

U.S. House of Representatives
Committee on Science, Space, and Technology
Subcommittee on Investigations & Oversight

HEARING CHARTER

***“Mismanagement of Funds at the National Weather Service and the Impact on the Future of
Weather Forecasting”***

Wednesday, September 12, 2012
2:00 p.m. – 4:00 p.m.
2318 Rayburn House Office Building

PURPOSE

On September 12, 2012 at 2:00 p.m., the Investigations and Oversight Subcommittee will hold a hearing to provide Subcommittee Members the opportunity to understand the events that led to unauthorized reprogramming of funds within the National Weather Service (NWS). A 2011 National Oceanic and Atmospheric Administration (NOAA) report and a 2012 joint NOAA and Department of Commerce (DOC) investigative report provide the basis for memos issued by NOAA and DOC that acknowledge “a financial unit that, for at least the past two fiscal years, operated outside the bounds of acceptable financial management.”¹ Of particular concern, these memos detail that NWS employees engaged in the transfer of potentially millions of NWS funds without Congressional authorization or notification. These actions raise concerns about the fidelity of budget requests, financial oversight, and possible Anti-Deficiency Act (ADA) violations.

The hearing will examine how NOAA, DOC, and the DOC Office of Inspector General (OIG) plan to prevent similar incidents in the future, as well as address the breakdown in communication that led to earlier complaints being ignored. The hearing will also examine the context in which these events transpired. The Committee will hear about historical funding challenges at the NWS, as well as the importance of science and technology investments to ensure that the U.S. produces first class forecasting.

BACKGROUND

The National Weather Service is one of five line offices within NOAA, which in turn is one of the largest bureaus within the Department of Commerce. The mission of NWS is to “provide weather, water, and climate data, forecasts and warnings for the protection of life and property and enhancement of the national economy.”² NWS data and products “form a national

¹ DOC Deputy Secretarial Decision Memorandum, “Decisions Regarding Recommendations Contained in Report Entitled ‘Internal Inquiry into Alleged Mismanagement of Funds Within the National Weather Service,’” May 24, 2012, available at: http://www.noaa.gov/foia/noaa_useful_websites/052412_blank_decision_memo.pdf (hereinafter DOC Memo).

² NWS website, available at: <http://www.weather.gov/about>.

information database and infrastructure which can be used by other governmental agencies, the private sector, the public, and the global community.”³

Earlier this year, NOAA and DOC each issued a decision memorandum addressing allegations of mismanagement at NWS.⁴ The basis for these two memos are a preliminary review of these allegations completed in November 2011, which in turn set the foundation for a subsequent NOAA and DOC-led investigation, culminating in a report in May titled, “Internal Inquiry into Alleged Mismanagement of Funds Within the National Weather Service” (Investigative Report). Citing Privacy Act concerns, NOAA has restricted circulation of the Investigative Report; however, the two decision memos from NOAA and DOC are available to the public.

According to the DOC memo, issued by Dr. Rebecca Blank, Deputy Secretary of Commerce:

“In recognition of the seriousness of the allegations and preliminary findings as well as the potential impact such conduct could have on a program of critical importance to the Nation, Under Secretary Lubchenco and I took immediate action to establish an investigative team led by senior executives from NOAA and the Department’s Office of Budget (“Investigative Team”) to review the preliminary findings and expand upon the work of the internal review.”⁵

Additionally, according to the NOAA memo, issued by Dr. Jane Lubchenco, Under Secretary of Commerce for Oceans and Atmosphere, in the five months it took to conduct the investigation this year:

“[T]he Investigative Team conducted thirty interviews of over twenty Department of Commerce employees, completed an extensive review of NWS financial records, and reviewed a large number of documents including emails, financial information, memoranda, and other material provided by witnesses in support of their testimony. Throughout the investigative process the Team consulted with the Office of the Inspector General regarding the conduct of the investigation, including whom to interview and what lines of questioning to pursue. The investigation focused on FY 2010 and FY 2011 because that was the time period referenced in the complaints received.”⁶

Dr. Lubchenco’s memo further elaborates on the findings of the Investigative Report. Specifically, she explains that the Investigative Team determined that “NWS employees engaged in reprogramming of NWS funds without Congressional notification during the years in question.”⁷ The Investigative Team also found there to be a “failure of management and oversight by NWS leadership. In addition, the Team found significant problems with budget and financial controls at the National Weather Service and that Departmental financial and

³ NWS website, Mission Statement, available at: <http://www.nws.noaa.gov/mission.php>.

