



August 2021

SEXUAL ASSAULT AND HARASSMENT

NOAA Has Made Substantial Progress in Prevention and Response but Could Further Improve Its Processes



A Century of Non-Partisan Fact-Based Work

GAO@100 Highlights

Highlights of [GAO-21-560](#), a report to congressional requesters

Why GAO Did This Study

Sexual assault and sexual harassment can have harmful effects on the individual employees as well as the workplace by undermining employee morale and decreasing productivity. In 2018, NOAA identified several factors indicating that the agency may be at risk for harassment or assault, or both.

GAO was asked to review NOAA's policies and actions for preventing and responding to sexual assault and sexual harassment. This report examines: (1) the extent to which NOAA's policy is consistent with relevant legal requirements in the 2017 NDAA and follows EEOC's promising practices and (2) the extent to which NOAA's actions follow EEOC's promising practices.

GAO reviewed NOAA's prevention and response policy and actions from 2016 through August 2021. GAO analyzed data, interviewed officials, and compared NOAA's policy and actions to relevant sections of the 2017 NDAA and EEOC's promising practices.

What GAO Recommends

GAO is making six recommendations, including that NOAA ensure future updates to agency policy are consistent with all relevant legal requirements in the 2017 NDAA and that NOAA address shortcomings in following EEOC's promising practices, such as requiring supervisor training to identify consequences for failing to fulfill supervisory responsibilities and consistently documenting complaints. The Department of Commerce and NOAA concurred with the recommendations.

View [GAO-21-560](#). For more information, contact Cardell Johnson at (202) 512-3841 or johnsoncd1@gao.gov.

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What GAO Found

The National Defense Authorization Act for Fiscal Year 2017 (2017 NDAA) required the National Oceanic and Atmospheric Administration (NOAA) to develop a policy for preventing and responding to sexual assault and sexual harassment of NOAA's workforce. In response to the 2017 NDAA, NOAA issued its Sexual Assault and Sexual Harassment Prevention and Response Policy in February 2018. GAO found that this 2018 policy is consistent with most of the relevant legal requirements from the 2017 NDAA and is partially or not consistent with some. For example, although NOAA has protocols for investigating allegations of sexual assault and sexual harassment, NOAA's policy does not specifically describe these protocols, as required by the 2017 NDAA. In addition, the policy follows most selected practices recommended by the Equal Employment Opportunity Commission (EEOC) in its 2017 *Promising Practices for Preventing Harassment* document.

While NOAA's actions followed many selected EEOC promising practices, GAO found some shortcomings in the agency's prevention and response processes. For example, NOAA's 2020 mandatory training for supervisors and managers did not explain the consequences for failing to fulfill the reporting responsibilities related to allegations of harassment—in contrast to EEOC's promising practices. Specifically, the training did not describe the consequences managers could face if, for example, they failed to report incidents that they witnessed or that were reported to them. In the absence of training or other mechanisms to clearly outline consequences for failing to fulfill managers' responsibilities, agency managers may allow harassing behavior to continue, thereby raising liability concerns and undermining the message that sexual harassment is not tolerated.

In addition, EEOC's promising practices state that those implementing an agency's complaint system should appropriately document every complaint. The offices responsible for implementing each of NOAA's complaint systems do not maintain or collect data in a consistent manner and have not always provided data to management in a consistent format. Consequently, the agency has experienced difficulty reconciling data from its multiple complaint systems for annual reports to Congress and is hindered in its ability to target prevention and response efforts, according to agency officials.

Extent to which NOAA's 2018 Sexual Assault and Sexual Harassment Policy and the Agency's Related Actions Follow Selected Promising Practices

Summary	Results of GAO analysis
NOAA's 2018 policy follows most selected Equal Employment Opportunity Commission's (EEOC) Promising Practices for Preventing Harassment.	●
NOAA's leadership and accountability actions to prevent and respond to sexual harassment follow selected EEOC promising practices.	◐
NOAA's anti-harassment training follows selected EEOC promising practices.	◐
NOAA's harassment complaint systems follow selected EEOC promising practices.	◐

Source: GAO. | GAO-21-560

- Follows
- ◐ Partially Follows

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Abbreviations

2017 NDAA	National Defense Authorization Act for Fiscal Year 2017
2018 policy	NOAA's Sexual Assault and Sexual Harassment Prevention and Response Policy from February 2018
955 office	955 Program Management Office
COVID-19	Coronavirus Disease 2019
EEO	Equal Employment Opportunity
EEOC	U.S. Equal Employment Opportunity Commission
FAQ	frequently asked question
Fisheries	National Marine Fisheries Service
Helpline	Sexual Assault and Sexual Harassment Helpline
NASEM	National Academy of Sciences, Engineering, and Medicine
OLE	Office of Law Enforcement
RAINN	Rape, Abuse, and Incest National Network
NOAA	National Oceanic and Atmospheric Administration
Violence Prevention office	Workplace Violence Prevention and Response office

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August 27, 2021

The Honorable Roger F. Wicker
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Raúl M. Grijalva
Chairman
Committee on Natural Resources
House of Representatives

The Honorable John Thune
United States Senate

Sexual assault or sexual harassment in the workplace can have harmful physical, psychological, occupational, and economic effects on individual employees. It can also adversely affect the workplace more broadly by undermining employee morale, decreasing employee productivity, and increasing employee turnover.¹ Sexual assault is prohibited by law at the federal and state level,² and a number of federal laws, including Title VII of the Civil Rights Act of 1964,³ and executive orders prohibit sex discrimination, including sexual harassment, in the workplace. Sexual harassment is defined by the U.S. Equal Employment Opportunity Commission (EEOC) as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature,⁴ and

¹For more information about the prevalence and costs associated with workplace sexual harassment, see GAO, *Workplace Sexual Harassment: Experts Suggest Expanding Data Collection to Improve Understanding of Prevalence and Costs*, [GAO-20-564](#) (Washington, D.C.: Sept. 30, 2020)

²See, for example, federal sexual abuse laws in chapter 109A of title 18 of the U.S. Code.

³Title VII of the Civil Rights Act of 1964 prohibits covered employers from discriminating against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin. 42 U.S.C. § 2000e-2(a)(1). The Supreme Court has held that sexual harassment, when it meets certain criteria, is a form of sex discrimination prohibited by Title VII. See, e.g., *Meritor Sav. Bank v. Vinson*, 477 U.S. 57 (1986).

⁴29 C.F.R. § 1604.11; see also EEOC website on sexual harassment, <https://www.eeoc.gov/sexual-harassment>.

federal agencies are required to have policies to prevent all forms of discrimination, including harassment.⁵

The National Defense Authorization Act for Fiscal Year 2017 (2017 NDAA), enacted in December 2016, includes a provision requiring the National Oceanic and Atmospheric Administration (NOAA)—an agency within the Department of Commerce—to develop an agency-specific policy for preventing and responding to incidents of sexual assault and sexual harassment.⁶ The policy is to cover sexual harassment and sexual assault involving NOAA employees, members of its commissioned officer corps, and individuals who work with or conduct business on behalf of NOAA.⁷

NOAA issued a Sexual Assault and Sexual Harassment Prevention and Response Policy in February 2018 (2018 policy). It also took related actions such as hiring a program manager to establish a Workplace Violence Prevention and Response program. Prior to enactment of the 2017 NDAA, NOAA did not have its own agency-specific policy on sexual assault or harassment. Instead, it relied on Commerce department-wide policies and processes defined by the U.S. Equal Employment Opportunity Commission (EEOC).⁸

The EEOC oversees federal agencies' adherence to Equal Employment Opportunity (EEO) program requirements and provides leadership and guidance to private and public-sector entities for preventing and

⁵EEOC, Equal Employment Opportunity: Management Directive 715, II.A, C (Oct. 1, 2003).

⁶Pub. L. No. 114-328, §§ 3541-42, 130 Stat. 2000, 2800-03 (2016). Specifically, section 3541 of the act required the development of such a policy to address sexual harassment, and section 3542 called for such a policy to address sexual assault. NOAA developed a single policy to address both sexual harassment and sexual assault.

⁷Additionally, federal agencies generally are required to include a non-discrimination clause in government contracts. Exec. Order No. 11246, 30 Fed. Reg. 12319 (1965). The executive order, as amended, also generally calls for agencies to include in contracts a provision that requires contractors to take affirmative action to ensure that equal opportunity is provided in employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin. In general, federal contractors and subcontractors, as well as federally assisted construction contractors and subcontractors, which conduct more than \$10,000 in federal government business in a year are covered by Executive Order 11246.

⁸For example, NOAA uses Commerce's Department Administrative Order 202-955 process to address sexual harassment allegations.

responding to sexual harassment and other forms of unlawful harassment. In 2017, the EEOC issued a technical assistance document entitled *Promising Practices for Preventing Harassment* that was intended to assist employers in preventing and addressing harassment in the workplace.⁹

You asked us to review NOAA's policies and actions related to preventing and responding to sexual assault and sexual harassment since the enactment of the 2017 NDAA in December 2016. This report examines the extent to which (1) NOAA's policy to prevent and respond to sexual assault and sexual harassment is consistent with relevant legal requirements in the 2017 NDAA and follows EEOC's Promising Practices, and (2) NOAA's actions since December 2016 to prevent and respond to sexual assault and sexual harassment follow EEOC's Promising Practices.

To address these objectives, we reviewed the policy and actions undertaken by NOAA to prevent and respond to sexual assault and sexual harassment involving its workforce since the 2017 NDAA was enacted in December 2016.¹⁰ (See app. I for additional details about our methodology.) For both objectives, we collected and reviewed relevant NOAA and Commerce policies and guidance, and we reviewed NOAA's actions aimed at preventing and responding to sexual assault and sexual harassment. Additionally, we interviewed senior NOAA officials as well as: (1) other NOAA officials knowledgeable about relevant NOAA policy

⁹U.S. Equal Employment Opportunity Commission, *Promising Practices for Preventing Harassment*, EEOC-NVTA-2017-2 (Washington, D.C.: Nov. 21, 2017). These promising practices are based on a 2016 EEOC report from the co-chairs of EEOC's Select Task Force on the Study of Harassment in the Workplace. See: U.S. Equal Employment Opportunity Commission, *Report of the Co-Chairs of the EEOC Select Task Force on the Study of Harassment in the Workplace* (Washington, D.C.: June 2016). The promising practices outlined in EEOC's document are not legal requirements under federal employment discrimination laws, but according to EEOC officials, these practices could enhance employers' compliance efforts when addressing matters of sexual harassment.

¹⁰For the purposes of this report, we use the definition of sexual harassment outlined in the 2018 NOAA Sexual Assault and Sexual Harassment Prevention and Response Policy (2018 policy), which uses EEOC's definition of sexual harassment. Unless otherwise noted, we use the term sexual harassment broadly to include behaviors that may or may not meet the legal criteria to constitute unlawful sexual harassment. We also use NOAA's definition of sexual assault outlined in the agency's 2018 policy, which defines sexual assault as any conduct proscribed by state or federal sexual abuse laws, including, but not limited to, those defined in chapter 109A of title 18 of the U.S. Code. *NOAA Sexual Assault and Sexual Harassment Prevention and Response Policy*, NAO 202-1106, (Washington, D.C.: February 2018).

and actions, including officials from each of NOAA's six Line Offices;¹¹ (2) officials from NOAA's Offices of the Undersecretary, Human Capital Services, Inclusion and Civil Rights, General Counsel, Legislative and Intergovernmental Affairs; and (3) officials from NOAA's Acquisition and Grants Office and Workplace Violence Prevention and Response office.¹² To better understand how NOAA's workforce experienced the agency's reporting and response processes for sexual assault and sexual harassment, we also conducted a series of confidential interviews with 10 individuals who experienced or witnessed sexual assault or sexual harassment and whose cases were reported to NOAA from January 2018 through May 2020.

To determine the extent to which NOAA's policy to prevent and respond to sexual assault and sexual harassment is consistent with relevant legal requirements in the 2017 NDAA, we reviewed NOAA's 2018 policy and relevant provisions of the 2017 NDAA. In addition, we conducted interviews with officials knowledgeable about who was covered by NOAA's 2018 policy,¹³ how the policy was developed, and how the policy is being updated, and we collected pertinent materials from these officials.¹⁴ We then assessed NOAA's 2018 policy against relevant sections of the 2017 NDAA. We developed a methodology to establish definitions for the terms "consistent," "partially consistent," and "not consistent" to reflect in plain language our determination of the extent to

¹¹NOAA's six Line Offices are the National Environmental Satellite, Data, and Information Service; National Marine Fisheries Service (also called NOAA Fisheries); National Ocean Service; National Weather Service; Office of Marine and Aviation Operations; and Office of Oceanic and Atmospheric Research.

¹²For the purposes of this report, we refer to this unit as an office because NOAA is in the process of institutionalizing the Workplace Violence and Prevention Response Program into a formal office. At the time of this report, this process has not yet been finalized.

¹³The 2018 policy applies to all NOAA employees. The policy stated that NOAA will develop language to incorporate the terms of the policy, as appropriate and permissible by law, into future contracts, grants, and cooperative agreements for application to NOAA contractors and affiliates—which NOAA began doing in 2018 for all contractors and subcontractors.

¹⁴At the time of our review, NOAA officials were updating the 2018 policy and expected to release a revised policy in the summer or fall of 2021. To the extent possible and appropriate, we included information on what we expect, based on interviews with NOAA officials, the updated policy to cover. We also noted where it might address gaps we identified in the 2018 policy.

which NOAA's policy is consistent with these relevant legal requirements.¹⁵

To determine the extent to which NOAA's policy and actions to prevent and respond to sexual assault and sexual harassment follow EEOC's Promising Practices, we assessed NOAA's 2018 policy and relevant agency actions against selected recommended practices for a comprehensive and effective harassment policy from EEOC's 2017 technical assistance document: *Promising Practices for Preventing Harassment*.¹⁶ More specifically, we assessed NOAA's 2018 policy, and the actions NOAA took since December 2016, against selected practices in each of the four categories outlined in EEOC's Promising Practices document—(1) comprehensive and effective harassment policy, (2) leadership and accountability, (3) effective and accessible harassment complaint system, and (4) effective harassment training. We selected promising practices from each of the four categories,¹⁷ assessed NOAA's policy and actions against each selected practice within the four categories, and then developed an assessment of NOAA's policy and the agency's actions when taken as a whole and over time. (See app. I for the criteria we used to select practices in each category.) We used the terms "follows," "partially follows," and "does not follow" to reflect in plain language our determination of the extent to which NOAA's policy and

¹⁵"Consistent" means that NOAA's policy is consistent with a relevant provision of the 2017 NDAA. "Partially consistent" means that NOAA's policy is consistent with part, but not all, of a relevant provision of the 2017 NDAA. "Not consistent" means that NOAA's policy was not consistent with a relevant provision of the 2017 NDAA. Similarly, to communicate the results of our review at the category-level, we used the terms "consistent," "partially consistent," and "not consistent" to reflect the extent to which NOAA's policies or actions are consistent with relevant provisions of the 2017 NDAA.

¹⁶EEOC's Promising Practices are recommended practices rather than requirements under the law. The EEOC's Promising Practices document identifies recommended practices employers can take to help prevent and respond to harassment, and which may enhance employers' compliance efforts on sexual harassment matters. We also assessed NOAA's policy and actions against similar related recommendations such as those found in: GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#), (Washington, D.C.: Sept. 10, 2014); and recommendations from the National Academies of Sciences, Engineering, and Medicine, *Sexual Harassment of Women: Climate, Culture, and Consequences in Academic Sciences, Engineering, and Medicine* (Washington, D.C.: 2018).

¹⁷We determined which promising practices from each category to include in our review based on multiple considerations, including: (1) whether the criterion was explicit enough for GAO to audit it, (2) our ability to use GAO's tools and expertise to measure the recommendation, and (3) whether the recommendation was relevant to NOAA's work and workforce.

actions are consistent with selected practices in each of the four categories.¹⁸

We conducted this performance audit from September 2019 to August 2021 in accordance with generally accepted government auditing standards. These standards require that we plan and perform an audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence we obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

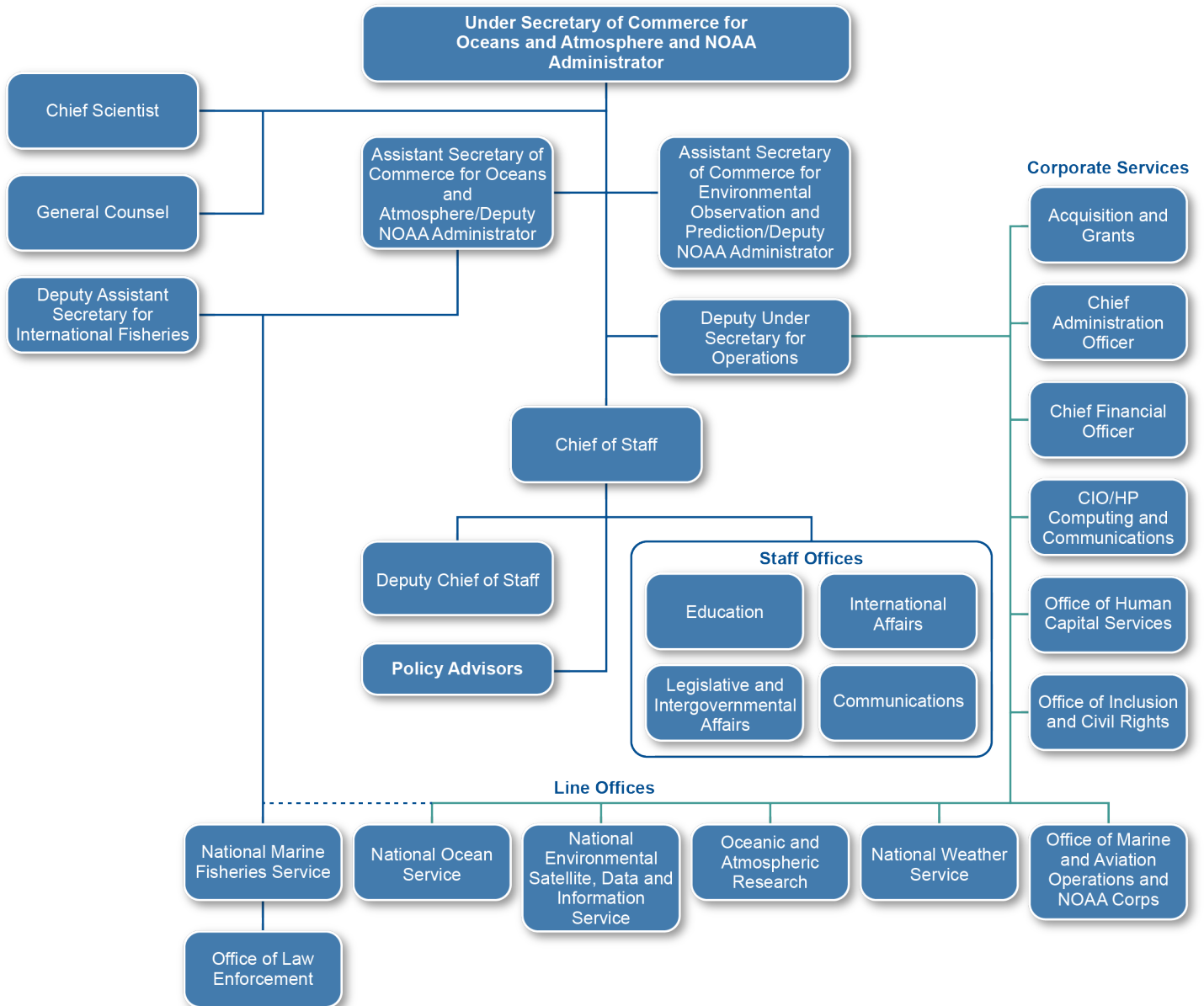
Background

NOAA's mission is to understand and predict changes in climate, weather, oceans, and coasts; to share that knowledge and information with others; and to conserve and manage coastal and marine ecosystems and resources. NOAA's workforce—including approximately 12,000 federal employees and nearly 10,000 affiliated staff, such as contractors and fishery observers¹⁹—is organized across numerous offices and geographically dispersed across over 700 sites in the United States and its territories. NOAA employees and affiliated staff conduct their work in a variety of environments, ranging from traditional office spaces to isolated, remote, or disconnected workspaces such as ships, aircraft, and laboratories. Figure 1 below shows the various offices that constitute NOAA's organizational structure, including the line offices that are responsible for executing NOAA's programs.

