firefighters Local 3233 v. Frenchtown Charter Township*, 246 F.Supp.2d 734, 742 (E.D. Mich. 2003).

<sup>468</sup> “Responsibilities,” Section 2.02 NOAA 2004 media policy, NAO-219-6.

<sup>469</sup> The District Court of Connecticut validated a police department regulation containing pre-clearance requirements for “formal releases” of information. See *Shelton Police Union v. Voccola*, 125 F.Supp.2d 604, 624 (D. Conn. 2001). The department’s interest in controlling statements attributed to it affects the effective functioning of the department in a direct and material way.

<sup>470</sup> *United States v. National Treasury Employees Union*, 513 U.S. 454, 477 (1995).

<sup>471</sup> See *Harman v. City of New York*, 140 F.3d 111, 120 (2d Cir. 1998) (weighing a lack of objective standard against the government’s interest)

<sup>472</sup> “Responsibilities,” Section 2.04 NOAA 2004 media policy, NAO-219-6.

<sup>473</sup> See *Harman*. The undefined timeline, however, is mitigated by the superseding DOC media policy, which proscribes detailed timing requirements for media communications. See DAO 219-2 § 2.03, Release of News, Clearance of Publications, and Media Coverage (“News releases are to be submitted two working days prior to the proposed release date to permit adequate time for processing.”)

<sup>474</sup> “Media and public interactions requiring prior notification,” Section 3.01 NOAA 2004 media policy, NAO-219-6.

<sup>475</sup> *Ibid.* Section 3.02.

Generally, notice without content approval requirement is deemed constitutional.<sup>476</sup> However, any proposed participation or inclusion in media presentations (e.g., audio or visual tapes, films, television programs, and exhibits) by individuals resulting from their duties as NOAA employees must be cleared by OPCIA beforehand.<sup>477</sup> If a “media presentation” constitutes an interview with a news station, then an approval requirement is arguably unconstitutional.<sup>478</sup>

### *Content Restriction*

NOAA’s media policy has a section entitled “Guidance on Media Queries.”<sup>479</sup> The guide appears to cover every conceivable form of communication and to direct its employees away from speaking about matters of public concern or offering their opinions on such matters. This guidance includes the following suggestions:

- a. Discussions should focus on science and fact, not speculation.
- b. Limit discussions to matters for which you are responsible and of which you have direct knowledge.
- c. Whether in person, on camera, or over the phone, when speaking to a reporter you represent and speak for the entire agency.
- d. When speaking to reporters, you are speaking on the record. Off-the-record and background interviews almost always result in a story.
- e. You are not bound to talk with reporters. Should you have any questions, concerns, or doubts, call your servicing PAO.
- f. Following an interview, call your servicing PAO to describe the interview and the expected story. Do this promptly. The situation may require the PAO to contact the reporter in order to provide additional information and context.

In an October 3, 2006, memo to all NOAA employees, NOAA Administrator Conrad Lautenbacher made the following statement:<sup>480</sup>

Our media standards also reflect an open policy. We encourage our public affairs staff to keep abreast of media interests. I encourage our scientists to speak freely and openly. Dozens of you every day are talking to the media and providing the results of peer reviewed science across a wide variety of NOAA topics. We ask only that you specify when you are communicating

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<sup>476</sup> *Latino Officers Association v. Safir*, 170 F.3d 167, 172-73 (2d Cir. 1999) (upholding notification).

<sup>477</sup> “Media and public interactions requiring prior notification,” Section 3.03 NOAA 2004 media policy, NAO-219-6.

<sup>478</sup> *See Southeastern Promotions Ltd. v. Conrad*, 420 U.S. 546, 559 (1975).

<sup>479</sup> “Guidance on media queries,” Section 4.02 NOAA 2004 media policy, NAO-219-6.

<sup>480</sup> Available at [http://sciencedems.house.gov/Media/File/ForReleases/04oct06NOAA/noaa\\_lautenbacher\\_mailtext\\_03oct06.pdf](http://sciencedems.house.gov/Media/File/ForReleases/04oct06NOAA/noaa_lautenbacher_mailtext_03oct06.pdf) (last visited on March 24, 2007).

personal views and when you are characterizing your work as part of your specific contribution to NOAA's mission.

Lautenbacher's views toward openness at NOAA are not reflected in the NOAA media policy. NOAA's written guidance to "limit discussions to matters for which you are responsible and of which you have direct knowledge" contradicts Lautenbacher's declaration and contravenes the well-stated societal interest in having public employees comment on any matters of public concern. As a matter of policy, NOAA has yet to respect its employees' right to a "personal views" exception.

### Media Policies and Statutory Protections

In 1989, Congress enacted the Whistleblower Protection Act (WPA), an amendment to the Civil Service Reform Act (CSRA), to protect federal employees who attempt to alert the public to illegal or dangerous actions.<sup>481</sup> The WPA forbids the federal government from taking or threatening adverse action against a federal employee because the employee disclosed information that he or she reasonably believed showed a violation of law, gross mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health or safety. To state a claim, a federal employee must show a protected disclosure, knowledge of the disclosure by the retaliating official, and concrete causation of the retaliation by the protected whistleblowing activity. The WPA permits employees to disclose otherwise-qualified information without restriction, unless it is classified or its release is specifically prohibited by statute.<sup>482</sup> None of the policies GAP examined that regulate a federal employee's communications contain an explicit exemption for this statutorily-protected form of speech.

