

August 10, 2015



Via Electronic Mail

Office of the Executive Secretariat and Regulatory Affairs
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

RE: Request for Reconsideration of Determinations on Oceana, Inc.'s, and Ocean Conservation Research's Complaint of Violations of the U.S. Department of the Interior's Policy on the Integrity of Scientific and Scholarly Activities.

Thank you for the opportunity to request reconsideration of determinations by Ms. Heidi Hadley, Scientific Integrity Officer of the Bureau of Land Management, on the Complaint of Violations of the U.S. Department of the Interior's Policy on the Integrity of Scientific and Scholarly Activities filed by Oceana, Inc., and Ocean Conservation Research on May 8, 2015.¹ In response, we request reconsideration of Ms. Hadley's determination that (1) the Complaint failed to allege a viable claim of scientific misconduct or a loss of scientific integrity and (2) there is no violation of the Department's Scientific Integrity policy.² We request reconsideration because the determinations

1. Are not justified;
2. Incorrectly assert that the *Science Notes* articles were not "science";
3. Fail to address the misuse of the *Science Notes* by industry groups; and
4. Do not consider new information, included below, supporting our Complaint.

First, the determinations made by the Scientific Integrity Officer are not supported by detailed explanation or rationale, which runs counter to the intent of the policy. In his Presidential Memorandum on Scientific Integrity intended to address the abuses of science that took place in

¹ Oceana & Ocean Conservation Research, Complaint of Violations of the U.S. Department of the Interior's Policy on the Integrity of Scientific and Scholarly Activities (May 8, 2015) (attached as Exhibit A).

² Letter from Heidi Hadley, Bureau of Land Management Scientific Integrity Officer, to Claire Douglass, Climate and Energy Campaign Director, Oceana, Inc., July 27, 2015 (attached as Exhibit B) [hereinafter Determinations from Scientific Integrity Officer].

the prior Administration, President Barack Obama directed federal agencies to “ensur[e] the highest level of integrity in all aspects of the executive branch’s involvement with scientific and technological processes.”³ To comply with the President’s policy, the Department of the Interior created a department-wide Scientific and Scholarly Integrity Policy, including procedures for the preliminary review of a complaint.⁴ Instead of responding to our Complaint in a way that “ensur[es] the highest level of integrity,” the Scientific Integrity Officer categorically denied our Complaint without articulating a rationale supporting the determinations. In our Complaint, we specifically outlined and substantiated our arguments. The determinations do not address any of these specific arguments. Accordingly, the unsupported determinations encourage the continued misuse of the Bureau of Ocean Energy Management’s purported scientific statements. Thus, we request reconsideration because the determinations lack a reasoned explanation for the Scientific Integrity Officer’s conclusions.

Second, the determinations presented by the Scientific Integrity Officer incorrectly asserted that the *Science Notes* articles did not constitute “science.” Rather than recognizing that the *Science Notes* articles present *scientific* information to the public for the purpose of informing the public about the Bureau of Ocean Energy Management’s *scientific* activity, the precise activity that the President’s and the Department’s Policies address, the determinations maintain that the purpose of the *Science Notes* is “to notify the public of recent agency actions and give summary information on where to locate additional and full coverage of the science regarding that topic.”⁵ This conclusion is incorrect for a number of reasons, but particularly because (1) both articles are identified as *Science Notes*, (2) the author self-identifies as a “*scientist* who has spent a good part of [his] career working in non-governmental environmental organizations and in industry,” and (3) the articles emphasize the “benefits by getting the *facts* right.”⁶ Therefore, we request reconsideration of the determinations because of the incorrect conclusion that the *Science Notes* articles are not “science” capable of violating the Department’s Policy.

Third, the determinations ignore evidence that the seismic and oil and gas industries repeatedly use the *Science Notes* articles as scientifically conclusive evidence that seismic airgun surveying activities do not harm marine mammal individuals *or* populations. For example, the International Association of Geophysical Contractors quoted the *Science Notes* articles in an article stating “federal regulators determined that seismic surveys in the Atlantic OCS will have no measurable

³ Memorandum from President Barack Obama to the Heads of Executive Departments and Agencies, Mar. 9, 2009, *available at* <http://www.doi.gov/scientificintegrity/upload/Presidential-Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-3-9-09.pdf>.

⁴ Department of the Interior, Department Manual Part 305: Department of Science Efforts, ch. 3 [hereinafter Department’s Policy].

⁵ Determinations from Scientific Integrity Officer, *supra* note 2.