¹⁸"Follows" means that NOAA's policy or actions are consistent with an EEOC Promising Practice (or that its policy or actions evolved to be consistent with a selected practice by the end of the period of our review). "Partially follows" means that NOAA's policy or actions are consistent with part, but not all, of a selected practice. "Does not follow" means that NOAA's policy or actions are not consistent with a selected practice. Similarly, to communicate the overall results of our review at the category-level, we used the terms "follows," "partially follows," and "does not follow" to reflect the extent to which NOAA's policies or actions, when taken as a whole and over time, are consistent with EEOC's recommendations for each of the four promising-practices categories overall.

¹⁹According to NOAA's 2018 policy, contractor employees are employees of a prime contractor or its subcontractors, affiliates, consultants, or team members. Fishery observers are professionally trained biological technicians who gather first-hand data on what is caught and discarded by U.S. commercial fishing vessels.

Figure 1: The National Oceanic and Atmospheric Administration's (NOAA) Organizational Structure



Source: National Oceanic and Atmospheric Administration (NOAA). | GAO-21-560

With the enactment of the 2017 NDAA in December 2016, NOAA began taking a series of actions to address sexual assault and sexual

harassment concerns within the agency.²⁰ For example, NOAA established a Sexual Assault and Sexual Harassment Helpline (Helpline).²¹ It also created an agency-specific policy to prevent and respond to sexual assault and sexual harassment (2018 policy), the stated purpose of which, among other things, is to provide guidance and establish processes to encourage its workforce to come forward when such incidents occur.²² The policy also defines the resources available to those involved. According to NOAA officials we interviewed, the agency is in the process of updating the 2018 policy and expects to release a revised policy in late summer or early fall of 2021.

NOAA also hired a subject matter expert as program manager to establish the agency's Workplace Violence Prevention and Response program,²³ established a Sexual Assault and Sexual Harassment Council, and implemented mandatory training for all employees on preventing and responding to sexual assault and sexual harassment (see fig. 2).²⁴

²⁰NOAA also coordinates with local and state law enforcement on allegations of sexual assault, as appropriate.

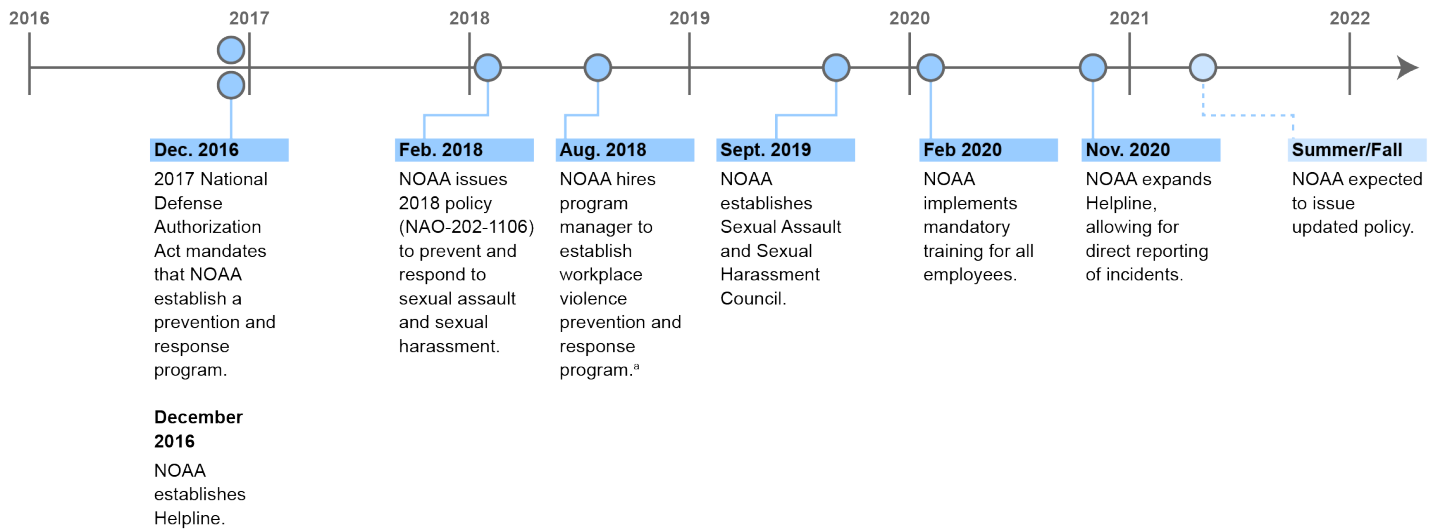
²¹According to NOAA officials we interviewed, the launch of the Helpline coincided with the enactment of the 2017 NDAA in December 2016. NOAA launched its Sexual Assault and Sexual Harassment Helpline (Helpline) to provide free, confidential, and anonymous crisis support services for those affected by sexual assault and sexual harassment. NOAA partnered with the Rape, Abuse, and Incest National Network (RAINN) to launch its Helpline. This partnership provides specific and tailored crisis support to any member of NOAA's workforce—federal employees as well as contractors and other affiliated staff—subjected to, affected by, or seeking information about sexual assault or sexual harassment.

²²NOAA's workforce includes federal employees, members of NOAA's commissioned officer corps, and those individuals who work with or conduct business on behalf of NOAA (i.e., contractors, grantees, and other affiliated staff including crews on contracted vessels).

²³The name of this program, and the office subsequently responsible for issues related to workplace violence prevention and response, changed several times during the course of our review. For the purposes of our report, we refer to this NOAA program or office as the Workplace Violence Prevention and Response program or office, as appropriate. This Violence Prevention program—which includes sexual assault and sexual harassment—covers the broad range of workplace violence including the continuum of harassing behaviors that, if left unchecked, can lead to sexual and non-sexual violence, including assault.

²⁴This Council is comprised of senior leaders, and representatives from across the agency, and serves as the principal forum through which NOAA-wide issues related to sexual assault and sexual harassment are discussed and addressed.

Figure 2: Efforts Taken by the National Oceanic and Atmospheric Administration (NOAA) to Prevent and Respond to Sexual Assault and Sexual Harassment



Source: GAO analysis of National Oceanic and Atmospheric Administration (NOAA) documentation. | GAO-21-560

^aIncludes agency efforts to address various forms of workplace violence, including but not limited to sexual assault and sexual harassment.

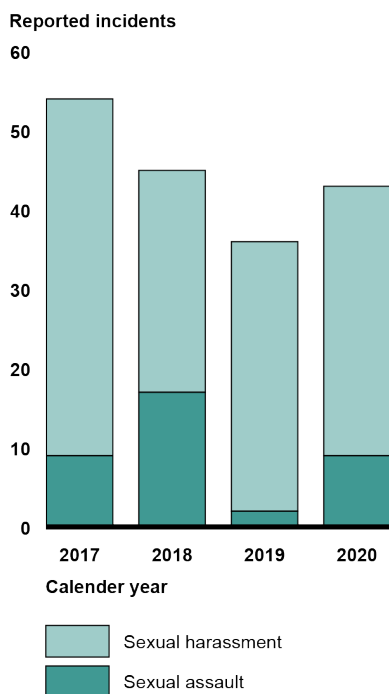
In addition, NOAA conducted a preliminary assessment of its workforce in 2018 and identified several risk factors indicating that the agency may be susceptible to incidents of sexual harassment or assault, or both. These factors included (1) a homogeneous workforce,²⁵ (2) workplaces with significant power disparities between different groups of workers, and (3) workplaces that are isolated, remote, and decentralized.

Besides requiring NOAA to establish a sexual assault and sexual harassment policy, the 2017 NDAA required NOAA to submit an annual report to Congress on sexual assault cases involving NOAA employees, members of the commissioned officers corps, and individuals who work with or conduct business on behalf of the agency. Each annual report is to include information such as the number of alleged cases, a synopsis of each case, and the disciplinary action taken, if any, as well as a summary

²⁵In homogeneous workforces, employees in the minority can feel isolated and may be vulnerable to pressure from others, according to EEOC's 2016 *Report of the Co-Chairs of the EEOC Select Task Force on the Study of Harassment in the Workplace*.

of quarterly sexual harassment reports.²⁶ In March 2018, NOAA provided Congress with its first annual report responding to the NDAA requirement. In its most recent annual report, which covers calendar year 2020, NOAA reported nine allegations of sexual assault and 34 allegations of sexual harassment.²⁷ Figure 3 below shows the number of sexual assault and sexual harassment allegations reported for calendar years 2017 through 2020.

Figure 3: Reported Incidents of Sexual Assault and Sexual Harassment at the National Oceanic and Atmospheric Administration (NOAA) from 2017 through 2020 (by calendar year)



Source: GAO analysis of National Oceanic and Atmospheric Administration (NOAA) documentation. | GAO-21-560

²⁶Specifically, the 2017 NDAA requires the Director of the NOAA Civil Rights Office (now referred to as the Office of Inclusion and Civil Rights) to submit, not less than 4 times each year, to the Under Secretary for Oceans and Atmosphere a report on sexual harassment at NOAA. Each report is to include the number of sexual harassment cases, the number of open actionable cases and how long the cases have been open, trends or region-specific issues discovered by the Director, and such recommendations the Director may have with respect to sexual harassment at NOAA. A summary of the quarterly sexual harassment reports is to be included in the annual sexual assault report to Congress.

²⁷NOAA, *CY 2020 Report to Congress: National Oceanic and Atmospheric Administration Annual Sexual Assault Report* (Washington, D.C.: Apr. 6, 2021). These annual reports cover allegations reported in the previous calendar year.

Note: Reported incidents do not necessarily reflect the total number of actual incidents in a given year. Similarly, an increase in the number of reported incidents from year to year may not necessarily indicate an increase in incidents, but could indicate a more robust program or an increased trust in and awareness of the agency's reporting mechanisms and complaint system, or both. Similarly, a decrease in the number of reported incidents does not necessarily reflect a decrease in total incidents, but could indicate decreased trust in or awareness of the agency's reporting system. The number of reported incidents for 2017 reflect the data as updated and reported by NOAA in its 2019 to Congress.

Sexual harassment, as defined by the EEOC, includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. Consistent with that definition, NOAA's 2018 policy defines sexual harassment to include unwelcome sexual advances; requests for sexual favors; and other verbal, non-verbal, or physical conduct of a sexual nature in certain contexts.²⁸ In addition, NOAA's policy defines sexual assault to include instances when one person (1) causes another person to engage in a sexual act by threatening or placing the other person in fear, or (2) engages in a sexual act with another person if that person is incapable of appraising the nature of the conduct or physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual act.²⁹

Agency employees and affiliated staff can report allegations of sexual assault and sexual harassment in multiple ways,³⁰ such as reporting to their supervisor or calling the Helpline.³¹ In addition, NOAA has established complaint systems under various agency offices designed to

²⁸Specifically, these behaviors constitute sexual harassment under NOAA's 2018 policy, which tracks the EEOC definition, when any of the following are true: (1) submission to such conduct is either explicitly or implicitly a term or condition of an individual's employment; (2) submission to or rejection of such conduct by an individual is used for employment decisions affecting such individual; or (3) the conduct interferes with an individual's work performance or creates an intimidating, hostile, or offensive working environment.

²⁹As previously noted, for the purpose of this report, we rely on NOAA's definition of sexual assault and sexual harassment unless stated otherwise.

³⁰NOAA's 2018 policy defines affiliates to include, but not be limited to, fellows, interns, scientists, cooperative institute members, grant recipients, and cooperative agreement recipients who work in support of NOAA or whose work is funded by NOAA.

³¹In November 2020, NOAA expanded its contract with RAINN to enable individuals to formally report incidents of sexual assault or sexual harassment to the Helpline for secure transmission to NOAA for follow up.

investigate such allegations, with each office’s system serving a distinct purpose.³² For example:

- The Office of Human Capital Services manages Commerce’s agency-wide anti-harassment program for NOAA, which we refer to as the 955 system,³³ which is designed to provide an expedited investigation process for reviewing allegations of harassment, stopping incidents of harassment, and taking disciplinary actions as appropriate.
- The Office of Inclusion and Civil Rights investigates discrimination complaints and manages NOAA’s Equal Employment Opportunity (EEO) system, which is intended to make whole the person affected by the discrimination through remedial relief, such as financial compensation or restoration of leave.
- The Office of Law Enforcement within the National Marine Fisheries Service (Fisheries) identifies and investigates violations of laws that are under the purview of the Secretary of Commerce, including the sexual harassment and sexual assault of fishery observers and data collectors. The Magnuson-Stevens Act specifically prohibits the forcible assault or sexual harassment of fishery observers and data collectors performing work on behalf of NOAA.³⁴ Harassment of observers may have significant negative effects on the observer’s ability to complete their duties and collect data.

EEOC provides leadership and guidance to private and public sector entities on preventing and responding to sexual harassment, and other forms of unlawful harassment. EEOC also oversees federal agencies’ adherence to EEO program requirements. For example, EEOC Management Directive 715 requires federal agencies to annually submit a report on the status of activities undertaken pursuant to its EEO

³²NOAA’s 955 and EEO complaint systems use different terminology when referring to reports of sexual assault and sexual harassment—with the 955 system using the term “allegations” and the EEO system using the term “complaints”—and when referring to the adjudication process—with the 955 system using the term “inquiries” and the EEO system using the terms “inquiries” and “investigations”. For the purposes of this report, we refer to reported incidents as “allegations” and the process used to determine the facts of the case as “investigations,” unless noted otherwise.

³³The Office of Human Capital Services manages NOAA’s implementation of Commerce’s program under DAO-202-955, which is common to all bureaus within Commerce.

³⁴16 U.S.C. §§ 1826g(e)(6), 1857(1)(L). According to NOAA officials, observers are entitled to a work environment free from any type of harassment.

programs, including anti-harassment program.³⁵ In 2017, EEOC issued a technical assistance document titled *Promising Practices for Preventing Harassment* that identifies recommended practices that employers, including the federal government, can take to prevent and address harassment. The promising practices outlined in EEOC's document are not legal requirements under federal employment discrimination laws, but according to EEOC, these practices could enhance employers' compliance efforts when addressing matters of sexual harassment.

Additionally, in 2018, the National Academy of Sciences, Engineering, and Medicine (NASEM), an organization with which NOAA partnered to review efforts aimed at preventing sexual harassment, published a report that identified systemic changes to the culture and climate of the academic workplace that are needed to prevent and effectively respond to the sexual harassment of women in higher education.³⁶ According to NASEM,³⁷ sexual harassment encompasses three types of behavior: (1) sexual coercion or favorable treatment conditioned on sexual activity; (2) unwanted sexual attention, such as verbal or physical unwelcome sexual advances, which can include assault; or (3) gender harassment, which includes sexist hostility and crude behavior.³⁸

³⁵For purposes of this report, as noted previously, we focused on the requirements in the 2017 NDAA and the recommendations of the EEOC Promising Practices. We did not separately assess the actions taken by NOAA to prevent and respond to sexual assault and sexual harassment against other requirements, such as the EEOC's MD-715 guidance on EEO programs.

³⁶NASEM, *Sexual Harassment of Women: Climate, Culture, and Consequences in Academic Sciences, Engineering, and Medicine*, (Washington, D.C.: 2018).

³⁷As part of the nongovernmental National Academies, NASEM works to provide independent, objective analysis and advice, and conduct activities to solve complex problems and inform public policy decisions on a range of issues, including workplace sexual harassment.

³⁸The definition of "sexual harassment" in NOAA's 2018 policy is similar to NASEM's definition, but not identical. As previously noted, for the purposes of this report, we use NOAA's definition of sexual assault and sexual harassment unless stated otherwise.

NOAA's Sexual Assault and Sexual Harassment Policy Is Consistent with Most of the Relevant Legal Requirements and Follows Most Selected EEOC Promising Practices

NOAA's 2018 policy to prevent and respond to incidents of sexual assault and sexual harassment is consistent with most of the relevant legal requirements in the 2017 NDAA. (See app. II for a table summarizing the overall extent to which the policy is consistent with relevant legal requirements in the 2017 NDAA.) In addition, the policy follows most selected EEOC promising practices for a comprehensive and effective harassment policy. (See app. III for a table summarizing the overall extent to which the policy follows selected EEOC promising practices.)