Policies restricting disclosures of information classified as "Sensitive but Unclassified" (SBU) – such as found in the reformed NASA media policy, which requires pre-approval for all SBU disclosures<sup>483</sup> – also violate the WPA and other free speech rights. SBU is an uncontrolled hybrid secrecy category for information that can be, and has been, imposed after the fact, without prior notice, and for any "official use."<sup>484</sup> SBU does not purport to meet the legal standards for classification and is so broad and vague that it could be interpreted to sweep in virtually anything.

The NASA policy also contravenes the WPA right to engage in anonymous communications by requiring federal employees to work with NASA officials "prior to releasing information" or "engaging in any activities or events ... that have the potential

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<sup>481</sup> See 5 U.S.C. §§ 2302(b)(8), (b)(9).

<sup>482</sup> As ruled in *Garcetti*, the WPA does not protect employees whose disclosures were made "during the course of [their] job duties." *Willis v. Department of Agriculture*, 141 F.3d 1139 (Fed. Cir. 1998). The U.S. Court of Appeals for the Federal Circuit removed WPA coverage for job-related whistleblowing disclosures. As discussed later in this section, pending legislation H.R. 985 would overturn the Federal Circuit's decision in *Willis*.

<sup>483</sup> "Preventing unauthorized release of sensitive but unclassified (SBU) information," NASA 2006 media policy at pg. 6-7.

<sup>484</sup> See, e.g., *McClellan v. Department of Homeland Security* (pending Ninth Cir.).

to generate significant media or public interest inquiry.”<sup>485</sup> Furthermore, the NASA policy requires “review and clearance” by appropriate officials for “all NASA employees” involved in “preparing and issuing” public information.<sup>486</sup> It grants NASA the power to control the timing of all disclosures.<sup>487</sup> With no distinction made for protected whistleblower speech, there is no legal basis to conclude that these provisions can lawfully coexist with the WPA.

On March 14, 2007, the U.S. House of Representatives passed an amendment to the WPA, H.R. 985, which, among other things, includes a clarification regarding disclosure of actions that threaten the integrity of federal science.<sup>488</sup> As amended, the WPA would now define “abuse of authority” to include:<sup>489</sup>

- (1) any action that compromises the validity or accuracy of federally funded research or analysis;
- (2) the dissemination of false or misleading scientific, medical, or technical information; and
- (3) any action that restricts or prevents an employee or any person performing federally-funded research or analysis from publishing in peer-reviewed journals or other scientific publications or making oral presentations at professional society meetings or other meetings of their peers.

These whistleblower protections thus protect against retaliation for exposing the distortion or restriction of scientific communications and research.<sup>490</sup> H.R. 985 covers civil service employees and narrowly-defined government contractors, but not all scientists at federally-funded facilities.<sup>491</sup>

Despite these statutory safeguards for whistleblower-type speech, the WPA does not protect from the increasingly restrictive policies and practices imposed upon federal employees when merely communicating their scientific research to the media, public, or Congress. This form of non-whistleblower speech does not satisfy the above-listed elements required to pursue a claim under the WPA. In other words, whistleblowers may currently be protected for disclosing evidence that their science has been suppressed, but would not necessarily be protected under the WPA for disclosing the science itself.

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<sup>485</sup> “Responsibilities,” sections (f) and (g), policy at 3; see also “Interviews,” sections (c) and (f), NASA 2006 media policy at pg. 5.

<sup>486</sup> “Public information coordination and concurrence,” Sections (a) and (b), NASA 2006 media policy at pg. 3-4.

<sup>487</sup> “Responsibilities,” section (i), NASA 2006 media policy at pg. 3.

<sup>488</sup> Whistleblower Protection Enhancement Act of 2007.

<sup>489</sup> H.R. 985 §13(a) “Clarification of Whistleblower Rights Relating to Scientific and Other Research.”

<sup>490</sup> Note that a corresponding provision is not currently included in companion Senate legislation, S. 274.

<sup>491</sup> H.R. 985 §11(a) limits protection to employees of traditional contractors, as defined by 41 U.S.C. 265(a). This would exclude those supported by research grants or other forms of federal funding.

A corollary to the WPA is the Lloyd-Lafollette Act, which recognizes the right of employees to freely communicate with Congress.<sup>492</sup> However, on its face the law offers no legal remedies in the event the right is abridged.

Another relevant legal boundary is the Anti-Gag Statute, which bans federal spending to implement or enforce any “nondisclosure policy, form, or agreement” unless it includes a congressionally drafted addendum specifying that statutory whistleblower protections supersede any conflicting language in the agency’s restriction.<sup>493</sup> The statute protects employees from being forced to relinquish their whistleblower rights. Congress has unanimously passed anti-gag provisions as riders to appropriations legislation since FY1988. H.R. 985 would make this provision permanent and render the failure to include the addendum a prohibited personnel action.<sup>494</sup> None of the media policies discussed in this report – all of which explicitly restrict federal employees’ communications contrary to the WPA – contain the required addendum.<sup>495</sup>

In addition to statutory proscriptions, affirmatively facilitating media communications through networking and preparing, assisting, and encouraging federal employees is often necessary to fulfill an agency’s legislative mandate, public expectations, or its own internal goals of educating the public. For example, the NOAA Climate Program states as its second objective the outcome of creating “a climate-literate public effectively incorporating NOAA’s climate products into their plans and decisions.”<sup>496</sup> Similarly, NASA’s 2006 Policy on the Release of Information to the News and Information Media stated that “consistent with NASA statutory responsibility, NASA will ‘provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof.’” Effective outreach can also raise an agency’s public recognition, improve its scientific reputation, and increase its federal funding.

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<sup>492</sup> See 5 U.S.C. § 7211 (1978). “The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.”

