PEER Analysis of New Interior Scientific Integrity Provisions
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Overview
Since the U.S. Department of the Interior adopted its Scientific Integrity policy back in February 2011 a total of 27 complaints of scientific misconduct have been filed and resolved.

Most every one of those complaints was rejected out-of-hand as not even meriting an investigation. These summary rejections included some filed by PEER, complaints buttressed by substantial evidence based on internal records, including –

- A decision by the Bureau of Land Management directing scientists to exclude any consideration of commercial livestock impacts from multi-million dollar assessments of environmental conditions on Western range lands; and

- Political interference to suppress the scientifically-formulated recovery plan for the Mexican wolf.

Indeed, Interior even rejected a complaint submitted by one of its own Scientific Integrity Officers that the Secretary of Interior's press office presented distorted summaries of studies on the effects of a still-pending decision to remove dams in the Klamath River. In that case, Interior hired a consultant who concluded that even though the substance of the complaint was accurate, the multiple, blatant inaccuracies and critical omissions did not constitute scientific misconduct.

Out of the 27 complaints, only two were investigated and found to have merit. Both of those cases arose out of the U.S. Fish & Wildlife Service (FWS). While Scientific Integrity Review Panels upheld both complaints, in neither case were the responsible managers punished nor did Interior officials intervene to protect the scientists who brought the complaints or testified in their favor yet suffered repeated acts of retaliation at the hands of FWS managers, including those implicated in misconduct.

Indeed, FWS leadership is currently still withholding its response to a PEER lawsuit brought under the Freedom of Information Act refusing to release records explaining why top agency officials declined to act on findings of official reviews confirming serious scientific misconduct by its own managers.

Yet, the Scientific Integrity rule revisions just unveiled by Interior:

1. Make it more unlikely that even these two egregious cases could have moved forward;

2. Further cloud lines of accountability making it far less likely that agency managers distorting or suppressing scientific work will be held to account; and

3. Enshroud scientific integrity reviews in secrecy, preventing independent analysis of the facts while moving away from using the scientific process and toward reliance upon a defensive, legalistic thicket in which official misconduct can escape public scrutiny.

In short, as detailed below, the latest Interior revised scientific rules significantly weaken – not strengthen – safeguards against politicizing science. At the same time, they turn the enforcement and review process from an already daunting gauntlet into something more closely resembling a bureaucratic shell game.

I. Reduced Scope of Scientific Integrity Rules

The stated purpose of these rules as commissioned by President Obama's Executive Memorandum of March 9, 2009 was to prevent a practice that had become rife during the Bush years:

> "Political officials should not suppress or alter scientific or technological findings and conclusions."

These new rules, however, compromise the ability to implement this rather straightforward directive.

A. Political Suppression of Information Not Covered.

The revised rules do not prohibit agency leadership from preventing publication or disclosure of information or reports for non-technical reasons. Managers appear to retain the prerogative of preventing the publication or disclosure of internal reports with implications at odds with official policy.

Even a vague policy statement about encouraging the "free flow of scientific information" is subordinate to compliance with undefined "classification standards." (§ 3.4 A5)

B. Hopelessly Blurred Definition of Scientific Misconduct.

The rule revisions define scientific misconduct as only "Fabrication, falsification, or plagiarism…" (§ 3.5 C) Removed from the definition are these key elements:

> "Misconduct also includes: (a) intentionally circumventing policy that ensures the integrity of science and scholarship, and (b) actions that compromise scientific and scholarly integrity." (Former § 3.5 M)

Instead, a new, lower but far more ambiguous level of prohibition is created, called "Loss of Scientific Integrity." It is defined as a "significant departure from the accepted standards, professional values, and practices of the relevant scientific community…" (§3.5 B) None of the key terms are defined. (What exactly is a "significant departure," and who determines what constitutes an "accepted practice"?).

Moreover, Interior has used this vague standard before in the Klamath dam case in which –

- Instances of "false precision" (where a summary has a finding that does not exist in the studies it purports to summarize) were dismissed because they are "not inconsistent" with the underlying studies;

- Repeated inaccuracies – all slanted in one direction – were excused because it is "normal practice" for press releases to exhibit hyperbole or falsities; and

- Explicit efforts to prevent these concerns from being put into writing were discounted because of a finding that it was "not sufficiently unusual" to be "automatically alarmed" by them.

If such blatant inaccuracies and bias can be excused by reference to unstated practices, values and norms then the review of science integrity complaints becomes as politicized as what it is supposed to cure.

Even the revision's attempt to clarify suggests that it is planted on a slippery and quite subjective slope:

> "Adherence to these standards ensures objectivity, clarity, reproducibility, and utility of scientific and scholarly activities and assessments and helps prevent bias, fabrication, falsification, plagiarism, outside interference, censorship, and inadequate procedural and information security." (§3.5A)

Thus, lack of objectivity or inaccuracy is not enough – even if deliberate – unless these flaws flow from a significant departure to unspecified norms. This means that meritorious complaints can be dismissed under a subjective judgment that they are not sufficiently egregious as to shock the conscience.