NOAA's Policy Is Consistent with Most of the Relevant Legal Requirements in the 2017 NDAA

We found that NOAA's 2018 policy is consistent with most of the relevant requirements in the 2017 NDAA and partially or not consistent with some. NOAA's policy provides guidance to managers, supervisors, employers, contractor employees, and affiliates on sexual assault and sexual harassment.³⁹ Furthermore, as required by the 2017 NDAA, NOAA's policy does the following, among other things:

- states that the agency will ensure that each contract it enters into for the use of a vessel has a provision that subjects that vessel's crew to the agency's policy;
- indicates that at least one volunteer victim advocate will be stationed in each of NOAA's five regions and NOAA's four marine and aviation centers.⁴⁰ (Volunteer victim advocates are NOAA employees who are trained to support victims of workplace violence, including victims of sexual harassment and sexual assault, but do so in addition to their

³⁹According to NOAA officials, the policy covers fishery management council participants, representatives of nongovernmental organizations and academic institutions, researchers, partners, contractors, subcontractors, crews of vessels, financial assistance awardees, sub-awardees, and others, who may not require an official NOAA email account to perform their duties. These officials told us that NOAA plans to make this explicit in its revised policy in 2021.

⁴⁰In this report, we do not generally refer to those individuals who have been subjected to or have been accused of sexual assault or sexual harassment as the victim or alleged perpetrator, respectively. However, we use the term *victim* and *alleged perpetrator* in this report when documentation provided by NOAA or EEOC, or the language in policy or law, such as the 2017 NDAA, uses these terms.

other duties.⁴¹) As of March 2021, NOAA had recruited 43 volunteer victim advocates, covering all of the NOAA regions and centers, according to a senior NOAA official. In addition, as of March 2021, NOAA had hired regional coordinators to manage the volunteer victim advocates for each of the five regions and one coordinator to oversee all four marine and aviation centers;⁴² and

- describes the agency’s Helpline, which provides crisis intervention, referrals, and emotional support to all NOAA employees, contractors, and affiliates who have experienced sexual assault or sexual harassment, even if the incident occurred outside of the workplace or is unrelated to work. The Helpline is to be secure, to ensure that all callers remain anonymous, and to be available worldwide, 24 hours a day, 7 days a week.

Table 1 below summarizes the ways in which NOAA’s 2018 policy is consistent with the relevant legal requirements in the 2017 NDAA.

Table 1: Ways That NOAA’s 2018 Sexual Assault and Sexual Harassment Policy Is Consistent with Relevant Legal Requirements in the 2017 NDAA

Summary of relevant 2017 NDAA requirements	GAO analysis of NOAA’s 2018 policy
Required policy	
Development of a policy on the prevention of and response to sexual harassment and sexual assault at NOAA that covers employees, members of the commissioned officer corps, and those who work with or conduct business of behalf of NOAA.	●
Availability of the policy to all covered by the policy as well as the public.	●
Each contract for the use of a vessel by NOAA is to include a provision that subjects the crew to the sexual harassment and sexual assault policy.	●
Matters to be Specified in the policy	
Establishment of a program to promote awareness of the incidence of sexual harassment	●
Clear procedures an individual should follow in the case of an occurrence of sexual harassment, including whom a person should contact and/or report an incident to with options for confidential reporting and after-hours reporting	●
Establishment of a mechanism by which questions regarding sexual harassment or assault can be asked and incidents can be reported confidentially	●
A prohibition on retaliation and consequences for retaliatory actions.	●

⁴¹The 2017 NDAA uses the term *victim advocate* to refer to an existing permanent NOAA employee who is trained in matters related to sexual assault and voluntarily serves as a victim advocate in addition to their other mission-related duties. NOAA refers to these volunteers as *victim advocate liaisons*. For the purposes of this report, we refer to these individuals as *volunteer victim advocates*.

⁴²These regional coordinators also provide victim advocacy.

Summary of relevant 2017 NDAA requirements	GAO analysis of NOAA's 2018 policy
Measures to prevent incidents of sexual assault.	●
Education and training on prevention of and response to sexual assault.	●
A list of support resources that is both easily and readily available that an individual may use in the occurrence of a sexual assault, including contact information for after-hours and a procedure for obtaining assistance and reporting sexual assault in all locations.	●
Availability of resources for victims of sexual assault within other agencies and organizations.	●
Victim advocacy	
Address in the policy victim advocacy, including the establishment of and the responsibilities and training requirements for victim advocates.	●
The agency shall establish victim advocates for victims of sexual assaults involving NOAA employees, members of the commissioned officer corps, and those who work with or conduct business on behalf of NOAA.	●
Victim advocates shall be existing permanent employees who are trained in matters relating to sexual assault and NOAA's policy, and serve as victim advocates voluntarily in addition to their other duties.	●
Victim advocates' duties shall include supporting victims of sexual assault and informing them of their rights and the resources available to them; acting as a companion in navigating the various processes relating to sexual assault; and helping to identify resources to ensure the safety of sexual assault victims.	●
The agency shall ensure that at least one victim advocate is stationed in each NOAA region and in each marine and aviation center.	●
The agency shall provide a hotline, using established hotlines when possible, at which a victim of a sexual assault can contact a victim advocate 24 hours a day.	●
The agency shall designate out of existing staff at least one NOAA employee who is tasked with handling matters related to equal employment opportunity or sexual harassment at each marine and aviation center.	●
Rights of the Victim of a sexual assault	
A victim of sexual assault covered by NOAA's policy has the right to be reasonably protected from the accused.	●
For employee victims of sexual assault, the agency is generally, to the degree practicable, to accommodate the request of a victim for a change of work location; for victims of sexual assault who are members of the commissioned officer corps, the agency is to provide for timely determination and action on a victim's application for consideration of a change of station or unit.	●
The agency shall ensure that such a request or application for change of location, station, or unit is approved or denied within 72 hours of submission.	●
If such a request or application is denied, the victim may request the Secretary to review the denial, and not later than 72 hours of receiving the request or application, the Secretary, acting through the Under Secretary, is to affirm or overturn the denial.	●
Reports on incidents of sexual harassment and sexual assault at NOAA	
The Director of the Civil Rights Office (Director) shall submit a report on sexual harassment at NOAA to the Under Secretary not less than four times each year.	●
Each such quarterly report shall include the number of sexual harassment cases involving individuals covered by the policy; the number of open actionable cases and how long the cases have been open; trends or region-specific issues discovered by the Director; and any recommendations the Director may have with respect to sexual harassment at NOAA.	●

Summary of relevant 2017 NDAA requirements**GAO analysis of NOAA's 2018 policy**

The Secretary of Commerce shall submit a report on sexual assaults involving NOAA employees, members of the commissioned officer corps, and those who work with or conduct business on behalf of NOAA to specified congressional committees not later than January 15 of each year.

●

Each such annual report shall include the number of alleged sexual assaults involving individuals covered by the policy; a synopsis of each case and the disciplinary action taken, if any; the policies, procedures, and processes implemented by the Secretary, and any updates or revisions; and a summary of the quarterly reports on sexual harassment described above.

●

● Consistent

Source: GAO analysis. | GAO-21-560

Note: Section 3541 of the National Defense Authorization Act for Fiscal Year 2017 (2017 NDAA) required the National Oceanic and Atmospheric Administration (NOAA) to develop a policy to address sexual harassment, and section 3542 called for a policy to address sexual assault. NOAA developed a single policy to address both sexual harassment and sexual assault. "Consistent" means that NOAA's policy is consistent with a relevant provision of the 2017 NDAA.

In addition, we found that NOAA's 2018 policy is partially consistent with one of the relevant provisions in the 2017 NDAA, which requires the policy to include protocols for the investigation of sexual assault complaints by command and law enforcement personnel. NOAA officials provided us with documentation demonstrating that the agency has such protocols for investigating sexual assault and sexual harassment allegations under each of its complaint systems—the 955 system, the EEO system, and the Office of Law Enforcement system—but NOAA's policy does not specifically reference these protocols of an investigation. Omitting these protocols could create confusion and undermine victims', witnesses', or managers' understanding of how and where to report allegations, and what happens once an investigation is initiated.

Last, we found that NOAA's 2018 policy is not consistent with five of the relevant requirements in the 2017 NDAA. Specifically,

- NOAA's policy does not address the legal requirement that the Under Secretary has oversight of administrative and disciplinary actions in response to substantiated incidents of sexual assault. The policy requires managers, such as immediate supervisors, to take immediate and appropriate steps to stop abusive conduct through corrective or disciplinary actions, but it says nothing about oversight of such

decisions by higher management, such as the Under Secretary.⁴³ NOAA officials told us that the revised policy the agency expects to issue in 2021 may address this requirement by including language that the Under Secretary will review all proposed disciplinary actions for incidents of sexual harassment and sexual assault before the discipline is imposed.

- NOAA's policy does not address all three requirements related to protecting the rights of victims of sexual assault. Specifically, the 2017 NDAA states that the agency shall develop a policy for the protection of victims of sexual assault by providing the alleged perpetrator with a change of station, unit transfer, or change of work location, when applicable, and that the policy is to include a means to control access to the victim and due process for the parties involved. The 2017 NDAA also states that the Secretary of NOAA is to promulgate regulations to carry out this section of the law.⁴⁴ NOAA's policy states that within one year of the issuance of the policy, the agency will promulgate guidelines that take into account the matters related to the establishment of a policy for the protection of victims of sexual assault. However, as of April 2021, NOAA had not published guidelines or promulgated regulations pertaining to the relocation of alleged perpetrators. According to NOAA officials, the agency is updating the related agency order to include specific language of separation between the victim and alleged perpetrator. In addition, according to NOAA officials, the revised policy will likely include language related to providing due process for the victim as well as the alleged perpetrator. However, even if the agency order or the updated policy were to include such language, it would not address the 2017 NDAA requirement for the issuance of related regulations.
- The 2017 NDAA states that in preparing and submitting required annual reports to Congress, the Secretary of Commerce shall ensure that no individual involved in an alleged sexual assault can be identified by the contents of such reports. NOAA's policy states that

⁴³NOAA's 2018 policy notes that when a supervisor has questions concerning what actions to take, the supervisor may consult others, such as the Workplace Violence Prevention Manager or the Office of General Counsel. In cases where the person alleged to have harassed someone is the immediate supervisor, these actions may be completed by the second-line supervisor or another supervisor in the chain of command or elsewhere in the agency.

⁴⁴The 2017 NDAA further provides that the Secretary is to make such regulations consistent with similar regulations promulgated by the Secretary of Defense when practicable.

every effort will be made to maintain confidentiality when incidents of sexual assault and sexual harassment are reported, but the policy does not ensure that individuals cannot be identified in the annual reports to Congress.⁴⁵ A senior NOAA official we interviewed stated that individuals involved in an incident could potentially be identified based on details provided in the synopsis of cases included in the agency's annual reports to Congress. This official also told us that NOAA plans to create a centralized reporting database in summer of 2021, which will collect and securely store the data used to prepare the reports to Congress. As a result, this step may help ensure the privacy and confidentiality of individuals involved in sexual assault and sexual harassment cases.

Table 2 below summarizes the ways in which NOAA's 2018 policy is partially consistent and not consistent with the relevant legal requirements in the 2017 NDAA.

Table 2: Ways That NOAA's 2018 Sexual Assault and Sexual Harassment Policy Is Partially Consistent and Not Consistent with Relevant Legal Requirements in the 2017 NDAA

Summary of relevant 2017 NDAA requirements	GAO analysis of NOAA's 2018 policy
Matters to be specified in the policy	
Protocols for the investigation of complaints of sexual assault by command and law enforcement.	●
Oversight by the Under Secretary for Oceans and Atmosphere (Under Secretary) of administrative and disciplinary actions in response to substantiated incidents of sexual assault.	○
Rights of the victim of a sexual assault	
The agency shall develop a policy for the protection of the victims of sexual assault by providing the alleged perpetrator (when the individual is a member of the commissioned officer corps or an employee of NOAA) with a change of work location, station, or unit.	○
The above-mentioned policy shall include a means to control access to the victim and due process for the victim and the alleged perpetrator.	○
The agency shall promulgate regulations to carry out the section of the act covering change of station, and is to make such regulations consistent with similar regulations promulgated by the Secretary of Defense when practicable.	○
Reports on incidents of sexual harassment and sexual assault at NOAA	
In preparing and submitting such annual reports, the agency shall ensure that no individual involved in an alleged sexual assault can be identified by the contents of the report.	○

- Partially consistent
- Not consistent

Source: GAO analysis. | GAO-21-560

⁴⁵The 2018 policy states that the anonymity of an individual alleging sexual assault or sexual harassment cannot be guaranteed, because it is often difficult to conceal the identity of an individual during an investigation or when the safety of other employees or the public is at risk when, for example, the alleged perpetrator is still at large.

Notes: Section 3541 of the National Defense Authorization Act for Fiscal Year 2017 (2017 NDAA) required the National Oceanic and Atmospheric Administration (NOAA) to develop a policy to address sexual harassment, and section 3542 called for a policy to address sexual assault. NOAA developed a single policy to address both sexual harassment and sexual assault. "Partially consistent" means that NOAA's policy is consistent with part, but not all, of a relevant provision of the 2017 NDAA. "Not consistent" means that NOAA's policy was not consistent with a relevant provision of the 2017 NDAA.

NOAA's Policy Follows Most Selected EEOC Promising Practices

We found that NOAA's 2018 sexual assault and sexual harassment policy follows most of the selected promising practices identified by the EEOC for a comprehensive and effective anti-harassment policy (see table 3). For example, NOAA's policy

- clearly defines sexual assault and sexual harassment, and provides a list of examples of prohibited conduct;⁴⁶
- describes ways that employees can report incidents of sexual harassment or sexual assault; and
- includes statements to establish the expectation that employees who observe or experience sexual harassment or sexual assault are to report the matter as soon as possible to an appropriate official or office.

As of April 2021, NOAA was in the process of reviewing and updating its 2018 policy, as recommended by EEOC's promising practices. According to NOAA officials we interviewed, the revised policy will be more consistent with the relevant legal requirements in the 2017 NDAA; reflects the establishment of the agency's Violence Prevention office; and reflects changes in the agency's processes and procedures for addressing sexual assault and sexual harassment since the 2018 policy was developed.

Table 3 below summarizes the ways in which NOAA's 2018 policy follows EEOC promising practices.

⁴⁶The 2018 policy applies to unwanted behaviors, even if those behaviors do not rise to a level that is actionable under the law.

Table 3: Ways That NOAA’s 2018 Sexual Assault and Sexual Harassment Policy Follows Selected EEOC Promising Practices for a Comprehensive and Effective Harassment Policy

Selected promising practices	GAO’s analysis of NOAA’s 2018 policy
Comprehensive harassment policy includes:	
A statement that the policy applies to employees at every level of the organization, as well as to applicants, clients, customers, and other relevant individuals.	●
An unequivocal statement that harassment based on, at a minimum, any legally protected characteristic is prohibited.	●
An easy to understand description of prohibited conduct, including examples.	●
A description of any processes for employees to informally share or obtain information about harassment without filing a complaint.	●
A description of the organization’s harassment complaint system, including multiple (if possible), easily accessible reporting avenues.	●
A statement that employees are encouraged to report conduct that they believe may be prohibited harassment (or that, if left unchecked, may rise to the level of prohibited harassment), even if they are not sure that the conduct violates the policy.	●
A statement that the identity of the individuals who report harassment, alleged victims, witnesses, and alleged harassers will be kept confidential to the extent possible and permitted by the law, consistent with a thorough and impartial investigation.	●
A statement that employees are encouraged to respond to questions or otherwise participate in investigations regarding alleged harassment.	●
A statement that information obtained during an investigation will be kept confidential to the extent consistent with a thorough and impartial investigation and permitted by law.	●
An assurance that the organization will take immediate and proportionate corrective action if it determines that harassment has occurred.	●
Effective written harassment policies are:	
Provided to employees upon hire and during harassment trainings, and posted centrally, such as on the company’s internal website, in the company handbook, near employee time clocks, in the employee break rooms, and in other commonly used areas or locations.	●
Periodically reviewed and updated as needed, and re-translated, disseminated to staff, and posted in central locations.	●
Written and communicated in a clear, easy to understand style and format.	●

● Follows

Source: GAO analysis. | GAO-21-560

Note: “Follows” means that the policy or actions of the National Oceanic and Atmospheric Administration (NOAA) are consistent with a promising practice identified by the Equal Employment Opportunity Commission (EEOC) or that NOAA’s policy or actions evolved to be consistent with a promising practice by the end of our review.

We also found that NOAA’s 2018 policy partially follows one selected practice, which calls for the inclusion of an unequivocal statement that retaliation is prohibited, among other things. As recommended by EEOC’s promising practices, NOAA’s policy includes a specific section prohibiting retaliation against anyone who reports an allegation or participates in an

investigation of sexual assault or sexual harassment—in other words, engages in protected activity. However, protected activity has a broader definition; it also includes other actions, such as intervening to protect others or refusing to obey an order reasonably believed to be discriminatory. NOAA officials told us that the revised 2021 policy would likely include a more expansive definition of retaliation, which could help better ensure that retaliation is prohibited against those who engage in all such protected activity.

Last, we found that NOAA’s 2018 policy does not follow one selected practice. Specifically, NOAA’s policy does not include a statement indicating that the agency will provide a prompt, impartial, and thorough investigation of allegations of sexual assault and sexual harassment, as recommended by EEOC’s promising practices. However, according to NOAA officials, the revised policy the agency plans to release in 2021 will likely include such language and state that the Under Secretary will ensure that investigations will begin no later than 48 hours after an allegation of sexual harassment or sexual assault is reported.

Overall, NOAA’s Actions to Prevent and Respond to Sexual Assault and Sexual Harassment Partially Follow Selected EEOC Promising Practices, with Some Shortcomings

Overall, NOAA’s actions to prevent and respond to sexual assault and sexual harassment since 2016 partially follow selected promising practices to demonstrate leadership and accountability, conduct anti-harassment training, and develop an effective and accessible complaint system for reporting and investigating allegations of sexual assault and sexual harassment. However, we found some shortcomings in the actions the agency has taken in these three areas.