<sup>493</sup> SEC. 820 of the Transportation, Treasury, Housing and Urban Development, the Judiciary, and Independent Agencies Appropriations Act of 2006, which became PL 109-115 on November 30, 2005, as extended through September 30, 2007, by H.J. RES 20, the continuing appropriations resolution for the FY2007, which became PL 110-5 on February 15, 2007. The language of the addendum may be found in GAP’s model media policy below.

<sup>494</sup> H.R. 985 § 5 “Nondisclosure policies, forms and agreements.”

<sup>495</sup> Note that in response to GAP’s FOIA requesting evidence of compliance with the statute, NOAA’s FOIA officers expressed first that no one had heard of it and then that they falsely believed it to be repealed.

<sup>496</sup> OAR Q&As (undated). *GAP August 9, 2006, part 3 NOAA FOIA response undated pg. 26-75.*

## RECOMMENDATIONS

*GAP recommends that the executive branch and all federal agencies supporting climate change research:*

- Eliminate mandatory pre-approval for media contacts, selective routing of media requests, drafting of anticipated questions and answers by scientists prior to interviews, and monitoring of media communications.

It may be reasonable to require notification of the Public Affairs Office (PAO) and a post-interview recap, as many local PAOs have done to both the scientists' and reporters' satisfaction. Furthermore, the PAO should take an active role in coordinating and facilitating media interactions, especially connecting journalists with the appropriate scientists and supplying corrections and background information. Nonetheless, the ultimate decision about the content of and parties to any particular media communication rests with the reporter and the scientist he or she asks to interview.

- Reaffirm the “personal views” exception for all media, congressional, public, and professional communications.

Scientists must be apprised of their constitutional right to speak about any subject, including policy-related matters and those outside their area of expertise, so long as:

1. scientists make it clear that they do so in their private capacity, not as a representative of their agency. Identifying the scientist with his or her agency, position, and area of expertise is permissible so long as the communication includes the “private capacity” disclaimer; and
  2. scientists' personal communications do not unreasonably take from agency time and resources. Personal use of telephone or email should be allowed during employees' “paid free time.” Longer interviews may need to be conducted during authorized breaks or after work. Insofar as an agency facility is usually open to the public, reporters should be able to conduct interviews with scientists on the premises.
- Comply with the mandatory requirements of the Anti-Gag Statute to notify employees of their whistleblower and related rights by incorporating the statutorily-prescribed addendum into the text of any restrictive communication policy or directive.
  - Comply with the Whistleblower Protection Act (WPA) by including the necessary exceptions.

The Whistleblower Protection Act protects any unclassified disclosures, or those

not specifically prohibited by statute, that a federal employee reasonably believes to present evidence of illegality, gross waste, gross mismanagement, abuse of power, or substantial and specific danger to public health or safety. Communication policies should include this exception to any restrictions they imposes.

- Eliminate communication restrictions based on the “Sensitive but Unclassified” (SBU) classification because the unsettled legal definition of SBU can cover virtually any form of communication and thereby implicates constitutional and statutory free speech concerns. Correspondingly, regulations governing the definition of “Sensitive but Unclassified” and related categories must be tightened so that employees know what type of information is properly marked SBU.
- Consistently emphasize the importance of unobstructed science in mission statements, communication policies, and/or administrative directives.
- Guarantee the timely and pro-active issue of press releases.

Any scientist, whether the lead author or co-author of a published report, study, or article, must be given the necessary approval and assistance to issue a press release calling attention to the work within a reasonable time and concurrent with the publication date – even if a release has already been or is scheduled to be issued by another institution.

- Leave content editing to the scientists for scientific publications, congressional written testimony and reports, web postings and presentation material, and press releases.

Although non-scientists and agency management may be actively involved in the review and preparation of scientific products, they do not have the authority to alter the substance of written scientific information without the scientists’ express consent. The qualified scientists actively involved in the research or synthesis of research are ultimately responsible for its content. Co-authors, peer review, ethics, and personal reputation are the proper check.

- Reaffirm a scientist’s “right of last review” for all media, congressional, public, and professional communications.

Federal employees have the right to approve the final version of any proposed federal publication that significantly relies on their scientific research, identifies them as a lead author or contributor, or purports to represent their scientific opinion. This includes, but is not limited to, reports, web postings, and press releases. In the case of multi-author publications, procedures should be set up to allow co-authors to have a meaningful right of review and comment. Where an agency adopts an agency-wide position on a scientific issue, scientists must be allowed to register their disagreement publicly and without adverse consequence

to themselves. Finally, federal employees should be permitted reasonable access to all drafts and edits of their publications that may be produced throughout the review process.

- Solicit the input of scientists and other stakeholders in the development of the content of substantial congressional and public reports and the procedures that govern their production.
- Continue to ensure that federal employees are not restricted either from publishing their research in peer-reviewed journals and other scientific publications or from making oral presentations about their research at professional conferences or other meetings of their peers.
- Establish effective transparency and accountability procedures.

In order to make the above two recommendations meaningful:

1. the editing and review process must clearly identify all participants and text changes at each stage of review. Participants must be able to address any concerns or questions about changes with the party that made them;
  2. an internal disclosure system must be established that ensures confidential reporting and independent resolution of inappropriate alterations, conduct, or conflicts of interest in the review process in particular; and
  3. more generally, the government and its agencies must afford federal scientists adequate whistleblower safeguards, including the impartial investigation and fair resolution of complaints, due process rights, confidentiality of disclosures, protections from retaliation, and adequate corrective relief.
- Adequately inform and clarify scientists' rights and responsibilities.