⁴ DOC Memo, *supra*, note 1; and DOC Under Secretarial Decision Memorandum, “Corrective Actions re: Internal Inquiry into Alleged Mismanagement of Funds Within the National Weather Service,” May 24, 2012, available at: http://www.noaa.gov/foia/noaa_useful_websites/052412_lubchenco_decision_memo.pdf (hereinafter NOAA Memo).

⁵ DOC Memo, *supra*, note 1.

⁶ NOAA Memo, *supra*, note 4.

⁷ *Ibid*.

management controls were ineffective at detecting or preventing this inappropriate reprogramming.”⁸

DOC OIG

The OIG referred complaints about the problems at NWS to NOAA and DOC. During the course of the NOAA/DOC investigation, OIG staff was available to assist the agency and provide guidance, with the understanding that at the conclusion of the investigation, the OIG would conduct a ‘sufficiency review,’ which would determine if the investigation was conducted appropriately. The IG will provide the Committee with his preliminary analysis of the NOAA/DOC report, and explain what additional steps his office will take to address his concerns.

Summary Level Transfers (SLTs)

The mechanism used to transfer funds involved a common accounting tool - Summary Level Transfers (SLTs) - that were manipulated and used inappropriately. Typically, SLTs are used to correct minor accounting mistakes such as billing errors. The NOAA decision memo explains that SLTs were used “improperly to facilitate the inappropriate transfer of funds. In this case, SLTs were used to switch accounting codes assigned to past expenses from one account to another, a purpose for which they were never intended.”⁹

The NWS used these accounting anomalies because there were insufficient funds to pay for various overhead costs such as common service expenses like rent and utilities, and management and administration (M&A) expenses. A recent GAO report found that NOAA line offices “have no or limited documentation of their policies and procedures for the M&A services they provide. This lack of documentation limits the availability of information on M&A services for agency officials and congressional decision makers and may hamper financial management and management decision making.”¹⁰

According to the decision memo from Dr. Lubchenco, in FY 2010 and FY 2011, NWS employees “did not assess NWS programs evenly or in appropriate amounts to cover NWS common services. This left a shortfall in the Management and Administration account.”¹¹

Structural Deficit

These annual shortfalls ultimately led to a ‘structural deficit’ that appeared to grow each year. The term structural deficit (variations include funding or budget deficit or shortfall) is a term the Committee encountered frequently during its review of the financial mismanagement issue at NWS, but one that is not clearly defined in the Investigative Report, nor is there consensus among NOAA staff on the definition and amount. It is nevertheless worth noting that in 2006,

⁸ Ibid.

⁹ Ibid.

¹⁰ GAO Report, “NOAA Needs to Better Document its Policies and Procedures for Providing Management and Administration Services,” January 2011, available at: <http://www.gao.gov/assets/320/315343.pdf>.

¹¹ NOAA Memo, *supra*, note 4.

DOC requested additional funds from Congress in the amount of \$12.7 million,¹² and earlier this year, shortly after breaking the news about the problems at NWS, the DOC sent Congress a request to be allowed to “repurpose \$35.5 million.”¹³

Congress has typically fully funded the NWS based on the request from the Administration. Since FY 2007, Congress has exceeded the Administration’s request for NWS in all but two years, including FY 2011, as a result of a Continuing Resolution (CR). The fact that the amount requested appears to be insufficient is a different - and more serious - issue altogether as it not only provides Congress with inaccurate information regarding the true needs of the NWS, but it also appears to be the main cause of the reprogramming issue at NWS.

Table 1

National Weather Service*

(\$ in thousands)

Fiscal Year	President’s Request	Appropriation
2007	881,866	851,577
2008	903,492	911,406
2009	930,691	958,889
2010	963,880	999,845
2011	1,003,193	976,481
2012	987,978	991,874
2013	972,193	

Source: NOAA Budget Office, NOAA Budget Summary (Blue Book), Fiscal Years 2008- 2013.

* Includes both Operations, Research, & Facilities (ORF), and Procurement, Acquisition & Construction (PAC) accounts.

No Personal Gain

Despite the inappropriate use of funds at NWS, both the NOAA and DOC decision memos indicate that these actions were not taken for any individual financial benefit. Initial reviews indicate that NWS personnel attempted to meet agency mission requirements while costs increased and budget remained stagnant. While the Investigative Team stated it “did not find any evidence that any NWS employee committed fraud or received personal financial gain

¹² Written testimony of Richard Hirn, General Counsel and Legislative Director, National Weather Service Employees Organization, submitted for the House Science, Space, and Technology Subcommittee on Investigations and Oversight hearing titled, “Mismanagement of Funds at the National Weather Service and the Impact on the Future of Weather Forecasting,” September 12, 2012.