NOAA's Actions to Demonstrate Leadership and Ensure Accountability Follow Several Selected Promising Practices, but These Actions Have Shortcomings in Oversight and Communication

EEOC's promising practices state that the cornerstone of a successful harassment prevention strategy is the consistent and demonstrated commitment of senior leadership to create and maintain a culture of accountability in which harassment is not tolerated.⁴⁷ We found that NOAA's actions to prevent and respond to sexual assault and sexual harassment follow several selected promising practices identified by the EEOC for demonstrating such leadership and accountability. NOAA's actions partially follow several other such practices, but senior leaders have limited ability to oversee discipline and do not always communicate key information to staff. (See app. III for a table summarizing the overall extent to which NOAA's actions follows selected EEOC promising practices for demonstrating leadership and accountability.)

NOAA's Actions Follow Several Selected Promising Practices for Leadership and Accountability

NOAA's actions to demonstrate leadership and accountability in preventing and responding to sexual assault and sexual harassment have evolved from a series of standalone efforts between 2016 and early 2018 to the launch of a coordinated agency-wide workplace violence prevention and response office beginning in early 2021. These actions follow several selected practices for demonstrating leadership and accountability (see table 4).

Table 4: Ways That NOAA's Actions Follow Selected EEOC Promising Practices for Demonstrating Leadership and Accountability

Selected promising practices	GAO's analysis of NOAA's actions
Demonstrated commitment by senior leaders may be demonstrated by:	
Clearly, frequently, and unequivocally stating that harassment is prohibited.	●
Incorporating enforcement of, and compliance with, the organization's harassment and other anti-discrimination policies and procedures into the organization's operational framework.	●
Providing appropriate authority to individuals responsible for creating, implementing, and managing harassment prevention strategies.	●
Senior leaders ensure that their organizations:	
Have a harassment policy that is comprehensive, easy to understand, and regularly communicated to all employees	●
Regularly and effectively train all employees about the harassment policy and complaint system	●

⁴⁷The promising practices outlined in EEOC's document are not legal requirements under federal employment discrimination laws, but according to EEOC, these practices could enhance employers' compliance efforts when addressing matters of sexual harassment. According to EEOC officials, sexual harassment may include sexual assault, such as unwanted physical sexual conduct, attempted rape, or rape.

Selected promising practices**GAO's analysis of NOAA's actions****To maximize effectiveness, senior leaders could seek feedback about their anti-harassment efforts by, for example:**

Partnering with researchers to evaluate harassment prevention strategies. ●

● Follows

Source: GAO analysis. | GAO-21-560

Note: "Follows" means that the actions of the National Oceanic and Atmospheric Administration (NOAA) are consistent with a promising practice identified by the Equal Employment Opportunity Commission (EEOC) or that NOAA's actions evolved to be consistent with a promising practice by the end of our review.

For example:

- NOAA leadership has clearly, repeatedly, and unequivocally stated to its workforce that sexual assault and harassment are prohibited. NOAA's 2018 policy for preventing and responding to sexual assault and sexual harassment opens by stating that NOAA is committed to providing a workplace free from sexual assault and sexual harassment. Senior leaders have reiterated the message that harassment will not be tolerated, issuing a series of agency-wide emails, including information on the website for NOAA's Violence Prevention office, and requiring mandatory anti-harassment training. Agency communications have also stated that retaliating against anyone who reports an allegation of harassment or participates in an investigation of harassment or assault is prohibited. Officials underscored these messages during the agency's October 2020 virtual Wellness Summit, using a video montage where senior leaders discussed their dedication to the agency's culture change and the importance of stopping harassing behavior before it escalates into violence or unlawful harassment. Individual Line Offices also echoed these messages by posting signs advertising the Helpline in agency workspaces, providing contact cards to vessel crews, and sending office-wide emails that unequivocally state that harassment will not be tolerated.⁴⁸
- NOAA has provided appropriate authority to individuals responsible for creating, implementing, and managing harassment prevention strategies, consistent with EEOC's promising practices. Specifically, NOAA (1) elevated its workplace violence prevention and response

⁴⁸NASEM's 2018 report recommended that organizations convey that reporting of sexual harassment is an honorable and courageous action and provide approaches that prevent individuals from fearing or experiencing retaliation.

program, in 2019, to report directly to the Office of NOAA's Deputy Under Secretary for Operations; (2) increased program staff from one person to 10 by June 2021;⁴⁹ and (3) expanded and elevated the program into the Workplace Violence Prevention and Response office (Violence Prevention office),⁵⁰ thereby institutionalizing the office within NOAA's organizational structure to serve as the central clearinghouse for issues involving sexual assault and sexual harassment.⁵¹ NOAA also gave the individual hired to lead this new office the authority to develop and direct a comprehensive agency-wide program to prevent and respond to sexual assault and sexual harassment as well as workplace violence more broadly. Further, NOAA expanded representation on its newly created Sexual Assault and Sexual Harassment Council to include senior managers from across the agency and enhance the council's capacity for recommending and monitoring policies, procedures, and initiatives to help NOAA foster an environment of professionalism and respect.

NOAA's Actions Partially Follow Several Selected Promising Practices for Leadership and Accountability, but Senior Leaders Have Limited Ability to Oversee Discipline and Do Not Always Communicate Key Information

NOAA's actions partially follow several selected promising practices identified by the EEOC as promising practices for demonstrating leadership and accountability (see table 5), but we found some shortcomings in the oversight of disciplinary actions and in communication by senior leadership.

⁴⁹The program grew from one permanent staff person in 2018, to two permanent staff in 2019, to 10 permanent staff as of June 2021. This expanded group included the hiring of the new office's Director, a lead coordinator, five regional coordinators, and a budget analyst. NOAA is in the process of hiring a Deputy Director and administrative position. In addition, some individuals served in temporary detailed positions in 2019 and 2020.

⁵⁰NOAA initiated work to reorganize and expand the duties and functions of its workplace violence prevention and response program into a formal office beginning in 2021. According to NOAA officials, the agency has initiated this reorganization to increase visibility, streamline processes, expand services, and create a centralized mechanism to address issues related to workplace violence reduction. They also explained that, while this reorganization process is under way, the agency recognizes this program as an office.

⁵¹This Violence Prevention office website states that the office aims to establish a culture of professionalism and respect through violence prevention and response, education and training, victim support, reporting procedures, and appropriate accountability that enhances the safety and well-being of all NOAA employees, affiliates, and visitors.

Table 5: Ways that NOAA's Actions Partially Follow Selected EEOC Promising Practices for Leadership and Accountability

Selected promising practices	GAO's analysis of NOAA's actions
Demonstrated commitment by senior leaders may be demonstrated by:	
Assessing harassment risk factors and taking steps to minimize or eliminate those risks.	●
Engaging organizational leadership in harassment prevention and correction efforts.	●
Senior leaders ensure that their organizations:	
Regularly and effectively train supervisors and managers about how to prevent, recognize, and respond to objectionable conduct that, if left unchecked, may rise to the level of prohibited harassment.	●
Have a harassment complaint system that is fully resourced, is accessible to all employees, has multiple avenues for making a complaint, if possible, and is regularly communicated to all employees.	●
Impose discipline that is prompt, consistent, and proportionate to the severity of the harassment and/or related conduct, such as retaliation, when it determines that such conduct has occurred.	●
Senior leaders exercise appropriate oversight of the harassment policy, complaint system, training, and any preventive and corrective efforts, which may include:	
Periodically evaluating the effectiveness of the organization's strategies to prevent and address harassment, including reviewing and discussing preventative measures, complaint data, and corrective action with appropriate personnel.	●
Ensuring that any necessary changes to the harassment policy, complaint system, training, or related policies, practices, and procedures are implemented and communicated to employees.	●
To maximize effectiveness, senior leaders could seek feedback about their anti-harassment efforts by, for example:	
Conducting anonymous employee surveys on a regular basis to assess whether harassment is occurring, or is perceived to be tolerated.	●

● Partially follows

Source: GAO analysis. | GAO-21-560

Note: "Partially follows" means that actions of the National Oceanic and Atmospheric Administration (NOAA) are consistent with part, but not all, of a promising practice identified by the Equal Employment Opportunity Commission (EEOC).

Specifically:

- NOAA completed its first comprehensive agency-wide assessments of harassment risk factors, but it has not yet taken steps to address risk factors identified across the agency, as outlined in EEOC's promising practices. NOAA issued two preliminary assessments of risk factors in

the agency's work environments in 2018 and 2019,⁵² and it subsequently contracted with an external organization to conduct a comprehensive agency-wide evaluation of harassment risk factors. In January 2021, this contractor provided a draft report detailing the results of its focus groups and in-person virtual interviews, and it recommended several actions NOAA should take to address certain risk factors. According to NOAA officials we interviewed, the contractor's assessment is not final, and NOAA is assessing how to address the contractor's recommendations, which include training supervisors to be proactive and intervene early in situations as well as documenting complaints in an individual's personnel file and considering them during promotion decisions.

- NOAA's senior leaders play an advisory rather than oversight role in corrective efforts for misconduct involving sexual assault and sexual harassment, and their engagement in corrective actions is thus limited, in contrast to EEOC promising practices. In addition, as we noted earlier in this report, NOAA's 2018 policy does not address the requirement in the 2017 NDAA that the Under Secretary have oversight of administrative and disciplinary actions in response to substantiated incidents of sexual assault. According to several NOAA officials we spoke with and several confidential interviews, there is a long-standing perception of favoritism for some scientists who are deemed too valuable to fire or risk losing and who therefore receive disproportionately light punishments for misconduct—a situation that may allow sexually harassing behaviors or other misconduct to continue unchecked. By enhancing the oversight authority by senior leaders of corrective actions, the agency could help ensure that misconduct is appropriately addressed and help dispel perceptions of favoritism. Officials told us they are exploring ways to enhance such

⁵²In 2018, the program manager of NOAA's workplace violence prevention and response program conducted an informal assessment of risk partly based on the chart of risk factors and responses in EEOC's 2016 Select Task Force on the Study of Harassment in the Workplace report. This report identifies 12 risk factors, several of which are relevant to NOAA's work environments including, for example: *homogeneous workforces* where employees in the minority can feel isolated and may be vulnerable to pressure from others; *workplaces with "high value" employees* where management may be reluctant to jeopardize employee's value to the organization or where such employees may perceive themselves to be immune from the consequences of their misconduct; and *isolated workplaces* where employees are physically isolated from others or in small groups and where harassers have easy access to their targets without witnesses. Source: U.S. Equal Employment Opportunity Commission, *Report of the Co-Chairs of the EEOC Select Task Force on the Study of Harassment in the Workplace* (Washington, D.C.: June 2016). In 2019, NOAA leadership included a preliminary discussion of risk related to sexual assault and sexual harassment as part of its agency-wide assessment of risk in 2019.

oversight and engagement by senior leaders for cases involving sexual assault and sexual harassment.

- NOAA is in the process of developing, piloting, and revamping training designed to teach supervisors and managers how to prevent, recognize, and respond to objectionable conduct that, if left unchecked, may rise to the level of prohibited harassment. These efforts are consistent with selected EEOC promising practices.⁵³ Specifically, NOAA is developing and implementing a broad training curriculum to help develop relevant knowledge and skills. This curriculum includes contracting with external subject matter experts to develop and update annual agency-wide mandatory training for all employees, supervisors, and managers. NOAA was developing training tailored to specific offices and isolated work environments, such as ships and aircraft, at the time of our report.
- NOAA has several complaint systems accessible to all employees through which staff can report, and the agency can investigate, allegations of sexual assault and sexual harassment. However, communication about how these complaint systems work has been limited in detail, in contrast to EEOC promising practices. NOAA officials have sent multiple agency-wide emails to the workforce to provide a list of the agency's multiple complaint systems. However, these emails generally do not outline differences in the various complaint systems; describe when an individual might want to use one system over another; explain that an individual can use more than one system at the same time; or describe what to expect during an investigation. According to our confidential interviews and interviews with agency managers, there continues to be confusion about where to report allegations, what each complaint system does, and how the systems differ. Consequently, NOAA's workforce, including both federal employees as well as contractors and other affiliated staff, may not be aware of the resources available to help them respond to harassing behavior or assault or to seek assistance from the agency. This may lead some to forego or delay reporting allegations or to miss out on available resources.
- In addition, NOAA's senior leaders have limited ability to ensure that disciplinary actions imposed are consistent across the agency or proportionate to the severity of the misconduct, as recommended by

⁵³NASEM's 2018 report also recommends that organizations support their leaders by providing skill-developing training customized to each level of leadership, since leaders without effective tools cannot implement the kind of institutional change required to address a longstanding problem such as sexual harassment.

EEOC promising practices. For example, authority to determine what, if any, disciplinary or corrective actions to impose rests with lower-level managers.⁵⁴ Specifically, the lowest-level manager not implicated in the misconduct—generally the direct supervisor of the person found to have engaged in the misconduct and referred to as the “proposing official”—proposes corrective or disciplinary action. Either this manager or a second-level manager, referred to as the “deciding official,” determines what disciplinary action(s) to impose, according to NOAA officials.⁵⁵ This deciding official has the ultimate authority to impose disciplinary or corrective action and can choose to impose less severe discipline than what is proposed.

However, the deciding official cannot increase the severity of the discipline proposed, according to NOAA officials.⁵⁶ This may result in uneven treatment if personal relationships or the perceived value of an employee affects the punishment imposed by lower-level managers—a concern echoed by some NOAA officials. As a result, the agency is exploring ways to enhance senior leaders’ ability to ensure consistency of disciplinary actions across the agency and to ensure that such actions are in proportion to the severity of the misconduct. For example, NOAA officials told us they are working to elevate who has authority to propose and decide disciplinary actions for sexual assault and sexual harassment cases, from the lowest level manager to one or more higher-level managers who have the training and authority needed to help ensure consistency and proportionality.

- NOAA contracted with an external research entity to assess the effectiveness of NOAA’s prevention strategies, but this assessment is

⁵⁴In cases where misconduct is found to have occurred, employee relations staff and agency attorneys recommend appropriate disciplinary action to the Proposing Official, according to NOAA officials. They explained that these recommendations are made in accordance with DAO-202-751 and its requirement to use a series of factors known as the Douglas Factors, such as past behavior and notoriety of the offense, to help ensure consistency and proportionality. Department of Commerce, Discipline, DAO 202-751 (Washington, D.C.: Aug. 4, 1980) and Douglas v. Veterans Administration, 5 MSPB 313 (1981).

⁵⁵A second-line supervisor will serve as the deciding official in cases involving harsher penalties, such as termination or suspensions of 14 days or greater, according to NOAA officials. They explained that having separate proposing and deciding officials is a longstanding practice for the agency and helps to ensure fairness in the discipline process.

⁵⁶In addition, a deciding official can go against disciplinary recommendations of employee relations and General Counsel staff if, for example, the manager did not want to pursue a harsh penalty against their employee.

not yet complete. Specifically, this assessment identified challenges in designing prevention strategies that meet the needs of all groups within NOAA's diverse work environments. It also identified opportunities to develop and tailor training to these different groups as well as opportunities for NOAA to enhance its workplace culture, information sharing, and complaint systems to contribute to a healthy and respectful workplace free from sexual assault and sexual harassment. According to NOAA officials we interviewed, the contractor's assessment is not final, and NOAA has not yet implemented the contractor's recommendations. These recommendations include developing training that is tailored to specific groups and work settings as well as creating a system that allows leaders to share generic information with the workforce about the consequences for engaging in assault or harassing behavior.

- NOAA has implemented numerous changes to its policies and procedures for preventing and responding to sexual assault and sexual harassment since 2016, but the agency's efforts to inform its staff about these efforts has been limited. EEOC promising practices recommend that senior leaders ensure that necessary changes, such as revisions to policies or practices, are implemented and communicated to all employees. We found shortcomings in NOAA's implementation of these practices:
 - Information about NOAA's policies and procedures for preventing and responding to sexual harassment and assault is difficult to locate on the agency's website. For example, the website for NOAA's Violence Prevention office, which went live in June 2020, is difficult to find and provides limited content. As of April 2021, staff cannot directly reach the Violence Prevention office's internal webpage from NOAA's homepage and must instead already have the direct URL or know the name of the office to include in a search.⁵⁷ NOAA officials we interviewed told us that they expect to resolve the navigation problem once the Violence Prevention office is fully incorporated into the agency's organizational structure and has a logical place to reside within the agency's website.
 - The website does not include information about the agency's various complaint systems or which complaint systems are

⁵⁷Although staff can now navigate to the website for the Violence Prevention office from the homepage for the Office of Inclusion and Civil Rights, nesting the Violence Prevention office webpage within this unrelated office is problematic in that it may erroneously imply that the Office of Inclusion and Civil Rights is responsible for programs addressing workplace violence, according to NOAA officials.

designed to stop assault and harassing behavior, punish or correct misconduct, or provide compensation or remedies to those found to have been assaulted or harassed. NOAA officials also told us they plan to expand the content posted to the website, possibly by the end of 2021.

- NOAA had not issued any agency-wide emails⁵⁸ specific to its sexual assault and sexual harassment prevention and response efforts between the announcement of its policy in February 2018, and the launch of its first mandatory agency-wide training in February 2020.⁵⁹ *Standards for Internal Control in the Federal Government* recommends that management should use quality information that is current and accessible and that management internally communicate necessary quality information to all employees to achieve agency objectives by, for example, communicating such information down, across, up, and around to all levels of the agency. In this case, the agency's stated objectives are to foster "a culture where sexual assault and sexual harassment of any kind is not tolerated, perpetrators are held accountable, and survivors are supported."

Without providing more readily accessible and current information, NOAA leadership may be missing opportunities to inform the agency's workforce about important changes in agency policy as well as opportunities to demonstrate to its workforce how seriously leadership takes sexual assault and sexual harassment.

- NOAA has not yet assessed the extent to which harassment is occurring or is perceived to be tolerated agency-wide, and it has not yet received feedback on the effectiveness of its anti-harassment strategies through efforts such as periodic evaluations, as

⁵⁸According to NOAA officials, the agency primarily communicates such changes to policy and practice through its website and these agency-wide emails.