Every public affairs office needs to evaluate its existing policies and to develop (or reaffirm) a set of simple and unambiguous policies in light of these recommendations and with the input of its own scientists. These policies should clearly incorporate the scientists' rights, as well as responsibilities, and be broadly disseminated to both scientists and management through annual reports, Internet sites, employment contracts, workplace posters, employee handbooks, and special trainings. Although agency- or department-wide policies may articulate an overarching set of principles and basic rights and responsibilities, it is suggested that implementation guidelines be afforded some measure of adaptability to the particular needs of agency subdivisions. In any case, communication policies should be uniformly applied and their content readily available to all employees and to the general public.

- Investigate and correct or redress the inappropriate policies, practices, and incidents set forth in this report and elsewhere.

Determine whether and why the reported problems have occurred. Where confirmed to be true, provide:

1. adequate relief, including but not limited to, reinstatement, plus public and/or private acknowledgement, to those who may have been harmed;
  2. adequate discipline of those found responsible, including but not limited to firing or demotion to a position of less authority; and
  3. necessary reform to correct the institutional conditions, policies, and activities that prompted the problem.
- Encourage the media to recognize and place primary emphasis on reporting credible peer-reviewed information from the scientific community.
  - Improve public affairs' affirmative role of translating science for public consumption by:<sup>497</sup>
    1. mandating that PAOs aggressively pursue the dissemination and accessibility of their scientists' work to the public, media, and Congress;
    2. regularly training scientists on effective communication techniques; and
    3. hiring more local public affairs officers to work directly with the scientists.
  - Develop a transparent communication policy at CCSP that meets the recommendations for media policy reform set out above and that streamlines the approval process for CCSP products and communications.<sup>498</sup>
  - Expedite the timely filling of the long-vacant position of CCSP Director with a scientifically-competent candidate, as well as of vacancies in science policy positions in the Office of Science and Technology Policy and in CCSP principal-representative-level science management positions in participating agencies.
  - End the suppression of meaningful and appropriate references to, as well as the use of, the National Assessment of the Potential Consequences of Climate Variability and Change in the communication of climate change research and

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<sup>497</sup> A good reference in this regard is Moser, S.C. and L. Dilling (eds.) *Creating a Climate for Change: Communicating Climate Change and Facilitating Social Change*, Cambridge University Press (February 2007).

<sup>498</sup> This process should occur in an aggressive timeframe significantly shorter than that required for the development of the new NOAA media policy.

assessment, including in CCSP reports to Congress, in research and in assessment planning documents, and on websites.

- Ensure CCSP compliance with the Global Change Research Act by producing in the statutorily-required timeframes an integrated, scientifically-based assessment of climate change, including an analysis of current and projected trends and a focus on the impacts of climate change on society and the environment.

*Further, GAP urges Congress to:*

- Enact legislation that protects federal free speech rights and extends whistleblower protections to all performing federally-funded scientific, professional, or technical research.
- Establish a more effective science-policy relationship.

In order to ensure that federal climate science can best develop and communicate an objective understanding of an important contemporary issue to the public and policymakers, there must be a constructive interface between politics and science. This can be promoted by:

1. reaffirming the importance of openness in science for effective policymaking;
2. training policymakers and regulators to base their decisions on credible, peer-reviewed scientific information from the mainstream scientific community;
3. addressing the influence of industry and industry-backed groups on government research and policy-making processes;
4. placing reasonable limits on agency and personnel authority with the aim of ensuring the scientific integrity of the final product:
  - a. agencies, departments, and executive offices without the institutional expertise should only promote, not interfere with, the conduct or communication of scientific research that has been delegated by the legislative or executive branch; and
  - b. political appointees or persons with conflicts of interest should not be granted final clearance and review of scientific information, and they should be held to transparent procedures in the overall review process.
5. restructuring the science divisions to consolidate and harmonize cross-cutting research and/or separate research elements from regulatory and policy-driven bodies; and

6. mandating a regular government-wide review to evaluate the integrity of federal scientific research and scientific communication.
- Strengthen essential congressional oversight functions on issues of scientific integrity.

## APPENDIX

### Appendix A: About the Authors

The Government Accountability Project (GAP) is the nation's leading whistleblower protection organization. GAP was founded in 1977, in the wake of the Pentagon Papers scandal, as a project of the Institute for Policy Studies. It has been a lifeboat for more than 3,000 citizen activists providing a range of services including legal information, referrals, counseling, advocacy, litigation, legislative affairs, and media advice. GAP has also been a driving force in many legislative advances in whistleblower protection, including the Sarbanes-Oxley Act of 2002 and the Whistleblower Protection Act of 1989.

GAP has developed in-house expertise in several areas such as promoting corporate accountability, strengthening whistleblower rights and protections, ensuring safe and cost-effective cleanup at nuclear weapons facilities, increasing food and drug safety, enforcing environmental protection laws, seeking enhanced protection for whistleblowers internationally, and curtailing national security abuses. To assist whistleblowers, GAP attorneys and organizers seek to galvanize an effective public response to the alleged wrongdoing and present the whistleblower's revelations to appropriate government agencies, congressional committees, and others on Capitol Hill to investigate and rectify the problems.

GAP's focus on scientific integrity in federal climate science began with the representation of two whistleblowers from government science programs: Dr. James Hansen from NASA and Rick Piltz of the CCSP. Tarek Maassarani served as staff attorney and lead investigator for GAP's new climate science integrity program. He holds a master's degree in international affairs from Columbia University's School for International and Public Affairs and a law degree from the Georgetown University Law Center. He also has a bachelors of science in Environmental Studies and bachelors of arts in Cultural Anthropology from the University of California, Santa Barbara. Tarek Maassarani is currently a Covington and Burling Westwood Fellow at the Neighborhood Legal Services Program in Washington, DC.

