

LIABILITY

Legal Issues in CITIZEN SCIENCE



What is Citizen Science?

"Citizen science* is a form of open collaboration where members of the public participate in the scientific process to address real-world problems in ways that include identifying research questions, collecting and analyzing data, interpreting results, making new discoveries, developing technologies and applications, and solving complex problems."

How Do I Use this Fact Sheet?

This fact sheet is part of a series that addresses relevant legal issues when conducting citizen science projects. The goal is to help minimize the impacts legal issues can have on citizen science projects, so these issues do not become roadblocks to the success of these projects.

These fact sheets are intended for volunteers and citizen science project leaders and researchers conducting coastal and marine science, particularly in North Carolina. However, practitioners in other disciplines and states can adapt these guidelines as appropriate for their own use.

*Source: The Federal Community of Practice on Crowdsourcing and Citizen Science at <http://www.digitalgov.gov/communities/federal-crowdsourcing-and-citizen-science/>.

LIABILITY: AN INTRODUCTION

As data collection and its accompanying technology expand, scientists are finding more ways to increase the involvement of volunteers through citizen science. However, government agencies may avoid using data and research collected by citizen scientists because of potential liability concerns.

Liability is defined as the legal responsibility for one's acts or omissions. Failure of a person or entity to meet their responsibilities can result in a lawsuit or court order.

The U.S. legal system provides protection for agencies involved in citizen science that should allow scientists to confidently use results from citizen science projects. There are two types of federal agencies: regulatory (e.g., the Environmental Protection Agency), and nonregulatory (e.g., U.S. Geological Survey). Each may have different liability issues.

This fact sheet presents a brief overview on relevant federal law. Many coastal or marine science projects that involve citizen scientists may be funded in whole or in part by a federal agency and are subject to these regulations.

However, individual states, state agencies, nonprofit organizations and academic institutions likely have their own laws or regulations governing liability.

For more information on liability laws at the state and local levels, see the accompanying North Carolina Sea Grant publication *Legal Issues in Citizen Science: A Guide for Coastal and Marine Scientists and Their Volunteers in North Carolina*.

Also contact your institution's legal, policy review or technology transfer office for specific policies and regulations on liability for your program or project.

Federal Tort Claims Act, 28 § 1346(b)

Under a concept known as “sovereign immunity,” citizens cannot sue their state. However, in 1946, Congress passed the Federal Tort Claims Act, or FTCA, which allows private parties to pursue certain lawsuits against the federal government. Specifically, the FTCA allows citizens to sue the federal government for negligence by a federal employee who is acting within the scope of his or her employment. The FTCA holds the United States liable “in the same manner and to the same extent as a private individual under like circumstances.”

Federal courts maintain jurisdiction over these claims, although they also will apply the law of the state where the “act or omission occurred.” The FTCA imposes several limitations on liability, exempting claims based on the federal employee’s performance of — or failure to perform — a “discretionary function or duty.” An individual cannot sue the federal government if the employee’s conduct involved an element of judgment.

As a result, the FTCA provides federal employees with a shield from citizen lawsuits. A member of the general public cannot sue an agency or employee for negligence in their research, unless they can show the government had a legal obligation toward that individual (i.e., a standard of reasonable care while conducting acts that could foreseeably harm another person).

The Antideficiency Act, 31 U.S. 1341

The Antideficiency Act, or AdA, was enacted by Congress to prevent excessive government agency expenditures. The legislation limits the voluntary services an agency can use, except in life-saving circumstances. Citizen science project coordinators should make sure there are no federal or state statutes limiting the number of volunteers they can use for projects.



N.C. Coastal Reserve and National Estuarine Research Reserve



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Information Quality Act

The Information Quality Act, or IQA, of 2001 was designed to ensure the “quality, objectivity, utility, and integrity of information” distributed to the general public. Citizens can use the act to file lawsuits to prevent an agency from disseminating information that fails to meet these requirements. Agencies are potentially subject to federal, state and institutional guidelines on disseminating information. Citizen science project coordinators should be familiar with these requirements in order to ensure they are in compliance.

Further Reading

- Gellman, Robert (2015). *Crowdsourcing, Citizen Science, and the Law: Legal Issues Affecting Federal Agencies*. Wilson Center Policy Memo Series, vol. 3. Available at <https://www.wilsoncenter.org/publication/crowdsourcing-citizen-science-and-the-law-legal-issues-affecting-federal-agencies>.
- Smith, Bailey (2014). *Agency Liability Stemming From Citizen-Generated Data*. Wilson Center Policy Memo Series, vol. 3. Available at https://www.wilsoncenter.org/sites/default/files/AgencyLiability_final.pdf.

For More Information

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