⁵⁹Federal agency websites are required to publish information that is easy to find and that includes content that is accurate, easy to use, and available on a timely basis. Digital.gov open government and information quality requirements state that federal agencies should publish information in ways that makes it easy to find and access and that the content of federal agency websites should be accurate, relevant and easy to use. Digital.gov, an executive branch source of guidance on requirements for government websites, was developed by the General Services Administration's Technology Transformation Service to help agencies provide digital services and information for the public.

recommended in EEOC's promising practices.⁶⁰ In 2020, NOAA conducted a limited anonymous survey of all its federal employees about the extent to which harassment is occurring or is perceived to be tolerated, across the agency. However, this initial survey asked a handful of high-level questions about workplace climate and therefore provided limited information to help managers target resources. At the end of March 2021, NOAA launched a broad-based anonymous employee survey to assess the extent to which harassment is (perceived to be) occurring. In addition, the survey aims to assess the workforce's understanding of the agency's services and reporting structures and the effects of misconduct on the workforce, and will identify who within the workforce is most vulnerable. The results of this survey are expected by July 2021, after which the Violence Prevention office plans to use the results in developing prevention models and support services to help concentrate efforts on those who are disproportionately affected, according to NOAA officials.

NOAA's Actions to Conduct Training Follow Most Selected Promising Practices, but the Training Has Shortcomings in Specificity

EEOC's promising practices state that regular, interactive, comprehensive anti-harassment training of all employees may help ensure that the workforce understands organizational rules, policies, procedures, and expectations as well as consequences for misconduct. We found that NOAA's anti-harassment training follows most selected practices identified by the EEOC as promising practices. The training partially follows or does not follow other such practices in part because it is not always tailored to NOAA's specific workforce and workplaces and could be more specific to NOAA in some areas. (See app. III for a table summarizing the overall extent to which NOAA's actions follows selected EEOC promising practices for effective anti-harassment training.)

NOAA's Actions Follow Most Selected Promising Practices for Training

NOAA's training for preventing and responding to sexual assault and sexual harassment follows most selected practices identified by the EEOC as promising practices for effective anti-harassment training (see table 6).

⁶⁰NASEM's 2018 report also recommends that organizations be accountable for their organizational climate and utilize surveys to further investigate and address systemic sexual harassment.

Table 6: Ways That NOAA’s Actions Follow Selected EEOC Promising Practices for Effective Training

Selected promising practices	GAO’s analysis of NOAA’s actions
Anti-harassment training may be most effective if it is, among other things:	
Championed by senior leaders	●
Repeated and reinforced regularly.	●
Provided to employees at every level and location of the organization.	●
Provided in a clear, easy to understand style and format.	●
Provided in all languages commonly used by employees.	●
Conducted by qualified, live, interactive trainers, or, if live training is not feasible, designed to include active engagement by participants.	●
Routinely evaluated by participants and revised as necessary.	●
Effective anti-harassment training for all employees includes, for example:	
Descriptions of prohibited harassment, as well as conduct that if left unchecked, might rise to the level of prohibited harassment.	●
Information about employees’ rights and responsibilities if they experience, observe, or become aware of conduct that they believe may be prohibited.	●
Encouragement for employees to report harassing conduct.	●
Identification and provision of contact information for the individual(s) and/or office(s) responsible for addressing harassment questions, concerns, and complaints.	●
Assurance that employees who report harassing conduct, participate in investigations, or take any other actions protected under federal employment discrimination laws will not be subject to retaliation.	●
Effective anti-harassment training for supervisors and managers includes, for example:	
An unequivocal statement that retaliation is prohibited, along with an explanation of the types of conduct that are protected from retaliation under federal employment discrimination laws	●
To help prevent conduct from rising to the level of unlawful workplace harassment, employers also may find it helpful to consider and implement new forms of training, such as workplace civility or respectful workplace training and/or bystander intervention training	●

● Follows

Source: GAO analysis. | GAO-21-560

Notes: “Follows” means that actions of the National Oceanic and Atmospheric Administration (NOAA) are consistent with a promising practice identified by the Equal Employment Opportunity Commission (EEOC) or that NOAA’s actions evolved to be consistent with a promising practice by the end of our review.

For example:

- In February 2020, NOAA launched annual mandatory training for employees at every level and location that focused on prevention of and response to sexual assault and sexual harassment, consistent with EEOC’s promising practices. In agency-wide emails and at the agency’s 2020 Wellness Summit, senior leaders repeatedly

championed this mandatory training.⁶¹ This training was web-based and interactive, and enabled NOAA to reach all employees in all locations, even amid the Coronavirus Disease 2019 (COVID-19) pandemic when the agency required segments of its workforce to telework.

- NOAA's 2020 mandatory training was consistent with EEOC's promising practices because it included descriptions of prohibited harassment and assault as well as conduct that, if left unchecked, might rise to the level of prohibited harassment and assault. The training also encouraged staff to report harassing conduct and included an unequivocal statement that retaliation against anyone for reporting incidents of sexual assault or sexual harassment is prohibited. According to NOAA officials we interviewed, the agency plans to require annual mandatory training for employees as well as for supervisors and managers and plans to introduce a second round of such training in September 2021.⁶²
- To help prevent harassing conduct from rising to the level of assault or unlawful harassment, NOAA has developed additional training, including bystander intervention and other skills-based training, consistent with EEOC promising practices. Because of the COVID-19 pandemic, the agency was unable to launch its in-person bystander intervention training in 2020 as planned, but it expects to do so in 2022, as more staff return to working in-person.

NOAA's Actions Partially Follow Several Selected Promising Practices for Training, but Training Is Not Always Tailored to NOAA's Workforce and Workplaces

NOAA's actions partially follow several selected practices for effective anti-harassment training (see table 7). NOAA's agency-wide mandatory anti-harassment training was generic instead of being tailored to NOAA's unique workforce or workplaces, and it provided limited information specific to the agency's complaint processes.

⁶¹This mandatory training consisted of one version designed for employees and another designed for supervisors and managers.

⁶²NOAA officials told us that the agency does not have the authority to require contractors or other affiliated staff to take specific training, though they may offer training to such staff on a voluntary basis.

Table 7: Ways That NOAA’s Actions Partially Follow Selected EEOC Promising Practices for Effective Training

Selected promising practices	GAO’s analysis of NOAA’s actions
Anti-harassment training may be most effective if it is, among other things:	
Tailored to the specific workplace and workforce.	●
Effective anti-harassment training for all employees includes, for example:	
Examples that are tailored to the specific workplace and workforce.	●
Explanations of the complaint process, as well as any voluntary alternative dispute resolution processes.	●
Explanations of the range of possible consequences for engaging in prohibited conduct.	●
Opportunities to ask questions about the training, harassment policy, complaint system, and related rules and expectations.	●
Effective anti-harassment training for supervisors and managers includes, for example:	
Information about how to prevent, identify, stop, report, and correct harassment.	●

● Partially follows

Source: GAO analysis. | GAO-21-560

Note: “Partially follows” means that actions of the National Oceanic and Atmospheric Administration (NOAA) are consistent with part, but not all, of a promising practice identified by the Equal Employment Opportunity Commission (EEOC).

Specifically:

- NOAA’s training has not (1) been consistently tailored to NOAA’s workforce or workplace environments or (2) always reflected the unique characteristics of the agency’s work, workplace, and workforce—two things that are recommended by EEOC’s promising practices.⁶³ For example, scenarios included in the 2020 mandatory agency-wide training reflected traditional office work environments and were not specific to NOAA or its varied work environments, including isolated or disconnected workplaces, such as ships, aircrafts, and laboratories. NOAA officials we interviewed stated that the focus of this training was to help all employees identify the continuum of harassing behavior and that they would work to expand the content of mandatory agency-wide training in future years. NOAA began to tailor training to address such limitations in 2021, but its efforts to focus training are still limited, and the agency does not yet provide information specific to staff disconnected from headquarters or working in isolated work environments, according to NOAA officials.

⁶³NASEM’s 2018 report also recommends that organizations ensure that training on preventing and addressing sexual harassment is tailored for specific populations and teaches staff how to intervene when harassment occurs.

For example, in May 2021, NOAA piloted a new version of its annual training designed specifically for the National Weather Service; however, such tailored training is not broadly available.⁶⁴

- NOAA's 2020 mandatory training for its employees was generic in its description of how to report allegations, did not include NOAA-specific explanations of its complaint systems,⁶⁵ and contained limited information about the differences in purpose or time frame between the various complaint systems available. There continues to be confusion about what each of the agency's complaint systems does and does not offer and how the systems differ, according to our confidential interviews and interviews with some agency managers.
- NOAA training materials for employees do not identify the range of potential consequences—such as types of disciplinary or corrective actions possible—for engaging in prohibited behavior, as recommended by EEOC's promising practices.⁶⁶ Specifically, training material we reviewed from NOAA's 2020 mandatory agency-wide training for employees does not identify the range of possible consequences for engaging in prohibited conduct. NOAA did cover such possible consequences as part of its July 2020 webinar for supervisors and managers, but this training is not required and is not intended for non-supervisory employees.⁶⁷ Further, NOAA staff continue to experience confusion as to whether individuals can be disciplined for engaging in harassing behavior that does not rise to the

⁶⁴NOAA officials told us they plan to develop additional training modules tailored to specific staff and offices in the future, and that they started with case-based scenarios and bystander intervention specific to the National Weather Service because it is the largest of NOAA's Line Offices. Separately, in December 2020, NOAA's Office of Marine and Aviation Operations implemented an internal mandatory training for ship-based staff based on real-life scenarios experienced aboard its vessels and work environment. However, this training is not accessible to employees or affiliated staff working in other NOAA offices.

⁶⁵We found that the welcome letter accompanying NOAA's 2020 mandatory web-based training lists contact information for the multiple complaint systems through which staff can report incidents of sexual assault and sexual harassment. However, neither the welcome letter nor the training describe the various complaint systems or the differences in their purpose or scope.

⁶⁶NASEM's 2018 report also recommends that organizations develop and readily share information related to standards of behavior, including a range of clearly stated, appropriate, and escalating disciplinary consequences for those found to have violated policy or the law, or both.

⁶⁷This webinar was developed and given by NOAA's Office of Human Capital Services for supervisors and managers.

level of unlawful sexual harassment, according to our confidential interviews and interviews with some agency managers.

- NOAA's 2020 mandatory agency-wide training provided limited opportunity to ask questions about the training, harassment policy, complaint system, and related rules and expectations because instruction was not live. According to NOAA officials, the COVID-19 pandemic limited opportunities for the agency to bring staff together for in-person training, such as for bystander intervention and other related training. They told us they intend to hold such in-person training as soon as it is possible to do so.
- NOAA's 2020 mandatory agency-wide training designed for supervisors and managers was easy to understand, but included limited information about how to prevent, identify, stop, report, and correct harassment—in contrast to EEOC's promising practices. For example:
 - The training included limited information on how to identify and mitigate risk factors specific to NOAA staff and employees, such as working in isolated, disconnected, or remote workspaces.
 - The training did not inform staff that they have only 45 days to file EEO complaints.⁶⁸
 - The training included limited information about NOAA's confidentiality rules associated with harassment allegations and did not explain how to report allegations up NOAA's chain of command.⁶⁹

Additionally, managers do not always understand how to address the immediate or ongoing safety concerns of those who experience or witness sexual assault or sexual harassment, according to our confidential interviews and interviews with agency managers. For example, managers have, at times, brought together into the same room the person who reported being harassed (i.e., the victim) with the person alleged to have harassed them (i.e., their harasser) for

⁶⁸Specifically, under EEOC regulations, an aggrieved person must initiate contact with an EEO Counselor within 45 days of the date of the matter alleged to be discriminatory or, in the case of personnel action, within 45 days of the effective date of the action. 29 C.F.R. § 1614.105(a)(1).

⁶⁹NOAA does include NOAA-specific descriptions of how the agency conducts 955 investigations as part of its July 2020 webinar for supervisors and managers, but this webinar is voluntary and has not been widely taken according to NOAA officials.

informal mediation—actions which NOAA officials told us are inconsistent with agency protocols.

NOAA officials explained that as they developed their first anti-harassment training focusing specifically on sexual assault and sexual harassment, their priority was to help supervisors identify the continuum of harassing behaviors and understand those behaviors that if left unchecked may rise to the level of unlawful harassment. In September 2021, NOAA will update its mandatory training for supervisors and managers to provide more information that is specific to NOAA and contact information for those working on workplace violence prevention and response, according to the official responsible for the training. However, critical information, such as material specific to those working in disconnected or remote or isolated areas, is still not included in this updated version, according to that agency official. Without more detailed and specific anti-harassment training about how to respond appropriately to allegations of sexual assault and sexual harassment, supervisors and managers may continue to not address allegations in accordance with agency policy and protocols, appropriately address unsafe situations, or connect staff with needed resources in a timely manner.

NOAA's Actions Do Not Follow Two Selected Promising Practices for Training Because Its Training Does Not Provide NOAA-Specific Explanations

NOAA's actions do not follow two selected practices for effective anti-harassment training because the training did not include specific explanations (1) for employees about what to expect as part of an investigation or (2) for supervisors and managers about consequences for failing to fulfill their supervisory responsibilities, such as to report allegations.

Specifically:

- NOAA's 2020 mandatory training for employees regarding preventing and responding to sexual assault and harassment did not specify what information the agency might request from employees as part of an investigation into allegations of sexual harassment, as recommended by EEOC's promising practices. In our confidential interviews with staff who experienced or witnessed sexual assault or sexual harassment and formal interviews with agency managers, several staff expressed confusion about what an investigation might entail as well as how to find information about what to expect after reporting an incident or if called upon by an investigator as a witness. Some of these staff also expressed concern that NOAA did not have facts sheets, a list of frequently asked questions (FAQ) or other

readily accessible written material that staff could refer to “in real time” as questions arose or when they experienced or witnessed harassing behavior. Agency officials we interviewed told us that the initial focus of the 2020 training was to help the agency’s workforce understand and identify inappropriate behaviors. These officials also stated that they plan to expand the agency’s training to include more information about NOAA’s various complaint systems.

- NOAA’s 2020 mandatory training for agency supervisors and managers did not explain the consequences for failing to fulfill their responsibilities related to sexual assault and sexual harassment, retaliation, and other prohibited conduct—in contrast to EEOC’s promising practices. According to NOAA officials whom we interviewed, the agency’s training initially focused on helping supervisors and managers identify the continuum of harassing behavior. We found that the training did not describe the consequences managers or supervisors could face if they were, for example, to fail to report incidents of harassment or retaliation that they witnessed or that were reported to them.⁷⁰ Moreover, we were told during confidential interviews with certain staff, as well as interviews with agency managers, that agency supervisors and managers have not consistently reported allegations of harassment up their chain of command or to the 955 system. In the absence of agency training or other mechanisms that clearly outline the consequences for failing to fulfill supervisory responsibilities, agency supervisors may allow harassing behavior and unsafe situations to continue, thereby undermining the message from NOAA leadership that sexual assault and sexual harassment are not tolerated. This omission may also raise liability concerns for the agency.

NOAA’s Actions to Develop Complaint Systems Follow Most Selected Promising Practices but Have Shortcomings in Information Sharing and Documentation

EEOC’s promising practices document states that an effective and accessible harassment complaint system

- welcomes questions, concerns, and complaints;
- encourages employees to report potentially problematic conduct early;
- treats alleged victims, complainants, witnesses, alleged harassers, and others with respect; and
- operates promptly, thoroughly, and impartially.

⁷⁰NOAA’s 2018 policy requires that all agency managers and supervisors report incidents of sexual assault or sexual harassment they witness, or are told about, to the office now referred to as the Office of Human Capital Services.

We found that NOAA’s actions to develop its complaint systems follow most selected EEOC promising practices for an effective and accessible complaint system. NOAA partially follows other such practices, but we found that it does not consistently keep staff informed about how the agency is responding to allegations of sexual assault and sexual harassment. In addition, NOAA does not consistently document the number and types of incidents. (See app. II for a table summarizing the overall extent to which NOAA’s actions follows selected EEOC promising practices for an effective and accessible complaint system.)

NOAA Follows Most Selected Promising Practices for an Effective and Accessible Complaint System

NOAA follows most selected promising practices for an effective and accessible complaint system (see table 8).

Table 8: Ways That NOAA’s Actions Follow Selected EEOC Promising Practices for an Effective and Accessible Complaint System

Selected promising practices	GAO’s analysis of NOAA’s actions
An effective harassment complaint system, among other things:	
Provides multiple avenues for complaints, if possible, including an avenue to report complaints regarding senior leaders.	●
Is fully resourced, enabling the organization to respond promptly, thoroughly, and effectively to complaints.	●
Protects the privacy of alleged victims, individuals who report harassment, witnesses, alleged harassers, and other relevant individuals to the greatest extent possible, consistent with a thorough and impartial investigation and with relevant requirements.	●
Includes processes to determine whether alleged victims, individuals who report harassment, witnesses, and other relevant individuals are subject to retaliation, and impose sanctions on individuals responsible for retaliation.	●
Includes processes to ensure that alleged harassers are not prematurely presumed guilty or prematurely disciplined for harassment.	●
Employees responsible for receiving, investigating, and resolving complaints or otherwise implementing the harassment complaint system, among other things:	
Have the authority, independence, and resources required to receive, investigate, and resolve complaints appropriately.	●
Understand and maintain the confidentiality associated with the complaint process.	●

● Follows

Source: GAO analysis. | GAO-21-560












Note: “Follows” means that actions of the National Oceanic and Atmospheric Administration (NOAA) are consistent with a promising practice identified by the Equal Employment Opportunity Commission (EEOC) or that NOAA’s actions evolved to be consistent with a promising practice by the end of our review.

For example:

- NOAA has several complaint systems to provide agency employees and affiliated staff with multiple mechanisms to report incidents of sexual assault and sexual harassment, consistent with EEOC's promising practices. These complaint systems are managed by the Office of Inclusion and Civil Rights, which manages Equal Employment Opportunity (EEO) complaints; the Office of Human Capital Services, which manages the 955 Program Management Office (955 Office) and the related 955 system; and the Office of Law Enforcement, which has its own system for fishery observers and data collectors. Allegations of sexual assault or sexual harassment can be investigated under one or more of these complaint systems simultaneously, depending on the specific circumstances of the allegation and the decisions of the person making the allegation. Employees and affiliated staff may also report incidents of sexual assault and sexual harassment to the Violence Prevention office, NOAA's Helpline, and Commerce's Office of Inspector General.⁷¹ Figure 4 below shows NOAA's three primary complaint systems and provides a general overview of how allegations of sexual assault and sexual harassment are investigated under each system.