The National Coalition Against Censorship (NCAC), founded in 1974, is an alliance of 50 national non-profit organizations, including literary, artistic, religious, educational, professional, labor, and civil liberties groups. United by a conviction that freedom of thought, inquiry, and expression must be defended, NCAC works to educate organization members and the public at large about the dangers of censorship and how to oppose them. At NCAC, Jay Dyckman directs The Knowledge Project, a program that examines the clash between First Amendment principles of free expression and government suppression or distortion of scientific information. He is a graduate of Columbia Law School, where he was an editor of the Columbia Law Review. Upon graduation, he clerked for a federal judge and then spent five years as a litigation associate for two New York law firms.

## Appendix B: About this Report and the Investigation

The Government Accountability Project (GAP) investigation into the integrity of federal climate science commenced in February 2006. It was prompted by the concerns of two GAP clients, Rick Piltz and James Hansen, regarding political interference with federal climate science-related employees. A year later, a limited selection of GAP's findings was incorporated into the joint Union of Concerned Scientist-GAP report, *Atmosphere of Pressure: Political Interference in Federal Climate Science*, published in February 2007. The present report offers the comprehensive findings and synthesis of the GAP investigation.

The GAP investigation focused primarily on the effects of restrictive federal government policies and practices, especially those applied to control communications from particular employees on “sensitive” aspects of climate science. The investigation also addressed government efforts to control the communication of scientific climate-related information to Congress, the scientific community, and the public. GAP did not investigate issues of scientific integrity in other fields of research, budgetary impacts on climate science, or political interference at the hands of state and local governments, industry, or non-governmental organizations.<sup>499</sup>

GAP conducted over 40 interviews with climate scientists, communications officers, agency and program officials, and journalists.<sup>500</sup> These sources – both named and confidential – represent inside perspectives from the National Oceanic and Atmospheric Administration (NOAA), National Aeronautics and Space Administration (NASA), Climate Change Science Program, Environmental Protection Agency, United States Geological Survey, and National Center for Atmospheric Research (NCAR), as well as local, national, and international media. Nearly half of these interviews were conducted in person during field visits to research or administrative facilities in Boulder, Colorado (NCAR, NOAA's Global Monitoring Division); Princeton, New Jersey (NOAA's Geophysical Fluid Dynamics Laboratory); New York, New York (NASA's Goddard Institute for Space Studies); and Silver Spring, Maryland (NOAA's Office of Oceanic and Atmospheric Research). The remaining interviews were conducted by telephone or email. Interviewees were identified through personal referrals, in the media, or by agency directories. Nearly half of responsive interviewees raised confidentiality concerns. About one quarter of the scientists and public affairs staff solicited by GAP turned down our requests for information, a few of them expressing fears to speak even anonymously on the issue. More than a dozen agency and program officials, the majority of those approached, either turned down or did not respond to requests for interviews.

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<sup>499</sup> UCS has published a number of investigations and/or surveys on these topics. See [http://www.ucsusa.org/scientific\\_integrity/](http://www.ucsusa.org/scientific_integrity/).

<sup>500</sup> We use the term “scientist” loosely to encompass Ph.D. and Master's degree holders, working and retired, as well as research and lab assistants engaged in the scientific process. Furthermore, our investigations did not focus solely on interference with scientists, but on any federal employees working for the climate science agencies and programs.

In addition to interviews, GAP reviewed thousands of pages of documentation obtained from Freedom of Information Act (FOIA) disclosures (discussed below), as well as public and internal agency sources. GAP reviewed the responses to its own FOIA requests as well as disclosures obtained by Greenpeace, Paul Thacker, and congressional committees. GAP also reviewed more than 100 published news articles and more than three dozen congressional documents including reports, testimonies, and questions for the record.

## Appendix C: A Postscript on FOIA Irregularities

The Freedom of Information Act, signed into law by President Lyndon B. Johnson on July 4, 1966, permits private individuals and groups the full or partial disclosure of prior unreleased records held by the executive-branch agencies, effectively transforming a “need to know” to a “right to know” for government information.<sup>501</sup> The Act defines what records are subject to disclosure, lays out the requisite disclosure procedures, and affords nine exemptions to the statute, including national security, personal privacy, trade secrets, and law enforcement records. The law also provides administrative and judicial remedies for those inappropriately denied access to records.

On April 18, 2006, the Government Accountability Project (GAP) requested any and all records from the relevant climate research divisions of the National Oceanic and Atmospheric Administration (NOAA), National Aeronautics and Space Administration (NASA), and Environmental Protection Agency (EPA) pertaining to:

- That agency’s media policy and guidelines affecting a federal scientist’s communications with the press, the public, other agencies, non-government scientists, and other outside parties;
- Mechanisms in place and actions taken to enforce the above policies and guidelines;
- All records that demonstrate compliance with the anti-gag statutes, Section 818 and 820, Title VIII, Trans./Treasury/Judiciary/HUD Appropriations Act of 2006 (PL109-115);
- Public affairs monitors present during media interviews with federal scientists; and
- Federal employees’ complaints and/or suggestions on workplace freedom of expression.

Only NOAA came close to meeting the 20-day statutory response time mandated by FOIA when it released its first batch of 130 responsive documents on May 30, 2006.

On June 6, 2006, in light of new information uncovered in the first few months of the investigation, GAP supplemented its request with the following items from NOAA and NASA.