Tellingly, this primary statement of policy was also excised from the new revision:

> "Use clear and unambiguous codes of conduct for scientific and scholarly activities to define expectations for those covered by this policy." (Former § 3.4 A)

C. Conflict of Interest Standard Emasculated.
The previous definition of "conflict of interest" was quite expansive:

> "Conflict of Interest. Any personal, professional, financial, or other interests that conflict with the actions or judgments of those covered by this policy when conducting scientific and scholarly activities or using scientific and scholarly data and information because those interests may:
>
> 1) Significantly impair objectivity; or
> 2) Create an unfair competitive advantage for any person or organization, or
> 3) Create the appearance of either (1) or (2)." (Former § 3.5 A)

This prohibition was enforced through the Code of Scientific and Scholarly Conduct for employees, which provided:

> "I will not engage in activities that put others or myself in an actual or apparent conflict of interest." (Former § 3.7 A5)

The revised rules substantially narrow this definition as follows:

> "Conflict of Interest. Any personal, professional, financial, or other interests of those covered by this policy and/or their immediate family members that is prohibited by an applicable law or policy, which may include federal ethics requirements, applicable standards issued by the Office of Government Ethics, federal acquisition requirements, and the prevailing practices of the National Academy of Sciences as adopted by OMB." (§ 3.5 E)

Missing from this new definition are, among other situations –

- The appearance of a conflict, no matter how blatant;
- Favoritism for someone who is not a family member, such as a romantic partner;
- An impairment of objectivity caused by a previous publicly stated position on a question that is about to be explored;
- Cronyism
- Creating an unfair advantage for a favored associate.

Moreover, by limiting conflict to a violation of a pre-existing rule, this definition removes any new or more rigorous element, leaving issues of conflict to be hashed out under pre-existing ethics processes.

D. Scientific Integrity of Management Discarded.
Many of the scientists who come to PEER seeking advice when their work is manipulated or suppressed by a hostile chain of command are in situations where the merits and fate of their work are judged by non-scientist supervisors.

The previous Interior Scientific Integrity rule contained the following provision as a key expression of departmental policy:

> "Ensure that selection and retention of employees in scientific and scholarly positions or in positions that rely on the results of scientific and scholarly activities are based on the candidate's integrity, knowledge, credentials, and experience relevant to the responsibility of the position." (Former § 3.4 D)

This provision was deleted in the latest revisions without explanation. Apparently, scientific acumen is no longer a desired quality in persons selected to make science-based decisions.

II. New Preclusions of Scientific Integrity Process

A. Scientific Integrity Secondary to All Else.
One of the new provisions appearing in the revision declares:

> "(b) If the complaint alleges a case of scientific misconduct or a loss of scientific integrity but also involves matters that may be within the purview of another complaint process, such as an OIG or Information Quality Act complaint, then the DSIO/BSIO must coordinate with the responsible office(s) with respect to investigative responsibilities. If

> the complaint involves matters that are the subject of an active complaint against the Government, then the scientific integrity officer will work with the Office of the Solicitor to coordinate the scientific integrity investigation with other legal processes as appropriate." (§ 3.8 B2b)

The phrase "involves matters that may be within the purview of another complaint process" (emphasis added) is so broad as to be almost all-encompassing. For example, the Inspector general jurisdiction is limitless. The Information Quality Act covers any matter affecting the "quality, objectivity, utility, and integrity of information…"

Thus, virtually every scientific integrity complaint would be within the purview of another process and thus subject to "coordination" which may preclude pursuit of the matter at all.

Similarly, this new preemption provision creates a loophole where Interior Scientific Integrity Officers could shut down scientific misconduct complaints involving matters covered by the Endangered Species Act or National Environmental Policy Act. Such a posture would make these Scientific Integrity rules largely irrelevant in the Department of Interior.

In addition, we have had the experience of the Interior Inspector General using admittedly unqualified criminal investigators to examine issues of scientific integrity. The Office of Inspector General has taken the position that it does not have to, and thus will not, coordinate probes on scientific integrity matters with designated Scientific Integrity Officers. That has not only led to clueless findings but misguided and dangerous attempts by the IG to criminalize the peer review process leading to the editing and publication of scientific papers.

Finally, this provision may invite managers accused of "Loss of Scientific Integrity" to gin up other reviews in more favorable fora, in order to block or compromise reviews of their own decisions.

In short, the new revision renders the Scientific Integrity rules into the recourse of last and seemingly infrequent resort.