⁷¹Commerce's Office of Inspector General may conduct investigations into allegations of sexual assault and sexual harassment at NOAA under limited circumstances, such as if the Office of Inspector General suspects that a systemic problem exists, but cases can be referred to NOAA's 955 system or EEO system, as appropriate, according to Commerce officials. NOAA's Helpline also started receiving complaints in 2020, prior to which it provided support and referral services but did not serve as a reporting system.

Figure 4: NOAA Systems for Reporting and Investigating Allegations of Sexual Assault and Sexual Harassment

955 system	Reporting	Fact finding		Investigation	Outcome
<p>Goal: To bring an end to harassing behavior and impose disciplinary and corrective action against the person who engaged in the harassing misconduct, as appropriate.</p> 	<p>Allegations can be submitted by the individual who experienced harassment, a witness, or a supervisor.</p>	<p>Staff notify the individual who experienced harassment of Equal Employment Opportunity (EEO) rights, ensures the workplace is safe, gathers information about the incident, determines the scope of the investigation, and requests funding from the appropriate line or staff offices.</p>		<p>Investigator is assigned and conducts interviews, obtains written declarations, and produces a written report summarizing the findings of the investigation, including whether the allegations are supported.</p> 	<p>For lower-level disciplinary or corrective actions, the lowest level supervisor of the individual who engaged in the harassing behavior imposes the action. For more severe discipline, this supervisor proposes an action but a higher-level supervisor, with oversight from the Office of General Counsel, imposes action.</p> 
EEO system	Reporting	Informal inquiry	Outcome or formal complaint filed	Formal investigation	Outcome
<p>Goal: To determine what the individual who experienced harassment needs to be made whole.</p> 	<p>Allegations can be submitted by the individual who experienced harassment only.</p>	<p>Counselors provide information regarding how the EEO process works, including time frames and appeals procedures, and attempt to informally resolve the matter at the lowest possible level.</p> 	<p>If the matter is resolved, the counselor may document the resolution or a settlement agreement may be reached; if no settlement is reached, the counselor informs the individual of the right to file a formal discrimination complaint.</p> 	<p>Investigation is conducted by the Department of Commerce; a copy of the investigative file is provided to the individual who filed the complaint, who may request a hearing with the Equal Employment Opportunity Commission or who may request an immediate final decision from Commerce.</p> 	<p>Remedies, such as financial compensation or restoration of leave, are tailored to the particular circumstances of the case.</p> 
Office of Law Enforcement (OLE) system	Reporting	Investigation			Outcome
<p>Goal: To investigate violations of the law under the purview of the Secretary of Commerce, including allegations of assault and harassment against fishery observers and data collectors.</p> 	<p>Allegations can be submitted by Fisheries Observers, Data Collectors, and the National Observer Program.</p>	<p>Investigation and fact finding are conducted, including interviews and evidence assessment.</p> 			<p>OLE provides compliance assistance as appropriate and refers cases for adjudication; NOAA General Counsel Enforcement Section adjudicates civil cases and assesses civil penalties; the Department of Justice adjudicates criminal charges, including levying fines.</p> 

Source: GAO analysis of National Oceanic and Atmospheric Administration (NOAA) information. | GAO-21-560

- NOAA has taken actions to increase the resources available for responding to complaints, consistent with EEOC’s promising practices that recommend that complaint systems be fully resourced. For example, in 2019, NOAA’s Office of Human Capital Services

expanded its investigative capacity by contracting for 10 external investigators. This step allowed the office to address the majority of backlogged cases and improve quality controls for its investigations, according to a senior agency official. Prior to contracting external investigators in June 2019, the 955 office had two contract investigators available to conduct investigations full-time, and 35 other staff trained to conduct investigations as a collateral duty. This approach led to poor quality investigations according to agency officials.

- NOAA has taken steps to improve how quickly certain investigations may be initiated and completed—steps that are consistent with EEOC promising practices and that addressed longstanding delays acknowledged by agency officials. For example, in 2020, NOAA’s Chief Financial Officer issued guidance to expedite funding for investigations conducted by the 955 office. This step allowed the office to begin investigations sooner.⁷² Because the 955 office cannot begin formal investigations until it receives funding, there were instances when officials had completed their initial fact finding process but were unable to forward case files to investigators to begin formal investigations, according to officials who implement the 955 system. We found that the new guidance significantly reduced such delays:
 - Prior to the CFO’s 2020 guidance, it took an average of 32 days after funds had been requested for the 955 office to receive funding and approval necessary to begin formal investigations related to sexual harassment and sexual assault.
 - Following the issuance of the 2020 guidance, 955 investigations for all forms of harassment were funded in approximately 10 days on average and, in many cases, the office received authorization to proceed even sooner.

Separately, NOAA’s Office of Law Enforcement has a formalized priority system, under which allegations of sexual assault and sexual harassment are considered the office’s highest priority. This approach allows investigations to begin promptly.

⁷²Under Commerce policy (DAO-202-955), funding for 955 investigations does not come from a central funding source; rather, it comes from the NOAA office in which the person alleged to have engaged in the harassing behavior is employed.

NOAA Partially Follows Some Selected Promising Practices for an Effective and Accessible Complaint System, but Does Not Consistently Inform Staff about Their Cases, Share Summary-Level Information, or Document Incidents

NOAA’s actions partially follow some selected EEOC promising practices for an effective and accessible complaint system (see table 9). However, NOAA officials do not consistently keep staff informed about the status of their cases. We also found shortcomings in how NOAA shares summary-level information and documents the number and types of incidents of sexual assault and harassment.

Table 9: Ways That NOAA’s Actions Partially Follow Selected EEOC Promising Practices for an Effective and Accessible Complaint System

Selected promising practices	GAO’s analysis of NOAA’s actions
An effective harassment complaint system, among other things:	
Is responsive to complaints by employees and by other individuals on their behalf.	●
Includes processes to convey the resolution of the complaint to the complainant and the alleged harasser, and where appropriate and consistent with relevant legal requirements, the preventative and corrective action taken.	●
Provides prompt, thorough, and neutral investigations.	●
Employees responsible for receiving, investigating, and resolving complaints or otherwise implementing the harassment complaint system, among other things:	
Appropriately document every complaint, from initial intake to investigation to resolution, use guidelines to weigh the credibility of all relevant parties, and prepare a written report documenting the investigation, findings, recommendations, and disciplinary action imposed (if any), and corrective and preventative action taken (if any).	●

● Partially follows

Source: GAO analysis. | GAO-21-560

Note: “Partially follows” means that actions of the National Oceanic and Atmospheric Administration (NOAA) are consistent with part, but not all, of a promising practice identified by the Equal Employment Opportunity Commission (EEOC).

Specifically:

- In our confidential interviews with staff who experienced or witnessed sexual assault or sexual harassment, some staff explained that NOAA was not responsive to them during investigations conducted through the 955 complaint system. EEOC’s promising practices state that an effective complaint system should be responsive to allegations by employees and others on their behalf. During our confidential interviews, staff told us that NOAA officials did not proactively update them on the status of their cases during the course of the investigation or became more difficult to access and were reluctant to answer follow-up questions as the investigation came closer to an end.

-
- NOAA has a procedure for informing staff about the general outcome of their cases as part of the agency's 955 investigations. However, this procedure has shortcomings.
 - Some staff with whom we conducted confidential interviews said they were not informed when their cases were resolved or did not know whether or how their allegations were resolved until they asked staff in the 955 office.
 - In letters sent to staff when closing out investigations, the 955 office does not make the person who experienced the incident of sexual assault or sexual harassment aware of what disciplinary or corrective actions have been taken. EEOC promising practices recommend that complaint systems include processes to convey the resolution of the complaint to the complainant and the alleged harasser and, where appropriate and consistent with relevant legal requirements, any preventative and corrective actions taken by the agency.⁷³ NOAA officials we interviewed explained that they did not provide this information to individuals who reported harassment due to privacy concerns. Moreover, the agency also does not share with its workforce summary-level information describing the number of allegations or descriptions of disciplinary actions taken.⁷⁴ Not knowing the status or outcome of their allegation left some staff feeling unsafe; raised concerns about the effect of delays on the investigation; and left critical questions unanswered, even after investigations were completed.
 - In our confidential interviews, several staff expressed concerns about the objectivity and neutrality of NOAA's investigation processes. EEOC promising practices state that a complaint system must provide investigations that are prompt, thorough, and neutral. We found that NOAA has taken recent steps to improve promptness, as discussed above. However, some staff with whom we spoke in our confidential

⁷³EEOC promising practices provide that to address potential Privacy Act concerns related to sharing corrective or disciplinary action with complainants, federal agencies may either (1) maintain harassment complaint records that include information about corrective or disciplinary action by complainants' names; or (2) ensure that the agency's complaint records system includes a routine use permitting disclosure of corrective or disciplinary action to complainants.

⁷⁴The 2018 NASEM report recommends that institutions strive for greater transparency in how they handle reports of sexual harassment while backing the need for confidentiality by, for example, issuing annual reports that include how many cases have been adjudicated along with general descriptions of any disciplinary actions taken. While NOAA provides summary-level information about the number and types of cases in its annual reports to Congress they are not made available to its workforce, according to the senior official responsible for preparing the agency's reports.

interviews told us that they felt that the agency's investigative processes were designed to protect managers; that investigations were not completed in an appropriate manner or handled sensitively; or that the process was burdensome, discouraging staff from reporting incidents of sexual assault and sexual harassment. These perceptions can affect employees' trust that the agency will appropriately investigate allegations of sexual assault and sexual harassment, which can affect the willingness of others to come forward with complaints.

- NOAA offices responsible for managing the agency's complaint systems do not maintain or collect data in a consistent manner and have not always provided data to management in a consistent format. EEOC's promising practices recommend that those managing the complaint system appropriately document every complaint, from initial reporting through the complaint's resolution. Furthermore, *Standards for Internal Control in the Federal Government* state that agency management should use quality information in order to achieve the agency's objectives and communicate this information throughout the agency by using appropriate methods.⁷⁵ In preparing NOAA's annual report to Congress for calendar year 2018, officials managing some complaint systems provided data in narrative form, while others provided data in numbers and graphs.⁷⁶ This process made it difficult for the agency to reconcile the data for its report, according to the senior agency official responsible for preparing the agency's annual report. In addition, the absence of a centralized tracking system has led to at least one instance in which NOAA has provided incomplete or inaccurate information to Congress. Furthermore, the offices responsible for managing NOAA's complaint systems do not collect key demographic information—such as race, gender identity, and sexual orientation—which hinders the agency's ability to identify and address how some employees may be disproportionately affected by sexual assault and sexual harassment, according to a senior agency official.

NOAA is currently in the process of developing and implementing a centralized database for collecting and maintaining case file information for allegations of sexual assault and sexual harassment reported to the agency through its various complaint systems. The implementation of this database is expected to improve the agency's

⁷⁵GAO-14-704G.

⁷⁶NOAA, *National Oceanic and Atmospheric Administration Annual Sexual Assault Report* (Washington, D.C.: June 12, 2019).

data collection process, including collecting and providing additional, critical information to management, allowing management real-time access to the information, and improving the quality and reliability of the data the agency provides to Congress, according to the senior agency official responsible for preparing the agency's annual report.

Conclusions

Sexual assault and sexual harassment in the workplace can have significant negative effects across an organization's workforce and can undermine productivity and trust in an organization's leadership. NOAA has made substantial progress in the last 5 years to prevent and respond to sexual assault and sexual harassment, and its policy is consistent with most relevant legal requirements in the 2017 NDAA and it follows most of EEOC's promising practices. These are critical steps in creating an organizational culture that does not tolerate such behavior. Nevertheless, opportunities remain for NOAA to ensure its policies are consistent with all relevant legal requirements in the 2017 NDAA, to more consistently follow EEOC's promising practices for a comprehensive and effective harassment policy, and to further improve its actions to prevent and respond to sexual assault and sexual harassment.

Specifically, NOAA's 2018 policy on sexual assault and sexual harassment is not consistent with all of the relevant legal requirements in the 2017 NDAA, such as provisions related to the oversight of disciplinary actions, protocols for investigations, confidentiality in reporting, and protections for victims of sexual assault. Regarding EEOC's promising practices, NOAA's senior leaders have limited ability to oversee disciplinary or corrective actions and to ensure that such actions taken in response to cases of sexual assault and sexual harassment are consistent across the agency or proportionate to the severity of the misconduct. Required oversight by senior agency leaders could help dispel perceptions of bias and favoritism, and help ensure the consistency and proportionality of related disciplinary and corrective actions taken by the agency.

In addition, communication about how complaint systems work has been limited in detail, in contrast to EEOC's promising practices. NOAA has not made information readily accessible to staff about what to expect when reporting an allegation of sexual harassment or assault. Without providing more specific information on its website or including such information in its training, confusion among staff will persist about what each of the agency's complaint systems offer and how the systems differ.

Further, in developing the initial agency-wide training for supervisors and managers, NOAA prioritized helping them understand the continuum of harassing behavior and did not focus on teaching them how to respond to specific incidents. Without anti-harassment training that includes NOAA-specific information about how to respond appropriately to allegations and what the consequences are for failing to fulfill supervisory responsibilities, supervisors and managers may continue to respond in ways that are inconsistent with agency policy.

In addition, NOAA officials also have not consistently informed staff who have reported allegations of sexual harassment or assault about the outcomes of their cases and have not shared summary-level information with the agency's workforce about the number or outcomes of reported cases. As a result, the agency is missing an opportunity to demonstrate that it does not tolerate sexual assault and sexual harassment and to cultivate trust within its workforce.

Finally, inconsistent data collection by NOAA's various complaint systems has meant data available to NOAA management on sexual assault and sexual harassment cases and their dispositions may not be complete, accurate, or timely. By ensuring that the centralized tracking system that is being developed will collect consistent data from NOAA's various complaint systems and appropriately document the number and type of incidents, the agency can improve the quality and reliability of its data and provide managers access to information needed to identify trends and respond to issues as they arise.

Recommendations for Executive Action

We are making six recommendations to NOAA:

The administrator of NOAA should ensure that future updates to the agency's sexual harassment and sexual assault prevention and response policy are consistent with all relevant legal requirements in the 2017 NDAA. (Recommendation 1)

The administrator of NOAA should implement a mechanism requiring oversight by senior agency leaders of all disciplinary actions involving misconduct related to sexual assault and sexual harassment before such actions are finalized. (Recommendation 2)

The administrator of NOAA should ensure that the agency provides specific and readily accessible information on its website, through frequently asked questions (FAQ) and in staff training. The information should describe and explain the differences among complaint systems

and what to expect from each when reporting allegations of sexual harassment or assault. (Recommendation 3)

The administrator of NOAA should require that training for supervisors and managers include critical NOAA-specific information, such as how to report allegations up the chain of command, how to identify and minimize potential risk factors, explanations of NOAA's confidentiality rules, and the consequences for failing to fulfill this staff's supervisory responsibilities. (Recommendation 4)

The administrator of NOAA should ensure the agency provides more information to specific individuals and the larger NOAA workforce about how the agency is responding to allegations of sexual assault and sexual harassment, as appropriate, such as by regularly updating individuals on the status of their cases and by annually developing summary-level information for the workforce about the number, type, and resolution of cases. (Recommendation 5)

The administrator of NOAA should ensure that the central tracking system being developed will collect consistent data and appropriately document the number and type of incidents of sexual assault and harassment across complaint systems. (Recommendation 6)

Agency Comments

We provided a draft of this product to Commerce and EEOC for comment. We received formal written comments from Commerce, which are reproduced in appendix IV. Commerce concurred with our six recommendations. In these written comments, they stated that we conducted a fair and thorough assessment of the efficacy of NOAA's program to prevent and respond to sexual assault and sexual harassment and its affiliated processes, and that the report sheds light on areas for NOAA to focus on to improve its program and ensure compliance with the relevant provisions of the National Defense Authorization Act. As part of this response, they also provided information on specific actions NOAA plans to take to address each of the six recommendations. In addition, NOAA and EEOC provided technical comments, which we incorporated as appropriate.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the appropriate congressional committees, the Secretary of Commerce, the Administrator of the National Oceanic and Atmospheric Administration, the Chair of the Equal Employment and Opportunity Commission, and other interested

parties. In addition, the report is available at no charge on the GAO website at <https://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-3841 or JohnsonCD1@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix V.

A handwritten signature in black ink, appearing to read "Cardell Johnson", with a large, stylized flourish at the end.

Cardell D. Johnson
Acting Director, Natural Resources and Environment

Appendix I: Objectives, Scope, and Methodology

GAO was asked to review the National Oceanic and Atmospheric Administration's (NOAA) policies and actions related to preventing and responding to sexual assault and sexual harassment since the enactment of the 2017 NDAA in December 2016. This report examines: (1) the extent to which NOAA's policy to prevent and respond to sexual assault and sexual harassment is consistent with relevant legal requirements in the 2017 NDAA and follows EEOC's promising practices; and (2) the extent to which NOAA's actions to prevent and respond to sexual assault and sexual harassment follow EEOC's promising practices. To address these objectives, we reviewed policies, guidance, and actions undertaken by NOAA to prevent and respond to sexual assault and sexual harassment involving its workforce since the 2017 NDAA was enacted in December 2016.

For both objectives, we collected and reviewed relevant NOAA and Commerce policies and guidance, as well as NOAA's actions aimed at preventing and responding to sexual assault and sexual harassment. Additionally, we interviewed senior NOAA officials as well as other NOAA officials knowledgeable about NOAA policy and actions to prevent and respond to sexual assault and sexual harassment between 2016 and May 2021. This process included interviews with officials from each of NOAA's six Line Offices;¹ officials from NOAA's Office of the Undersecretary, Office of Human Capital Services, Office of Inclusion and Civil Rights, Office of General Counsel, and Office of Legislative and Intergovernmental Affairs; as well as officials from NOAA's Acquisition and Grants Office and NOAA's Workplace Violence Prevention and Response office.²

To determine the extent to which NOAA's policy to prevent and respond to sexual assault and sexual harassment is consistent with relevant legal requirements in the 2017 NDAA, we reviewed NOAA's 2018 policy and

¹NOAA's six Line Offices are the National Environmental Satellite, Data, and Information Service; National Marine Fisheries Service (also called NOAA Fisheries); National Ocean Service; National Weather Service; Office of Marine and Aviation Operations; and Office of Oceanic and Atmospheric Research.