*NOAA:*

- Any and all preliminary, internal, or official responses to Senator Daniel Inouye’s February 16, 2006, “Questions for the record to Vice Admiral Conrad

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<sup>501</sup> 5 U.S.C. § 552 (2002).

Lautenbacher (Ret.) following a hearing on the FY2007 Budget Request for the National Oceanic and Atmospheric Administration.”

- Any and all documents marked as belonging to the OAR Line/Staff office(s) and labeled “Questions and Answers” or “Q and A” with any of the following in their subheading(s):
  - “Muzzling”
  - “Climate Change”
  - “Hurricanes”
- Any and all communications regarding or containing the words “climate change,” “hurricanes,” or “global warming” generated by or received by Jana Goldman, Kent Laborde, James Mahoney, Jordan St. John, Randee Exler, Ahsha Tribble, Conrad Lautenbacher, Jennifer Sprague, or anyone else at the policy office of the Under Secretary of Commerce, NOAA Office Public, Constituent and Intergovernmental Affairs, or Office of Legislative Affairs. This includes, but is not limited to, communications with subsidiary public affairs officers, federal scientists, and members of the media.
- Any documents and communications concerning the press releases and other publicity materials prepared by NOAA public affairs for the 7<sup>th</sup> International Carbon Dioxide Conference in 2005.
- Any documents or communications that lay out NOAA’s media policy, and associated guidelines, prior to 2004.

*NASA:*

- Any and all communications regarding or containing the words “climate change,” “hurricanes,” or “global warming” generated by or received by Erica Hupp, Gretchen Cook-Anderson, George Deutsch, Dwayne Brown, Glen Mahone, Dean Acosta, Dolores Beasley, or anyone else at NASA Public Affairs Headquarters, Chief of Staff/White House Liaison office, or Office of the Administrator. This includes, but is not limited to, communications with subsidiary public affairs officers, federal scientists, and members of the media.

After extensive telephone discussions clarifying the scope and purpose of GAP’s request, NOAA provided nearly 2,000 pages of documents under separate cover on July 31, 2006, and August 6, 2006. In contrast, the NASA request yielded only nine pages of documents – a copy of NASA’s most recent media policy – on June 12, 2006. On August 8, 2006, the EPA notified GAP that they had found no records responsive to our request.

Despite the obvious failures of the FOIA process in the NASA and EPA requests, the NOAA request was also marked with significant irregularities. For example, a

parallel disclosure of several hundred pages made directly to us by one Boulder scientist never arrived through the official FOIA channels. Overwhelmingly, conversation strings between senior level officials and agency scientists or staff did not include the responses from the officials, including those at the Council on Environmental Quality and Department of Commerce. GAP received no documents in response to the first two items of our supplementary request. Finally, the records were redacted without a specific explanation of what exemption justified each redaction as set forth in our request and required by law<sup>502</sup>

Similar irregularities also appeared in the disclosures generated by FOIA requests from Paul Thacker<sup>503</sup> and Greenpeace<sup>504</sup>. For example, Thacker has received no

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<sup>502</sup> 5 U.S.C. § 552(a)(2).

<sup>503</sup> *Thacker NOAA FOIA request* (December 16, 2005). From NOAA, Thacker requested all records pertaining to:

- Media outreach about climate change studies or studies that concern climate change from NOAA.
- All press releases and news stories about climate change and climate change studies from NOAA.
- Any communications between scientists, the press office, and agency officials regarding their studies and the creation of media outreach, news stories, or press releases – specifically communications involving Thomas Knutson, Venkatachalam Ramaswamy, Ronald Stouffer, Keith Dixon, Michael Winton, Kirsten Findell, Mike Spelman, Richard Wetherald, Thomas Delworth and other GFDL scientists working on climate change topics.
- Any communication within the press office regarding media outreach, news stories, and press releases on climate change topics at NOAA – specifically communications involving Jana Goldman, Ben Sherman, Kent Laborde, Michael Quigley, Jordan St. John, and Scott Mullen.

For an outline of FOIA issues encountered by the Massachusetts’s Attorney General with CEQ in 2004, see [http://www.whitehouse.gov/ceq/foia/correspondence/appeal/masscar\\_appeal\\_correspondence\\_9-23-04.pdf](http://www.whitehouse.gov/ceq/foia/correspondence/appeal/masscar_appeal_correspondence_9-23-04.pdf) (last visited March 24, 2007).

<sup>504</sup> On May 11, 2006, Greenpeace requested all records from January 2005 to present related to:

- Correspondence between staff members within the Climate Dynamics and Prediction Group of NOAA’s Geophysical Fluid Dynamics Laboratory at Princeton and NOAA press officials or administrators concerning the link between their climate phenomena research and human-induced greenhouse gases. Please include official statements and documents that reference CDPG research and the efforts of these staff members to make public statements linking their research to global warming.
- All documents and correspondence directed at the following Climate Dynamics and Prediction Group researchers that reference any NOAA position on the link between climate phenomena and global warming:
 

- Thomas Delworth	- Anthony J. Rosati
- Keith Dixon	- C. Tony Gordon
- Kirsten Findell	- Rich G. Gudgel
- William Hurlin	- Matthew J. Harrison
- Thomas Knutson	- Joseph J. Sirutis
- Ronald Stouffer	- William F. Stern
- Mike Spelman	- Robert D. Smith

documents from NASA despite the fact that he clarified his request for draft press releases with NASA's General Counsel.<sup>505</sup> Furthermore, in discussing the seemingly illegal NOAA redactions with their General Counsel, Thacker was told that the Department of Justice had been involved in screening the disclosures.<sup>506</sup>

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- Richard Wetherald
  - Michael Winton
  - Hyun-Chul Lee
  - Fanrong Zen
  - J. Tony Beesley
  - Jian Lu
  - Andrew Wittenberg
  - Gabriel Vecchi
  - Shaoqing Zhang

- Any NOAA documents, correspondence or materials that relate to the Geophysical Fluid Dynamics Laboratory and the manner in which its staff members are instructed to release statements or research related to climate variability and global warming.