B. Just Following Orders Defense.
The revision also adds a curious and potentially troublesome new section that provides:

> "If there is a conflict between this policy and a statutory, regulatory, or judicial requirement, the statutory, regulatory, or judicial requirement will take precedence. Compliance with such conflicting requirements is not misconduct." (§ 3.2 D)

It is difficult to imagine the circumstances under which a law or a judge would require an agency to falsify data or to water down scientific methodologies.

There is a concern, however, that a misguided manager would seek to suppress information under a misreading of the Freedom of Information Act or some confusing judicial dicta and then claim a good faith mistake as a defense. The policy does contain the caveat that:

> "Scientific misconduct does not include honest error or differences of opinion." (§ 3.5 C1)

Rather than obfuscating behind legalisms, the policy should declare that there are no circumstances justifying a violation of Scientific Integrity rules.

III. Accountability for Misconduct Further Compromised

In the two FWS cases where Scientific Integrity Review Panels (SIRP) found managers guilty of misconduct, none of those responsible managers suffered any discernible punishment. Nor has the FWS Director explained what his role in the matter was.

A. Disciplinary Decision-Making Diffused.

The rule revisions – rather than clarify accountability for punishing miscreant managers – further diffuse and confuse it. For example, the SIRP is now forbidden to address the need for appropriate discipline:

> The "final report may make related recommendations, including changes to policy, but the report must not recommend any specific personnel actions or other corrective measures." (§ 3.8 D8)

To further muddy the accountability waters, the former policy directed managers and supervisors to take "appropriate administrative and disciplinary action" against violators. (Former § 3.6) That provision has been inexplicably removed.

Instead, the new version requires that the Coordinating Manager –

> "(3) Upon completion of the inquiry process... If needed, work with the Human Resource Office, determine appropriate actions, if any, to be taken using 370 DM 752 - Discipline and Adverse Actions, and any union contracts, as applicable." (§ 3.6 G3b)

What the heck does this mean?

It appears to spare line managers from having to exercise responsibility for actually enforcing the Scientific Integrity policy. Instead, the task is left to Human Resources to shape what the rules describe as a "culture of scientific integrity." (§ 3.4 A1)

B. Reconsideration May Block Action.

Under the appeal provisions adopted in the revision, after a SIRP has found fault, the identified manager may request reconsideration from the Departmental Scientific Integrity Officer. The DSIO may "amend" or may reconsider an adverse finding without any apparent review. (See § 3.8 G)

Since the entire process is cloaked in promises of confidentiality, findings of fault can be tossed out without any public notice, let alone explanation.

Significantly, the complainant has no rights to appeal or to request reconsideration of decisions by departmental officials to dismiss complaints or to amend findings.

Again, the thrust of the revisions appears designed to protect managers from being held to account and shield their actions from any meaningful review.

C. Duty to Report Misconduct Dropped.
Among the many small changes honeycombed throughout these revisions is one removing the duty of all employees to report scientific misconduct:

> "Reporting to the appropriate officials…knowledge of scientific misconduct that is planned, is imminent, or has occurred." (Former § 3.6 H 3)

As with other such changes, it is neither highlighted nor explained. It could be fairly intuited, however, that the new posture of the Interior Department is that it does not encourage reports of scientific manipulation and would prefer not to hear about them.

IV. New Avenues for Political Interference
The central motivation behind these scientific rules was to prevent political manipulation of science and scientists. These new revisions, however, not only retain but create new inroads for political influence to affect the scientific integrity review process.

A. System of Self-Investigation.

1. Scientific Integrity Officers chosen by "Bureau Heads"
Under both the former and current rules, the person to review agency decision-making is chosen by the chief decision-maker. (See § 3.6 E2)

The designated "Bureau Scientific Integrity Officer" is a career officer whose future career will presumably be enhanced by doing nothing to embarrass the agency. The revisions thus fail to address a key weakness of the rules which rely upon agencies to investigate themselves and, in order to address issues of any significance, further require designed officials to cast bureaucratic profiles in courage.
The political reins run even deeper in the revision which provides that the Bureau Head also "Appoint a coordinating manager for inquiries performed by the BSIO." §3.6 E2. Thus, the agency director can determine whether to select either a Sherlock Holmes or an Inspector Clouseau to actually conduct internal scientific probes.

By contrast, these revisions could have easily bolstered independence by, for example, requiring DSIOs, BSIOs and coordinating managers to be retired officials who have no career stake in the discharge of scientific integrity reviews.

2. Allegations against Agency Head Stay In-House
The former rules required that complaints against bureau heads be kicked up the departmental ladder;

> "Allegations related to bureau heads or offices within the Office of the Secretary will be referred to the DSIO." (Former§ 3.8 B)

As with several others, this provision disappeared in the revision process.