¹³ Lisa Rein and Jason Samenow, “Senators Tell Weather Service Congress Won’t Authorize Plan to Shift Money,” The Washington Post, May 29, 2012, available at: http://www.washingtonpost.com/politics/senators-tell-weather-service-congress-wont-authorize-plan-to-shift-money/2012/05/29/gJQAgvVS0U_story.html.

through their actions,”¹⁴ it did acknowledge that, “[t]his fact does not excuse, or reduce the seriousness of the employees’ actions.”¹⁵

ISSUES

Structural Deficit

As previously mentioned, while the term structural deficit or budget shortfall seems commonplace, NOAA does not officially acknowledge its existence. One of the findings of the Investigative Report, as described in the NOAA decision memo is:

“[The NWS employees that were interviewed] believe there is a “structural deficit” with the NWS budget. This, along with apparent shortfalls in the NWS OAA [Office of the Assistant Administrator] account, created a motive for [the NWS employee’s] actions. Accordingly, it is imperative to determine if such a structural deficit exists and, if so, the causes and extent of that shortfall.”¹⁶

The accompanying ‘Administrator Decision #10’ states:

“I instruct the Acting NWS CFO to examine each program office to determine if [the government employee’s] belief that a “structural deficit” existed is supported by evidence and if so, to determine the causes and extent of that shortfall. I expect a time line and plan of action to complete this review no later than July 1.”¹⁷

However, according to comments by the President of the National Weather Service Employees Organization (NWSEO):

“It is long-held knowledge that NWS had been operating at a structural deficit -- in fact the Obama transition team was briefed on it in 2009,” Sobien [President of NWSEO] said. “It sounds like this came as a surprise, but given there’s been a deficit for over a decade, where did they think the money would come from?”¹⁸

Further, a witness on the second panel has been quoted as saying that he “briefed both Monica Medina, who became deputy undersecretary of NOAA, and Sally Yozell, a senior policy advisor to Lubchenco, on this [structural deficits] matter on Dec. 3, 2008, as part of Presidential transition process.”¹⁹

National Research Council (NRC) of the National Academies

¹⁴ NOAA Memo, *supra*, note 4.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ Charles S. Clark, “NOAA Takes Remedial Steps After National Weather Service Chief’s Departure,” *National Journal*, May 29, 2012, available at: <http://www.nationaljournal.com/congress/noaa-takes-remedial-steps-after-national-weather-service-chief-s-departure-20120529>.

¹⁹ Eric Berger, “The National Weather Service may have been diverting funds for years: Here’s why,” *Houston Chronicle*, May 30, 2012, available at: <http://blog.chron.com/sciguy/2012/05/the-national-weather-service-may-have-been-diverting-funds-for-years-heres-why>.

Last month, the NRC issued the second of two reports that took a comprehensive look at the Modernization and Associated Restructuring (MAR) of the NWS during the 1980s and 1990s. The first report, titled “The National Weather Service Modernization and Associated Restructuring: A Retrospective Assessment” was published earlier this year, and essentially concluded that “the MAR was a success: ‘weather services have great value to the Nation and the MAR was well worth the investment.’”²⁰ The second report titled, “Weather Services For The Nation: Becoming Second to None,” contains “advice for the NWS on how best to plan, deploy, and oversee future improvements, based on lessons learned from the MAR.”²¹

The NWS’ ability to keep up with advances in science and technology will be critical to the agency’s ability to produce world class forecasting. As the NRC stated in its August report, “[A]s scientific and technological progress continues, critical components within the NWS are lagging behind the state of the science.”²² Moreover, the same report states that as the:

“pace of scientific and technological advancement in the atmospheric and hydrological sciences continues to accelerate...enormous amounts of data generated by new surface networks, radars, satellites, and numerical models need to be rapidly distilled into actionable information in order to create and communicate effective public forecasts and warnings.”²³

Keeping those findings in mind, it is disconcerting to note that “programs like the Advanced Weather Interactive Processing System Program and the Weather Radio Improvement Project were used to pay for NWS expenses within LWF [Local Warnings and Forecasts account]. And separate funds within LWF were in turn freed up to pay for shortfalls in other NWS operations.”²⁴ AWIPS is a “technologically advanced information processing, display, and telecommunications system that is the cornerstone of the National Weather Service modernization and restructuring.”²⁵

Anti-Deficiency Act Violations

From Dr. Lubchenco’s decision memo:

“The Investigative Team found that NWS employees engaged in the reprogramming of NWS funds without Congressional notification during the years in question. These actions may be a violation of the Anti-Deficiency Act.”²⁶

Under the Anti-Deficiency Act, federal employees may not:

²⁰ Weather Services for the Nation: Becoming Second to None,” National Research Council of the National Academies, August 2012, available at: http://www.nap.edu/openbook.php?record_id=13429&page=R7.