<sup>505</sup> Paul Thacker, communication with Maassarani (February 25, 2007) *record on file with GAP*.

<sup>506</sup> *Ibid.*

## Appendix D: Background on Federal Climate Science Research

Federal government research into climate change is a large yet decentralized enterprise. Government climate scientists are scattered across several federal departments, programs, and independent agencies. Their development of high-tech, satellite-based Earth observation instruments and sophisticated computer models over the past few decades has helped transform the global warming hypothesis into a testable scientific theory. These advances are the result of a significant investment of scientific work and American taxpayer dollars. This section outlines the history, organizational structure, and funding of federal climate research.

### *History*

Scientific research into the nature of global climate change has long been recognized by Congress as a national priority. The U.S. Global Change Research Program (USGCRP) was created as a presidential initiative in 1989 and subsequently codified by Congress in the Global Change Research Act of 1990 (GCRA). The USGCRP provided funding to several government agencies to undertake scientific research into climate change.

The GCRA mandated that the USGCRP and its affiliated agencies prepare periodic scientific assessments of climate change and its likely effects and submit them to Congress, producing “information readily usable by policymakers attempting to formulate effective strategies for preventing, mitigating, and adapting to the effects of global change.”<sup>507</sup> The first of these reports, the *National Assessment of the Potential Consequences of Climate Variability and Change*, was published in November 2000.

In 2001, President George W. Bush established the U.S. Climate Change Research Initiative (CCRI), with the goal of refocusing USGCRP resources to study “areas of uncertainty [about global climate change science]” and identifying “priority areas where investments can make a difference.”<sup>508</sup> In 2002, the U.S. Climate Change Science Program (CCSP) was formed as a successor to both the USGCRP and the CCRI, thereby becoming responsible for compliance with the requirements of the GCRA. The CCSP is currently led by Acting Director William Brennan, who is also deputy assistant secretary for international affairs at the National Oceanic and Atmospheric Administration.

The CCSP has announced no plans to sponsor research for the congressionally mandated second national assessment report, and has instead decided to produce 21 separate “synthesis and assessment” products in order to meet the scientific reporting requirements of the GCRA. The first of these products, *Temperature Trends in the Lower Atmosphere: Steps for Understanding and Reconciling Differences*, was published in

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<sup>507</sup> U.S. Global Change Research Information Office (GCRI). 2004. U.S. Global Change Research Act of 1990, Public Law 101-606 (11/16/90) 104 Stat. 3096–3104 available at <http://www.gcrio.org/gcact1990.html> (last visited March 24, 2007).

<sup>508</sup> See <http://www.climate-science.gov/about/ccri.htm> (last visited March 24, 2007).

April 2006. The CCSP is also responsible for providing an annual report to Congress, *Our Changing Planet*, detailing the status of climate science research and funding. The National Academy of Sciences has convened a committee to provide advice to the CCSP regarding evaluation of its current goals and strategic planning for future priorities.

### *Organization*

We estimate that more than 2,000 government scientists spend at least part of their time researching climate-related issues. The agencies where most of the scientists are employed are:

- National Oceanic & Atmospheric Administration (NOAA)
- National Aeronautics and Space Administration (NASA)
- U.S. Department of Energy (DOE)
- U.S. Department of Agriculture (USDA)
- U.S. Geological Survey (USGS)
- U.S. Environmental Protection Agency (EPA)
- U.S. Department of Defense (DOE)

The CCSP is responsible for coordinating climate science research at all of these entities except the DOD, which does not have climate change as a dedicated research program but does fund some climate science research. Climate-related programs also take place at the National Institute of Standards and Technology, the National Institutes of Health, the U.S. Agency for International Development, the Smithsonian Institution, and the Department of Transportation. The CCSP also coordinates these programs, but they are either smaller research efforts, or are not primarily focused on basic climate science.

Within each federal agency, climate research may take place in a number of discrete departments and laboratories—sometimes dozens of locations within a single agency. Federal funding also supports hundreds of climate scientists at academic centers around the country. One of the biggest non-governmental climate research centers is the National Center for Atmospheric Research, an organization of atmospheric and geoscience researchers who are funded by the National Science Foundation but are not government employees.

Although it is difficult to briefly summarize the work of large federal agencies, below are examples of the type of climate research several agencies undertake:<sup>509</sup>

- Research at NOAA focuses on developing a “predictive understanding of the global climate system” by observing climate variability and modeling both oceanic and atmospheric behavior. NOAA also aims to provide climate-related information “sufficient for making informed and reasoned decisions,” to a wide range of policy makers.

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<sup>509</sup> See <http://www.usgcrp.gov/usgcrp/agencies/noaa.htm> (last visited on March 24, 2007).