In its place, the revision substitutes a more convoluted process that does not guarantee independent review. If a "complaint is against a bureau head or an Office of the Secretary" then a "request" must be made "that a SIRP be convened." At that point –

> "The DSIO/BSIO will submit a request to convene a SIRP to the relevant non-political deputy bureau director or equivalent, or, for matters in the Office of the Secretary, to the Deputy Secretary. A written response to this request must occur within 10 days. If the request to the bureau head is not acted on or approved, the BSIO may appeal to the DSIO for further consideration of this request." (§ 3.8 D)

Nothing however requires that a review panel be convened or even that the complaint is acted upon. Moreover, the "non-political deputy bureau director" is put into the position of chartering and overseeing an investigation of the person who appointed them to their current position.

B. Solicitor Injected into Complaint Process.
The revision also adds curious provisions that put departmental lawyers in position to influence key actions.

For example, before an SIRP may issue a report implicating an official for scientific integrity lapses, the Office of Solicitor must become involved:

> "The DSIO/BSIO must provide the Office of the Solicitor an opportunity to review and comment on the ROI [Report of Investigation] prior to finalizing and, at the request of the Coordinating Manager, to provide a briefing about the legal issues. (§ 3.8 E3)

Since the Solicitor represents the agency chain of command, this is akin to allowing the defense attorney to privately lobby a jury before it may announce its verdict against his or her client.

Moreover, as with many parts of this revision, these changes move Interior's scientific integrity process away from a review by scientists into a more legalistic exercise dominated by lawyers.

Further, the revision creates a wholly new role for the Solicitor of apparently approving in advance any review of a scientific integrity complaint against a "a cooperator, partner, permittee, lessee, or grantee":

> "DOI inquiry will be conducted regarding a complaint against cooperator, partner, permittee, lessee, or grantee until the DSIO/BSIO and the appropriate Federal official have consulted the SOL." (§ 3.8 H2)

The purpose of this legal pre-review is not explained. Nonetheless, it does allow agency lawyers to prevent scientific integrity issues from arising where they might complicate economic arrangements between the Department and various stakeholders. The net result is to foster a "culture of scientific integrity" only when it is not inconvenient.

V. Critical Ambiguities Remain Unaddressed

Despite proclaiming that the revisions incorporate Interior's experience during the past 3-plus years the scientific integrity rules have been in place, the revisions still leave a number of gray areas on topics that should be central, including –

- **Whistleblower Protection**

Promised whistleblower protections for scientists are not spelled out. The revised rules state:

> "Employees may be protected from reprisal for disclosing alleged scientific misconduct or a loss of scientific integrity under Federal law. Employees who are found to have engaged in reprisal may be subject to discipline under 370 DM 752, Discipline and Adverse Actions." (§ 3.4 C)

"May be protected" as stated is not the same thing as "are protected." Moreover, the rules do not hint at what the nature of those protections is or who enforces them. Perhaps significantly, the rules no longer list the Whistleblower Protection Act as a source of authority (see §3.3)

This murky picture is further clouded by this provision:

> "The policy and requirements in this chapter are not intended to, and do not create, any right or benefit, substantive or procedural, enforceable by law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees or agents, or any other person." (§ 3.2 C)

If these rules create no enforceable right against official retaliators, then how can someone disclosing violations be protected without any "substantive or procedural" safeguards?

Finally, these rules suggest that a scientist would only be theoretically protected for reporting a violation. A scientist whose work is improperly altered, watered down, or censored derives no apparent benefit or even consideration from these rules.

- **Ability of Scientists to Write and Publish**

Interior's Scientific Integrity policy still lacks any declaration that employees have the right to personal expression on matters within their official expertise or knowledge. Interior's Public Communications rules impose broad and confusing prohibitions on off-duty communications, such as –

1. Employees are forbidden from disclosing anything covered by a Freedom of Information Act exemption, such as "pre-decisional" information. The rules discourage specialists from revealing any information not previously "published or otherwise publicly released by the Department";

2. Scientists have no clear right to publish papers in their own name using raw research data developed on the job; and

3. It is unclear whether employees may communicate in a personal capacity with news reporters during work hours or from an office terminal or phone, as use of official equipment or resources for unofficial expression may not be more than "negligible."

Thus, it appears to be Interior's policy that scientists can speak out on scientific topics so long as they do not say anything new.

Conclusion

These latest revisions all point in one direction – to restrict the scope and application of scientific integrity rules. They read as if every internal bureaucratic grievance from managers and lawyers that has arisen during the past three years was accommodated.

Given that Interior has yet to fully prosecute a single case of scientific integrity lapses, the reasonable conclusion would be that the rules are too restrictive rather than being too loose. Instead, the revisions seem designed to ensure that scientific integrity remains a rhetorical pulpit, divorced from the reality of how science inside Interior is routinely distorted to meet political objectives.

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