²For the purposes of this report, we refer to this unit as an "office" because NOAA is in the process of institutionalizing this program into a formal Office. At the time of this report, this process has not yet been finalized.

relevant provisions of the 2017 NDAA.³ In addition, we conducted interviews with, and collected relevant materials from, officials knowledgeable about who was covered by NOAA's 2018 policy, how the policy was developed, and how the policy is being updated.⁴ We then assessed NOAA's 2018 policy against relevant legal requirements, specifically relevant sections of the 2017 NDAA. We determined the extent to which NOAA's 2018 policy was consistent with relevant sections of the 2017 NDAA by having one analyst conduct an assessment of NOAA's policy against each relevant section, having the rest of the team review this assessment and flag areas of disagreement, and then having the team come to consensus to finalize the assessment. For this assessment, we developed definitions for the terms "consistent," "partially consistent," and "not consistent" to reflect in plain language our determination of the extent to which NOAA's policy is consistent with relevant legal requirements in the 2017 NDAA.

- A determination of "consistent" means that NOAA's policy is consistent with a relevant provision of the 2017 NDAA.
- A determination of "partially consistent" means that NOAA's policy is consistent with part, but not all, of a relevant provision of the 2017 NDAA.
- A determination of "not consistent" means that NOAA's policy was not consistent with a relevant provision of the 2017 NDAA.

Similarly, to communicate the overall results of our review at the category-level, we used the terms "consistent," "partially consistent," and "not consistent" to reflect the extent to which NOAA's 2018 policy is consistent with relevant provisions of the 2017 NDAA.

To determine the extent to which NOAA's policy and actions to prevent and respond to sexual assault and sexual harassment follow EEOC

³While NOAA may be subject to additional requirements related to sexual harassment and sexual assault beyond those enumerated in the 2017 NDAA, those requirements were outside the scope of this review.

⁴The 2018 policy applies to all NOAA employees. The policy stated that NOAA will develop language to incorporate the terms of the policy, as appropriate and permissible by law, into future contracts, grants, and cooperative agreements for application to NOAA contractors and affiliates—which NOAA began doing in 2018 for all contractors and subcontractors. At the time of our review, NOAA officials were updating the 2018 policy and expected to release a revised policy in the summer or fall of 2021. To the extent possible and appropriate, we included information on what we expect the updated policy to include and noted where it might address gaps in the 2018 policy.

Promising Practices, we assessed NOAA's 2018 policy and relevant agency actions since 2016 against selected recommended practices for a comprehensive and effective harassment policy from the Equal Employment Opportunity Commission's (EEOC) 2017 technical assistance document: *Promising Practices for Preventing Harassment*. These practices are based on a 2016 report from the Co-Chairs of EEOC's Select Task Force on the Study of Harassment in the Workplace and, according to EEOC officials, identify approaches employers can take to prevent and correct harassment and may enhance employers' compliance efforts on sexual harassment matters.⁵ We also assessed NOAA's policy and actions against similar related recommendations and highlighted where EEOC promising practices underscored those recommendations and certain legal requirements, as applicable.⁶

In conducting our review, we assessed NOAA's 2018 policy and its actions to prevent and respond to sexual assault and sexual harassment against each of the four categories of practices laid out in EEOC's Promising Practices document—(1) *comprehensive and effective harassment policy*, (2) *leadership and accountability*, (3) *effective harassment training*, and (4) *effective and accessible harassment complaint system*. In conducting our analysis, we selected promising

⁵EEOC's promising practices are recommended practices rather than legal requirements. The EEOC's Promising Practices document identifies recommended practices that employers can take to help prevent and respond to harassment and that may enhance employers' compliance efforts on sexual harassment matters.

⁶In addition to primarily assessing NOAA's policy and actions against EEOC promising practices, we also assessed NOAA's policy and actions against similar related recommendations, such as: GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#), (Washington, D.C.: Sept. 10, 2014); and recommendations from the National Academies of Sciences, Engineering, and Medicine, *Sexual Harassment of Women: Climate, Culture, and Consequences in Academic Sciences, Engineering, and Medicine* (Washington, D.C.: 2018).

practices against which to assess NOAA's policy and actions;⁷ assessed NOAA's policy and actions (as a whole and over time) against each selected practice; and then assessed NOAA's policy and actions against each of the four categories as a whole.⁸ We determined the extent to which NOAA's 2018 policy or actions followed individual practices and each category as a whole by having one analyst conduct an assessment of NOAA's policy or actions against each selected practices, having the rest of the team review this assessment and flag areas of disagreement, and then having the team come to consensus to finalize the assessment. For this assessment, we used the terms "follows," "partially follows," and "does not follow" to reflect in plain language our determination of the extent to which NOAA's policies or actions are consistent with each of the selected practices.

- A determination of "follows" means that NOAA provided evidence that it had issued a policy or taken key actions consistent with an EEOC promising practice (or that its policy or actions evolved to be consistent with a selected practice by the end of the period).
- A determination of "partially follows" means that the NOAA policy or actions are consistent with part, but not all, of a selected practice.
- A determination of "does not follow" means that NOAA did not issue policies or take actions consistent with a selected practice.

Similarly, to communicate the overall results of our review at the category-level, we used the terms "follows," "partially follows," and "does not follow" to reflect the extent to which NOAA's policy or actions, when

⁷We determined which practices to review based on multiple considerations, including: (1) whether the criterion was explicit enough for GAO to audit it, (2) our ability to use GAO's tools and expertise to measure the recommendation, and (3) whether the recommendation was relevant to NOAA's work and workforce. To this end, we included practices that required GAO to identify the presence of an activity or policy element, such as "conduct anonymous employee surveys on a regular basis to assess whether harassment is occurring, or is perceived to be tolerated" and included in training "explanations of the range of possible consequences for engaging in prohibited conduct"; we excluded practices or elements that required an evaluative judgment by GAO such as adequacy, appropriateness, or effectiveness. We also excluded practices that required GAO to assess resource allocation or sufficiency of resources, as GAO does not make recommendations related to resource allocation. However, we did include characterizations by NOAA officials regarding the sufficiency of resources or timeliness of actions.

⁸At the time of our review, NOAA officials were updating the 2018 policy and expected to release a revised policy in the summer or fall of 2021. To the extent possible and appropriate, we included information on the updated policy and noted where it might address gaps in the 2018 policy.

taken as a whole and over time, are consistent with EEOC's recommendations for each of the four promising practices categories overall.

To identify NOAA policy and actions developed or taken to prevent and respond to sexual assault and sexual harassment in each of the four Promising Practices categories, we interviewed senior NOAA officials and other agency officials from headquarters, each of the Line Offices, and several other offices including NOAA's new Workplace Violence Prevention and Response office. We obtained and reviewed organizational charts and process flow charts related to the agency's prevention and response efforts and processes; we collected and reviewed information from agency websites, as well as all-staff emails and other management communiques to its workforce, about the resources and processes available for those experiencing or witnessing sexual assault or sexual harassment, including how to report allegations and the processes used to investigate such allegations; we collected documentary and testimonial evidence on NOAA resources dedicated to preventing and responding to sexual assault and sexual harassment; we collected and reviewed documents related to contracts the agency has entered into for support services, training, and other assistance in establishing and expanding prevention and response resources including the Sexual Assault Sexual Harassment Helpline; and we collected and reviewed information on agency efforts to evaluate the workforce's perceptions of the agency climate for recognizing and reporting sexual assault and sexual harassment.

To further understand and assess the agency's actions related to training, we also collected and analyzed training materials for employees, supervisors, and managers on preventing and responding to sexual assault and sexual harassment, including NOAA's 2020 mandatory web-based training. We used a two-coder system to assess the extent to which NOAA's 2020 mandatory training was consistent with EEOC's promising practices: using a data collection instrument we developed based on EEOC recommendations,⁹ one analyst assessed the training, a second analyst reviewed this assessment and flagged areas of disagreement, and both analysts came to consensus to finalize the

⁹We initially developed this data collection instrument using the recommendations in the EEOC's 2016 Task Force report and then updated this instrument to reflect additional practices recommended by the EEOC's 2017 *Promising Practices* document.

assessment. We also examined other training offered by NOAA to certain offices or workforce components.

To understand and assess NOAA's complaint processes, we collected and analyzed information about NOAA's multiple complaint systems—from reporting allegations through investigations, determination of misconduct, and imposition of disciplinary or corrective actions. Specifically, we interviewed and gathered information from Commerce's Office of Inspector General as well as NOAA officials from the Workplace Violence Prevention and Response office, Office of Human Capital Services, Office of Inclusion and Civil Rights, Office of Law Enforcement, and Line Office management. We also reviewed annual reports that NOAA provided to Congress, in accordance with the 2017 NDAA, on the number of reported incidents of sexual assault and sexual harassment.¹⁰ We also collected information from and spoke to agency officials responsible for tracking and reporting on cases of sexual assault and sexual harassment. To this end, we collected and reviewed data on all sexual assault and sexual harassment cases investigated through each of NOAA's three primary complaint systems¹¹—(1) the "955 system" within the Office of Human Capital Services, (2) the Office of Inclusion and Civil Rights, and (3) the Office of Law Enforcement within NOAA Fisheries—for calendar years 2018, 2019, and the first half of 2020.¹² We collected these data to determine the extent to which each office tracks and monitors data and trends on reported incidents of sexual assault and sexual harassment at the agency. To assess the reliability of these data, we reviewed a sample of case files from each system to ensure that the case data provided were complete and accurate, to identify any inconsistencies, and to understand what information NOAA collects and tracks within each system. Where data appeared incomplete or

¹⁰In preparing its annual report to Congress for calendar year 2018, NOAA officials discovered additional incidents that occurred in calendar year 2017 but were not included in the agency's report for that year. As a result, NOAA updated the number of reported incidents for 2017 to reflect the additional incidents in its report to Congress for calendar year 2018. Our analysis for calendar year 2017 reflects the data as updated and reported by NOAA in its report to Congress for calendar year 2018.

¹¹Commerce's Office of Inspector General may conduct investigations into allegations of sexual assault and sexual harassment at NOAA under limited circumstances. These cases can be referred to NOAA's 955 system or EEO system, as appropriate, according to Commerce officials.

¹²We excluded data prior to calendar year 2018 in our review, as agency officials expressed concerns about the reliability of data within the 955 unit prior to this.

inaccurate, we worked with agency officials to resolve inconsistencies. We found these data to be sufficiently reliable for the purposes of identifying the number of investigations conducted by each office for each year, how long investigations generally took to complete, and what data fields the offices collected and tracked.

To better understand how NOAA's workforce experienced the agency's reporting and response processes for sexual assault and sexual harassment, we also conducted and analyzed a series of structured confidential interviews with individuals who experienced or witnessed sexual assault or sexual harassment, and whose cases were reported to NOAA from January 2018 through May 2020, about their experiences with NOAA's reporting and response processes.¹³ For these confidential interviews, we developed and sent a "call for participants" requesting confidential interviews, with the assistance of NOAA staff engaged in victim assistance, to individuals whose cases of sexual assault or sexual harassment were reported to NOAA between January 2018 and May 2020, and who wished to share their experiences in navigating NOAA's reporting and response processes. We used a set of structured interview questions, developed in part on EEOC's 2017 *Promising Practices* and its underlying 2016 Task Force report, to conduct confidential interviews with those who responded to our "call for participants" and who met our criteria. These individuals included federal employees, contractors, and other affiliated staff who experienced or witnessed sexual assault or sexual harassment and who reported their cases (or whose cases were reported by others) to NOAA between January 2018 and May 2020. We focused our questions on their experiences navigating NOAA's reporting and response processes, including retaliation, and not on the incidents themselves. We did not discuss "open" cases. All individuals were asked to contact GAO directly and did not go through NOAA to set up or conduct these interviews. In all, we conducted 10 confidential interviews. Finally, we documented these confidential interviews to ensure and maintain the confidentiality of each individual who volunteered to speak with us and did not share any of their names, or the information they provided, with NOAA officials.

We conducted this performance audit from September 2019 to August 2021 in accordance with generally accepted government auditing standards. These standards require that we plan and perform an audit to

¹³Separately, we also interviewed representatives from several NOAA unions and an organization serving fishery observers about their experiences navigating NOAA's reporting and response processes, including retaliation.

**Appendix I: Objectives, Scope, and
Methodology**

obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence we obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Summary Analysis of Relevant Legal Requirements in the National Defense Authorization Act for Fiscal Year 2017

This appendix provides a summary table showing the extent to which National Oceanic and Atmospheric Administration’s (NOAA) 2018 Sexual Assault and Sexual Harassment Policy is consistent with relevant legal requirements in the National Defense Authorization Act for Fiscal Year 2017 (2017 NDAA), as reported in objective 1 of this report (see Table 10).

Table 10: Extent to Which NOAA’s 2018 Sexual Assault and Sexual Harassment Policy Is Consistent with Relevant Legal Requirements in the National Defense Authorization Act for Fiscal Year 2017 (2017 NDAA)

Summary of relevant 2017 NDAA requirements	GAO analysis of NOAA’s 2018 policy
Required policy	
Development of a policy on the prevention of and response to sexual harassment and sexual assault at the National Oceanic and Atmospheric Administration (NOAA) that covers employees, members of the commissioned officer corps, and those who work with or conduct business of behalf of NOAA.	●
Availability of the policy to all covered by the policy as well as the public.	●
Each contract for the use of a vessel by NOAA is to include a provision that subjects the crew to the sexual harassment and sexual assault policy.	●
Matters to be specified in the policy	
Establishment of a program to promote awareness of the incidence of sexual harassment.	●
Clear procedures an individual should follow in the case of an occurrence of sexual harassment, including whom a person should contact and/or report an incident to with options for confidential reporting and afterhours reporting.	●
Establishment of a mechanism by which questions regarding sexual harassment or assault can be asked and incidents can be reported confidentially.	●
A prohibition on retaliation and consequences for retaliatory actions.	●
Measures to prevent incidents of sexual assault.	●
Education and training on prevention of and response to sexual assault.	●
A list of support resources that is both easily and readily available and that an individual may use in the occurrence of a sexual assault, including contact information for afterhours and a procedure for obtaining assistance and reporting sexual assault in all locations.	●
Availability of resources for victims of sexual assault within other agencies and organizations.	●
Protocols for the investigation of complaints of sexual assault by command and law enforcement.	◐
Oversight by the Under Secretary for Oceans and Atmosphere (Under Secretary) of administrative and disciplinary actions in response to substantiated incidents of sexual assault.	○
Victim advocacy	
Address in the policy victim advocacy, including the establishment of and the responsibilities and training requirements for victim advocates.	●
The agency shall establish victim advocates for victims of sexual assaults involving NOAA employees, members of the commissioned officer corps, and those who work with or conduct business on behalf of NOAA.	●
Victim advocates shall be existing permanent employees who are trained in matters relating to sexual assault and NOAA’s policy, and serve as victim advocates voluntarily in addition to their other duties.	●

**Appendix II: Summary Analysis of Relevant
Legal Requirements in the National Defense
Authorization Act for Fiscal Year 2017**

Summary of relevant 2017 NDAA requirements	GAO analysis of NOAA's 2018 policy
Victim advocates' duties shall include supporting victims of sexual assault and informing them of their rights and the resources available to them; acting as a companion in navigating the various processes relating to sexual assault; and helping to identify resources to ensure the safety of sexual assault victims.	●
The agency shall ensure that at least 1 victim advocate is stationed in each NOAA region and in each marine and aviation center.	●
The agency shall provide a hotline, using established hotlines when possible, at which a victim of a sexual assault can contact a victim advocate 24 hours a day.	●
The agency shall designate out of existing staff at least 1 NOAA employee who is tasked with handling matters related to equal employment opportunity or sexual harassment at each marine and aviation center.	●
Rights of the victim of a sexual assault	
A victim of sexual assault covered by NOAA's policy has the right to be reasonably protected from the accused.	●
For employee victims of sexual assault, the agency is generally, to the degree practicable, to accommodate the request of a victim for a change of work location; for victims of sexual assault who are members of the commissioned officer corps, the agency is to provide for timely determination and action on a victim's application for consideration of a change of station or unit.	●
The agency shall ensure that such a request or application for change of location, station, or unit is approved or denied within 72 hours of submission.	●
If such a request or application is denied, the victim may request the Secretary to review the denial, and not later than 72 hours of receiving the request or application, the Secretary, acting through the Under Secretary, is to affirm or overturn the denial.	●
The agency shall develop a policy for the protection of the victims of sexual assault by providing the alleged perpetrator (when the individual is a member of the commissioned officer corps or an employee of NOAA) with a change of work location, station, or unit.	○
The above-mentioned policy shall include a means to control access to the victim and due process for the victim and the alleged perpetrator.	○
The agency shall promulgate regulations to carry out the section of the act covering change of station, and is to make such regulations consistent with similar regulations promulgated by the Secretary of Defense when practicable.	○
Reports on incidents of sexual harassment and sexual assault at NOAA	
The Director of the Civil Rights Office (Director) shall submit a report on sexual harassment at NOAA to the Under Secretary not less than four times each year.	●
Each such quarterly report shall include the number of sexual harassment cases involving individuals covered by the policy; the number of open actionable cases and how long the cases have been open; trends or region-specific issues discovered by the Director; and any recommendations the Director may have with respect to sexual harassment at NOAA.	●
The Secretary of Commerce shall submit a report on sexual assaults involving NOAA employees, members of the commissioned officer corps, and those who work with or conduct business on behalf of NOAA to specified congressional committees not later than January 15 of each year.	●
Each such annual report shall include the number of alleged sexual assaults involving individuals covered by the policy; a synopsis of each case and the disciplinary action taken, if any; the policies, procedures, and processes implemented by the Secretary, and any updates or revisions; and a summary of the quarterly reports on sexual harassment described above.	●

**Appendix II: Summary Analysis of Relevant
Legal Requirements in the National Defense
Authorization Act for Fiscal Year 2017**

Summary of relevant 2017 NDAA requirements	GAO analysis of NOAA's 2018 policy
In preparing and submitting such annual reports, the agency shall ensure that no individual involved in an alleged sexual assault can be identified by the contents of the report.	○

- Consistent
- ◐ Partially consistent
- Not consistent

Source: GAO analysis. | GAO-21-560

Notes: Specifically, section 3541 of the act required the development of a policy to address sexual harassment, and section 3542 called for a policy to address sexual assault. NOAA developed a single policy to address both sexual harassment and sexual assault. "Consistent" means that NOAA's policy is consistent with a relevant provision of the 2017 NDAA. "Partially consistent" means that NOAA's policy is consistent with part, but not all, of a relevant provision of the 2017 NDAA. "Not consistent" means that NOAA's policy was not consistent with a relevant provision of the 2017 NDAA.