²¹ Ibid.

²² Ibid.

²³ Ibid.

²⁴ NOAA Memo, *supra*, note 4.

²⁵ NWS website, Field Systems Operations Center Test and Evaluation Branch (OPS24), available at: <http://www.nws.noaa.gov/ops2/ops24/awips.htm>.

²⁶ NOAA Memo, *supra*, note 4.

“make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation; involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law.”²⁷

The Committee expects to be kept apprised of any ADA developments including any administrative and/or penal actions that may result from a determination of an ADA violation. However, at this point, DOC has not yet made a determination on an ADA violation, nor has it provided the Committee with a time frame on when we can expect that decision.

Impacts

- *Of the budget reallocation on NWS programs and services:* The regular and repeated practice of siphoning money from accounts could impact the program’s ability to perform and provide required services. Dr. Lubchenco states in her decision memo that, “I have been assured that none of the local forecasts and warnings – life-and property-saving services provided by NWS on a daily basis – was jeopardized by the misconduct.”²⁸ While these actions may not have impacted current forecasts and warnings, it remains to be seen how future forecasting ability will be impacted by the reallocation of funding from future investments for near-term shortfalls.
- *Of the insufficient transparency and oversight:* Dr. Lubchenco states in her decision memo that, “The NWS operated with an unacceptable lack of transparency relating to budgeting and without mechanisms for staff to air their concerns about budget formulation and execution within NWS, creating an environment of mistrust.”²⁹ Dr. Lubchenco also states that, “In addition to the reprogramming violations, the investigation also found that these actions went unchecked in large part due to various management issues. It is clear that this issue would have been discovered and corrected earlier had senior leadership within the NWS exercised appropriate oversight.”³⁰ The Committee plans to monitor how NOAA and DOC address these issues of transparency and oversight.

Future Actions

- *Comprehensive review by an outside firm:* On June 21, 2012, Dr. Lubchenco testified before the House Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies that, “I have initiated the process of contracting with an outside firm to determine the full amount of expenses improperly reprogrammed during fiscal years 2010, 2011, and possibly prior years.”³¹ It is unclear when this review will start and end,

²⁷ 31 U.S.C. Chapter 13 § 1341(a)(1)(A) and (B), available at: <http://uscode.house.gov/download/pls/31C13.txt>.

²⁸ NOAA Memo, *supra*, note 4.

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ Testimony of Jane Lubchenco, Under Secretary of Commerce for Oceans and Atmosphere and NOAA Administrator, before the Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies, on June 21, 2012, available at: http://appropriations.house.gov/uploadedfiles/06.21.12_cjs_-_noaa_-_jane_lubchenco_-_testimony.pdf.

or whether the agency will solicit input from the OIG. The Committee will monitor developments on these issues.

- *Disciplinary Actions*: For privacy reasons, the Committee has not been briefed on personnel actions taken or being considered by NOAA and or DOC, other than placing one individual on administrative leave. In her decision memo, Dr. Blank states, “Under Secretary Lubchenco has assured me that appropriate disciplinary action is being taken regarding those involved.”³² The Committee will hold the agency accountable for ensuring those actions take place and expects to be kept apprised of any such action.

WITNESSES

Panel I:

- **Dr. Kathryn D. Sullivan**, Assistant Secretary of Commerce for Environmental Observation and Prediction and Deputy Administrator for the National Oceanic and Atmospheric Administration, U.S. Department of Commerce
- **Inspector General Todd J. Zinser**, U.S. Department of Commerce, Office of Inspector General
- **INVITED - Ms. Maureen Wylie**, Chief, Resource and Operations Management, and former Chief Financial Officer, National Oceanic and Atmospheric Administration, U.S. Department of Commerce

Panel II:

- **Dr. William B. Gail**, Chief Technology Officer, Global Weather Corporation, and Member, Committee on the Assessment of the National Weather Service’s Modernization Program, National Research Council of the National Academies.
- **Mr. Richard Hirn**, General Counsel and Legislative Director, National Weather Service Employees Organization

³² DOC Memo, *supra*, note 1.