- NASA researchers gather data from space-based Earth observation satellites and use the results to help develop some of the world's most sophisticated climate models. NASA researchers also use this data to study a wide range of subjects related to global climate change, from clouds to solar irradiance to potential effects of global warming.
- The DOE, through its Office of Science and national laboratories, conducts research into the "effects of energy production and use on the global climate system, primarily through studies of climate response." The DOE labs conduct basic and applied climate research, emphasizing new energy and carbon sequestration technologies that could reduce emissions of heat-trapping gases.
- The USDA's Agricultural Research Service focuses on how climate affects terrestrial systems, including the water and carbon cycles and species distribution. The goal of this research is to plan for the potential effects of climate change on agricultural and forest systems.
- The USGS, in the U.S. Department of the Interior, conducts studies designed to "understand the interactions between climate, Earth surface processes, and ecosystems on time scales ranging from years to millennia." USGS scientists observe local trends in land use, hydrologic processes, and species diversity, providing information that can be used in climate research.
- Climate change research at the EPA focuses on "evaluating the potential consequences of global change...on air quality, water quality, ecosystems, and human health in the United States."
- The DOD does not have a dedicated climate change research program, but does support targeted research that concurrently satisfies its national security mission. DOD climate programs include development of satellite-based observation systems, ocean modeling software, and polar regions research.

## Appendix E: Model Media Policy

### *Section 1: Purpose*

.01 This Order establishes this agency's media policy governing media communications including advisories, press releases, statements, interviews, news conferences, and other related media contacts. Public affairs offices have been established to facilitate the active dissemination of agency research results and to coordinate media and public relations activities. A principal goal of public affairs is to help the agency or program achieve its vision of a better informed society and of policy making based on sound and objective science.

### *Section 2: Rights*

.01 Scientists and other employees of the government have the fundamental right to express their personal views, provided they specify that they are not speaking on behalf of, or as a representative of, the agency, but rather in their private capacity. So long as this disclaimer is made, the employee is permitted to mention his or her institutional affiliation and position if this has helped inform his or her views on the matter. The employee is allowed to make reasonable use of agency time and resources for the purposes of expressing their personal views, i.e. accommodations comparable to what would be allowed on other personal matters.

.02 Employees have the right of final review to approve and comment publicly upon the text of any proposed publication that significantly relies on or interprets their scientific research, identifies them as a lead author or contributor, or purports to represent their scientific opinion. In the case of multi-author publications, procedures should be set up to allow co-authors to have a meaningful right of review and comment.

.03 Final authority over the content of and parties to any particular media communication rests with the reporter and the scientist he or she requests.

### *Section 3: Responsibilities*

.01 Public affairs is responsible for

- a) promoting media attention on important scientific and institutional developments,
- b) coordinating journalists and the sources of information they are looking for, and
- c) providing both reporters and scientists with timely, accurate, and professional media assistance.

.02 Employees are responsible for working with public affairs to make significant research developments accessible and comprehensible to the public.

.03 Employees are responsible for the accuracy and integrity of their communications and should not represent the agency on issues of politics or policy without prior approval from the public affairs office (PAO). Employees are not free to disclose classified information unless authorized by the U.S. Government or federal statute.

#### *Section 4: Guidelines for Media and Public Interactions*

- .01 To help public affairs best fulfill its responsibilities, employees are asked to
- a) keep the PAO informed of any media interest or potential for interest in your work, subject to the protections of the Whistleblower Protection Act
  - b) notify the PAO of any impending media contacts and provide a recap afterwards
  - c) request press releases from the PAO and submit drafts for review of their form and non-scientific content
  - d) work with the PAO to review presentations or news conferences for their form and non-scientific content
- .02 Public affairs officers should
- a) respond to all media inquiries within 120 minutes during the workday
  - b) do all they can to help reporters get the appropriate information know the reporter's deadline to ensure timely response
  - c) provide contact information where they will be available, even after hours, on weekends, and on holidays
  - d) draft regional and national press releases whenever warranted
  - e) ensure a timely turn-around on press releases over no more than one week
  - f) develop or coordinate the development of talking points in collaboration with the relevant experts for the release of scientific papers and other agency products

#### *Section 5: Media Coverage*

.01 In the spirit of openness, media representatives must be granted free access to open meetings of advisory committees and other meetings convened by this agency, as well as permission to reasonably use tape recorders, cameras, and electronic equipment for broadcast purposes.

.02 The PAO sponsoring or co-sponsoring a meeting may be present, or consulted, to undertake all responsibilities of a news media nature, including but not restricted to necessary physical arrangements.

.03 It shall be the responsibility of the servicing PAO to cooperate fully with and accede to all reasonable requests from news media representatives. In instances where conflicts or misunderstandings may arise from the expressed views, wishes, or demands on the

part of news media representatives, such matters should be referred at once to the Director for resolution.

.04 The PAO Director shall exercise full authority and assume responsibility for all decisions involving the news media and related activity.

#### *Section 6: Internal Reporting*

.01 The agency will offer an internal disclosure system to allow for the confidential reporting and meaningful resolution of inappropriate alterations, conduct, or conflicts of interest that arise with regards to media communications.

#### *Anti-Gag Addendum and Relevant Statutory Rights*

These restrictions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Code, as amended by the Whistleblower Protection Act (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by said Executive order and listed statutes are incorporated into this agreement and are controlling.”: Provided, That notwithstanding the preceding paragraph, a nondisclosure policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure forms shall also make it clear that they do not bar disclosures to Congress or to an authorized official of an executive agency or the Department of Justice that are essential to reporting a substantial violation of law.

The Whistleblower Protection Act, 5 USC 2302(b)(8), states that:

(b) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority –

(8) take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of –

(A) any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences –

(i) a violation of any law, rule, or regulation, or

(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

(B) any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences –

(i) a violation of any law, rule, or regulation, or

(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

The Lloyd-Lafollette Act, 5 USC 7211, states that:

The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.