Appendix III: Summary Analysis of Selected Promising Practices Developed by the Equal Employment Opportunity Commission

This appendix provides four summary tables showing the extent to which actions taken by the National Oceanic and Atmospheric Administration (NOAA) follow selected promising practices in each of the four categories articulated by the Equal Employment Opportunity Commission's (EEOC) *Promising Practices for Preventing Harassment* document and reported in the first and second objectives of this report (see tables 11, 12, 13, and 14 below). These four categories are: (1) comprehensive and effective harassment policy, (2) leadership and accountability, (3) effective harassment training, and (4) effective and accessible harassment complaint system.

Table 11: Extent to Which NOAA's 2018 Sexual Assault and Sexual Harassment Policy Follows Selected EEOC Promising Practices for a Comprehensive and Effective Harassment Policy

Selected promising practices	GAO's analysis of NOAA's 2018 policy
Comprehensive harassment policy includes:	
A statement that the policy applies to employees at every level of the organization, as well as to applicants, clients, customers, and other relevant individuals.	●
An unequivocal statement that harassment based on, at a minimum, any legally protected characteristic is prohibited.	●
An easy to understand description of prohibited conduct, including examples.	●
A description of any processes for employees to informally share or obtain information about harassment without filing a complaint.	●
A description of the organization's harassment complaint system, including multiple (if possible), easily accessible reporting avenues.	●
A statement that employees are encouraged to report conduct that they believe may be prohibited harassment (or that, if left unchecked, may rise to the level of prohibited harassment), even if they are not sure that the conduct violates the policy.	●
A statement that the identity of the individuals who report harassment, alleged victims, witnesses, and alleged harassers will be kept confidential to the extent possible and permitted by the law, consistent with a thorough and impartial investigation.	●
A statement that employees are encouraged to respond to questions or otherwise participate in investigations regarding alleged harassment.	●
A statement that information obtained during an investigation will be kept confidential to the extent consistent with a thorough and impartial investigation and permitted by law.	●
An assurance that the organization will take immediate and proportionate corrective action if it determines that harassment has occurred.	●
An unequivocal statement that retaliation is prohibited, and that individuals who report harassing conduct, participate in investigations, or take any other actions protected under federal employment discrimination laws will not be subjected to retaliation.	◐
A statement that the employer will provide a prompt, impartial, and thorough investigation.	○

Appendix III: Summary Analysis of Selected Promising Practices Developed by the Equal Employment Opportunity Commission

Selected promising practices	GAO's analysis of NOAA's 2018 policy
Effective written harassment policies are:	
Provided to employees upon hire and during harassment trainings, and posted centrally, such as on the company's internal website, in the company handbook, near employee time clocks, in the employee break rooms, and in other commonly used areas or locations.	●
Periodically reviewed and updated as needed, and re-translated, disseminated to staff, and posted in central locations.	●
Written and communicated in a clear, easy to understand style and format.	●

- Follows
- ◐ Partially follows
- Does not follow

Source: GAO analysis. | GAO-21-560

Notes: "Follows" means that the policy or actions of the National Oceanic and Atmospheric Administration (NOAA) are consistent with a promising practice identified by the Equal Employment Opportunity Commission (EEOC) or that NOAA's policy or actions evolved to be consistent with a promising practice by the end of our review. "Partially follows" means that NOAA's policy or actions are consistent with part, but not all, of a promising practice. "Does not follow" means that NOAA's policy or actions are not consistent with a promising practice.

Table 12: Extent to Which NOAA's Actions Follow Selected EEOC Promising Practices for Leadership and Accountability

Selected promising practices	GAO's analysis of NOAA's actions
Demonstrated commitment by senior leaders may be demonstrated by:	
Clearly, frequently, and unequivocally stating that harassment is prohibited.	●
Incorporating enforcement of, and compliance with, the organization's harassment and other anti-discrimination policies and procedures into the organization's operational framework.	●
Providing appropriate authority to individuals responsible for creating, implementing, and managing harassment prevention strategies.	●
Assessing harassment risk factors and taking steps to minimize or eliminate those risks.	◐
Engaging organizational leadership in harassment prevention and correction efforts.	◐
Senior leaders ensure that their organizations:	
Have a harassment policy that is comprehensive, easy to understand, and regularly communicated to all employees	●
Regularly and effectively train all employees about the harassment policy and complaint system	●
Regularly and effectively train supervisors and managers about how to prevent, recognize, and respond to objectionable conduct that, if left unchecked, may rise to the level of prohibited harassment.	◐
Have a harassment complaint system that is fully resourced, is accessible to all employees, has multiple avenues for making a complaint, if possible, and is regularly communicated to all employees.	◐
Impose discipline that is prompt, consistent, and proportionate to the severity of the harassment and/or related conduct, such as retaliation, when it determines that such conduct has occurred.	◐
Senior leaders exercise appropriate oversight of the harassment policy, complaint system, training, and any preventive and corrective efforts, which may include:	

Appendix III: Summary Analysis of Selected Promising Practices Developed by the Equal Employment Opportunity Commission

Selected promising practices	GAO's analysis of NOAA's actions
Periodically evaluating the effectiveness of the organization's strategies to prevent and address harassment, including reviewing and discussing preventative measures, complaint data, and corrective action with appropriate personnel.	●
Ensuring that any necessary changes to the harassment policy, complaint system, training, or related policies, practices, and procedures are implemented and communicated to employees.	●
To maximize effectiveness, senior leaders could seek feedback about their anti-harassment efforts by, for example:	
Partnering with researchers to evaluate harassment prevention strategies.	●
Conducting anonymous employee surveys on a regular basis to assess whether harassment is occurring, or is perceived to be tolerated.	●

- Follows
- Partially follows
- Does not follow

Source: GAO analysis. | GAO-21-560

Notes: "Follows" means that actions of the National Oceanic and Atmospheric Administration are consistent with a promising practice identified by the Equal Employment Opportunity Commission (EEOC) or that NOAA's actions evolved to be consistent with a promising practice by the end of our review. "Partially follows" means that NOAA's actions are consistent with part, but not all, of a selected practice. "Does not follow" means that NOAA's actions are not consistent with a selected practice.

Table 13: Extent to Which NOAA's Actions Follow Selected EEOC Promising Practices for Effective Training

Selected Promising Practices	GAO's Analysis of NOAA's Actions
Anti-harassment training may be most effective if it is, among other things:	
Championed by senior leaders.	●
Repeated and reinforced regularly.	●
Provided to employees at every level and location of the organization.	●
Provided in a clear, easy-to-understand style and format.	●
Provided in all languages commonly used by employees.	●
Conducted by qualified, live, interactive trainers, or, if live training is not feasible, designed to include active engagement by participants.	●
Routinely evaluated by participants and revised as necessary.	●
Tailored to the specific workplace and workforce.	●
Effective anti-harassment training for all employees includes, for example:	
Descriptions of prohibited harassment, as well as conduct that if left unchecked, might rise to the level of prohibited harassment.	●
Information about employees' rights and responsibilities if they experience, observe, or become aware of conduct that they believe may be prohibited.	●
Encouragement for employees to report harassing conduct.	●
Identification and provision of contact information for the individual(s) and/or office(s) responsible for addressing harassment questions, concerns, and complaints.	●

Appendix III: Summary Analysis of Selected Promising Practices Developed by the Equal Employment Opportunity Commission

Selected Promising Practices	GAO's Analysis of NOAA's Actions
Assurance that employees who report harassing conduct, participate in investigations, or take any other actions protected under federal employment discrimination laws will not be subject to retaliation.	●
Explanations of the complaint process, as well as any voluntary alternative dispute resolution processes.	◐
Examples that are tailored to the specific workplace and workforce.	◐
Explanations of the range of possible consequences for engaging in prohibited conduct.	◐
Opportunities to ask questions about the training, harassment policy, complaint system, and related rules and expectations.	◐
Explanations of the information that may be requested during an investigation, including: the name or a description of the alleged harasser(s), alleged victim(s), and any witnesses; the date(s) of the alleged harassment; the location(s) of the alleged harassment; and a description of the alleged harassment.	○
Effective anti-harassment training for supervisors and managers includes, for example:	
An unequivocal statement that retaliation is prohibited, along with an explanation of the types of conduct that are protected from retaliation under federal employment discrimination laws	●
Information about how to prevent, identify, stop, report, and correct harassment	◐
Explanations of the consequences of failing to fulfill their responsibilities related to harassment, retaliation, and other prohibited conduct.	○
To help prevent conduct from rising to the level of unlawful workplace harassment, employers also may find it helpful to consider and implement new forms of training, such as workplace civility or respectful workplace training and/or bystander intervention training	●

- Follows
- ◐ Partially follows
- Does not follow

Source: GAO analysis. | GAO-21-560

Notes: "Follows" means that actions of the National Oceanic and Atmospheric Administration (NOAA) are consistent with a promising practice identified by the Equal Employment Opportunity Commission (EEOC) or that NOAA's actions evolved to be consistent with a selected practice by the end of our review. "Partially follows" means that NOAA's actions are consistent with part, but not all, of a selected practice. "Does not follow" means that NOAA's actions are not consistent with a selected practice.

Table 14: Extent to Which NOAA's Actions Follow Selected EEOC Promising Practices for an Effective and Accessible Complaint System

Selected promising practices	GAO's analysis of NOAA's actions
An effective harassment complaint system, among other things:	
Is fully resourced, enabling the organization to respond promptly, thoroughly, and effectively to complaints.	●
Provides multiple avenues for complaints, if possible, including an avenue to report complaints regarding senior leaders.	●
Is responsive to complaints by employees and by other individuals on their behalf.	◐
Provides prompt, thorough, and neutral investigations.	◐
Protects the privacy of alleged victims, individuals who report harassment, witnesses, alleged harassers, and other relevant individuals to the greatest extent possible, consistent with a thorough and impartial investigation and with relevant requirements.	●

Appendix III: Summary Analysis of Selected Promising Practices Developed by the Equal Employment Opportunity Commission

Selected promising practices	GAO's analysis of NOAA's actions
Includes processes to determine whether alleged victims, individuals who report harassment, witnesses, and other relevant individuals are subject to retaliation, and impose sanctions on individuals responsible for retaliation.	●
Includes processes to ensure that alleged harassers are not prematurely presumed guilty or prematurely disciplined for harassment.	●
Includes processes to convey the resolution of the complaint to the complainant and the alleged harasser, and where appropriate and consistent with relevant legal requirements, the preventative and corrective action taken.	◐
Employees responsible for receiving, investigating, and resolving complaints or otherwise implementing the harassment complaint system, among other things:	
Have the authority, independence, and resources required to receive, investigate, and resolve complaints appropriately.	●
Understand and maintain the confidentiality associated with the complaint process.	●
Appropriately document every complaint, from initial intake to investigation to resolution, use guidelines to weigh the credibility of all relevant parties, and prepare a written report documenting the investigation, findings, recommendations, and disciplinary action imposed (if any), and corrective and preventative action taken (if any).	◐

- Follows
- ◐ Partially follows
- Does not follow

Source: GAO analysis. | GAO-21-560

Notes: "Follows" means that actions of the National Oceanic and Atmospheric Administration (NOAA) are consistent with a promising practice identified by the Equal Employment Opportunity Commission (EEOC) or that NOAA's actions evolved to be consistent with a selected practice by the end of our review. "Partially follows" means that NOAA's actions are consistent with part, but not all, of a selected practice. "Does not follow" means that NOAA's actions are not consistent with a selected practice.

Appendix IV: Comments from the Department of Commerce



UNITED STATES DEPARTMENT OF COMMERCE
Office of the Acting Chief Financial Officer and
Assistant Secretary for Administration
Washington, D.C. 20230

August 20, 2021

Cardell D. Johnson
Acting Director
Natural Resources and Environment
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Johnson:

Thank you for the opportunity to review and comment on the Government Accountability Office's (GAO) draft report entitled *SEXUAL ASSAULT AND HARASSMENT: NOAA Has Made Substantial Progress in Prevention and Response, but Could Further Improve its Processes* (GAO-21-560).

On behalf of the Department of Commerce, I have enclosed our comments. The Department of Commerce agrees with GAO's recommendations.

If you have any questions, please contact MaryAnn Mausser, Commerce Audit Liaison, at 202-482-8120.

Sincerely,

WYNN
COGGINS

Digitally signed by WYNN
COGGINS
Date: 2021.08.20 09:28:42
-04'00'

Wynn W. Coggins
Acting Chief Financial Officer and
Assistant Secretary for Administration

Enclosure

**Department of Commerce's Comments on
GAO Draft Report entitled *SEXUAL ASSAULT AND HARASSMENT:
NOAA Has Made Substantial Progress in Prevention and Response, but
Could Further Improve its Processes*
(GAO-21-560)**

The Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), has reviewed the Government Accountability Office (GAO) draft report and we offer the following comments for GAO's consideration.

General Comments

NOAA appreciates the opportunity to review the draft report on Sexual Assault and Sexual Harassment (SASH) and believes GAO has done a fair and thorough job of assessing the efficacy of NOAA's sexual harassment and sexual assault prevention and response program and affiliated processes. The report sheds light on areas that NOAA will focus on to improve its SASH program and ensure compliance with the relevant provisions of the National Defense Authorization Act.

Comments on Recommendations

The Government Accountability Office (GAO) made six recommendations to the Department of Commerce in the report.

- **Recommendation 1:** The administrator of NOAA should ensure that future updates to the agency's sexual harassment and sexual assault prevention and response policy are consistent with all relevant legal requirements.

Commerce Response: The Department of Commerce agrees with this recommendation.

NOAA is actively collaborating with stakeholders on modifying its SASH policy to incorporate all relevant legal requirements, including implementing a process that will ensure future updates are consistent with legal requirements. The policy will also be updated to specify that NOAA will provide regular case status updates to individuals that were sexually assaulted and/or sexually harassed. Because of the various agencies, unions, and stakeholders that are required to review the policy, NOAA anticipates the updated policy will be released in early 2022.

- **Recommendation 2:** The administrator of NOAA should implement a mechanism requiring oversight by senior agency leaders of all disciplinary actions involving misconduct related to sexual assault and sexual harassment before such actions are finalized.

Commerce Response: The Department of Commerce agrees with this recommendation.

NOAA is actively collaborating with stakeholders on modifying its SASH policy to incorporate all relevant legal requirements, including the oversight of disciplinary matters in

a manner consistent with the due process rights of those subject to such discipline, and training for managers and decision-makers on roles and responsibilities related to SASH. NOAA anticipates the updated policy will be released in early 2022.

- **Recommendation 3:** The administrator of NOAA should ensure that the agency provides specific and readily accessible information on its website, through frequently asked questions (FAQs), and in staff training, regarding the differences among complaint systems and what to expect from each when reporting allegations of sexual harassment or assault.

Commerce Response: The Department of Commerce agrees with this recommendation.

NOAA is actively collaborating with stakeholders and affiliates on streamlining access to information and clarifying processes so impacted personnel may make informed decisions. NOAA will update its websites accordingly and will include FAQs, contact mechanisms, cross-posting resources, and summary level information regarding the number, type, and resolution of cases. NOAA also plans to increase awareness of available resources by, among other means, showcasing the programs and resources. In July 2021, NOAA held the “We are NOAA” SASH Summit, which had 1300 registrants and provided an overview of the reporting process, program goals, and prevention tools available to the workforce.

Recommendation 4: The administrator of NOAA should require that training for supervisors and managers include critical NOAA-specific information, such as how to report allegations up the chain of command, how to identify and minimize potential risk factors, explanations of NOAA’s confidentiality rules, and the consequences for failing to fulfill their supervisory responsibilities.

Commerce Response: The Department of Commerce agrees with this recommendation.

NOAA is actively collaborating with stakeholders on modifying its SASH policy to clarify managerial requirements relating to SASH incidents. NOAA also has hired a contractor that is creating evidence-based training that both highlights existing programs and processes and provide tools to address risk factors and bystander intervention methods. This training is expected to be released in September 2021.

- **Recommendation 5:** The administrator of NOAA should ensure the agency provides more information to specific individuals and the larger NOAA workforce about how the agency is responding to allegations of sexual assault and sexual harassment, as appropriate, such as regularly updating individuals on the status of their cases and by annually developing summary-level information for the workforce about the number, type and resolution of cases.

Commerce Response: The Department of Commerce agrees with this recommendation.

NOAA holds a monthly SASH Council where stakeholders may share data and trends tied to SASH. In addition, NOAA is training its volunteer assistance advocates on trauma-informed care and response, clarifying expectations on transparency, and ongoing communication.

**Appendix IV: Comments from the Department
of Commerce**

During NOAA's "We are NOAA" week, leadership discussed the recent workplace survey, and addressed how leaders may implement change.

- **Recommendation 6:** The administrator of NOAA should ensure that the central tracking system being developed will collect consistent data and appropriately document the number and type of incidents of sexual assault and harassment across complaint systems.

Commerce Response: The Department of Commerce agrees with this recommendation.

NOAA currently is developing a database that will streamline case data for reporting to Congress, as well as provide consistent trend data to NOAA leadership and employees. This data will also allow NOAA to engage in meaningful prevention and response efforts.

Appendix V: GAO Contact and Staff Acknowledgments

GAO Contact

Cardell D. Johnson, (202) 512-3841 or johnsoncd1@gao.gov

Staff

Acknowledgments:

In addition to the contact named above, Anne-Marie Fennell (Director); Elizabeth Erdmann (Assistant Director); Tama Weinberg (Analyst in Charge); John Delicath; Abigail Epstein; Caitlin Jackson; Ronald La Due Lake; Patricia Moye; Cynthia Norris; Matthew Ray; Lauren Sherman; Sara Sullivan; and Amy Ward-Meier made key contributions to this report.

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