⁶ *See, e.g.,* William Y. Brown, *The Science Behind the Decision: Answers to Frequently Asked Questions about the Atlantic Geological and Geophysical Activities Programmatic Environmental Impact Statement (PEIS)*, BOEM Science Notes, Aug. 22, 2014, <http://www.boem.gov/BOEM-Science-Note-August-2014> (emphasis added) [hereinafter *Science Notes* 1].

impact on fish or marine mammal populations.”⁷ One of the most egregious example of the misuse of the *Science Notes* articles comes from the congressional testimony of Robert Gisiner, where he uses the *Science Notes* articles as support for his statement, “[T]here is at present no scientific support for statements that seismic sound kills or injures animals, causes them to beach themselves or disrupts their behavior to the extent that it affects the health and well-being of the individuals or the populations of which they are a part.”⁸ The determinations’ failure to address the misuse of the *Science Notes* articles does not reflect the purpose of the President’s or the Department’s Policy to “ensure the integrity in all aspects of the executive branch’s involvement with scientific and technological processes.” Thus, we request reconsideration of the determinations.

Finally, the determinations fail to consider new information from the National Oceanic and Atmospheric Administration (“NOAA”) that supports our Complaint. In the Complaint, we maintained that the following statement violated the Department’s Policy: “To date, there has been no documented scientific evidence of noise from air guns used in geological and geophysical (G&G) seismic activities adversely affecting animal populations.”⁹ Recent information from Craig Woolcott, Congressional Affairs Specialist in the Office of Legislative and Intergovernmental Affairs at NOAA, supports our Complaint regarding this statement. In a July 27, 2015, email regarding the proposed oil and gas geophysical survey activity in the Atlantic, Mr. Woolcott stated,

Behavioral disturbance of individual marine mammals by seismic surveys is *well-documented*, meaning that an MMPA authorization is required. The potential impacts to marine mammal populations grow with the scale of the proposed survey activity. It is difficult to document population level effects, but *recent science has demonstrated connections between disturbance and energetic costs that can affect vital rates and, ultimately, population.*¹⁰

Because NOAA’s National Marine Fisheries Service has the authority to make the final determination on Incidental Harassment Authorization for takes of marine mammals, the Fisheries Service is a conclusive scientific voice on how and to what extent manmade noise affects marine mammals. Given the quoted language from NOAA, it is clear that the conclusions

⁷ IAGC, *Seismic Surveying 101*, at 2 (2014), http://internationalgeophysicaltxprod.weblinkconnect.com/uploads/4/5/0/7/45074397/seismic-survey-factsheet_final_iagc.pdf.

⁸ *The Fundamental Role of Safe Seismic Surveying in OCS Energy Exploration and Development: Oversight Hearing before the H.R. Subcomm. Energy & Mineral Res.*, 114th Cong. (2015) (statement of Dr. Robert C. Gisiner), *available at* <http://naturalresources.house.gov/uploadedfiles/gisinertestimony.pdf>.

⁹ *Science Notes 1*, *supra* note 6; William Y. Brown, *A Follow Up to our August 2014 Note: More on the Science Behind the Atlantic G&G Decision*, BOEM Science Notes, Mar. 9, 2015, <http://www.boem.gov/BOEM-Science-Note-March-2015>.

¹⁰ Email from Craig Woolcott, Congressional Affairs Specialist in the Office of Legislative and Intergovernmental Affairs, NOAA, July 27, 2015 (emphasis added) (attached as Exhibit C).

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presented in the *Science Notes* articles do not communicate the results of effects of seismic airgun surveying activities clearly, objectively, thoroughly, and accurately. Thus, we request reconsideration of the Scientific Integrity Officer's determinations based on this new information.

In conclusion, we request that the Office of the Executive Secretariat and Regulatory Affairs reconsider the Scientific Integrity Officer's determinations that the Complaint failed to allege a viable claim of scientific misconduct or a loss of scientific integrity and that there is no violation of the Department's Scientific Integrity policy because the determinations (1) are not justified; (2) incorrectly assert that the *Science Notes* articles were not "science"; (3) fail to address the misuse of the *Science Notes* by industry groups; and (4) do not consider new information, included above, supporting our Complaint. Thank you for your consideration of our request. We look forward to hearing from you.

Respectfully submitted,

Claire Douglass
Campaign Director, Climate and Energy
Oceana, Inc.

Michael Stocker
Director
Ocean Conservation Research

cc: Sally Jewell, Secretary, U.S. Department of the Interior
Hilary Tompkins, Solicitor, U.S. Department of the Interior
Brad J. Blythe, Bureau of Ocean Energy Management Scientific Integrity Officer
Alan D. Thornhill, Director, Office of Science Quality and Integrity