

the FMC relevant to this lawsuit, and it includes the coastal waters of Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut. 16 U.S.C. § 1852(a)(1)(A).

2. The NEFMC is composed of eighteen (18) voting members, *id.*, including twelve (12) appointees chosen by the Secretary of Commerce from lists of nominees provided by the governors of states within the boundaries of the FMC. *Id.* §§ 1852(b)(1)(C), (b)(2)(A) (C). The NEFMC includes the “principal State official with marine fishery management responsibility and expertise” from each state, *id.* § 1852(b)(1)(A), as well as the Administrator of the National Marine Fisheries Service (“NMFS”) Mid-Atlantic Regional Office, or his designee. *Id.* § 1852(b)(1)(B).

3. Some commentators have suggested that the membership of the NEFMC and, indeed, the membership of all the regional FMCs is not representative of the fishing industry. Representation of the fishing industry is “generally skewed towards the larger corporate interests that support larger sized vessels, whereas the small-scale vessel fleets that are the traditional core of coastal communities (and more likely to have conservation interests) are often less represented[.]” Thomas A. Okey, *Membership in the Eight Regional Fishery Management Councils in the United States: Are Special Interests Over-Represented?*, 27 *Marine Pol’y* 193, 199 (2003).

4. Although the FMCs are supervised by NMFS, and ultimately by the Secretary of Commerce, their members exercise significant independent power. They propose Fishery Management Plans (“FMPs”), amendments, and framework adjustments; they conduct hearings; and they determine annual catch limits. *See* 16 U.S.C. § 1852(h). The FMCs even have the ability to constrain the Secretary of Commerce. *See* 16 U.S.C. § 1854(a) (Secretary may only

approve, disapprove, or partially approve FMPs given to him; he may not modify them on his own authority); *id.* § 1854(h) (Secretary may not repeal or revoke FMPs without FMC approval).

5. The FOIA request at issue here is aimed at providing transparency into how the Secretary of Commerce determines the membership of the FMCs, including the NEFMC. NOAA has not disclosed records about this process to the public before, and there is danger for politicization in how members are actually chosen.

6. The records at issue in this case, which include records of communication between high-ranking agency officials, will permit the public to understand how the most recent round of membership selection for the NEFMC was handled, and whether that process was at all tinged by political considerations or other untoward government action.

JURISDICTION AND VENUE

7. Jurisdiction is asserted pursuant to 28 U.S.C. § 1331 and 5 U.S.C. §§ 552(a)(4)(B), (a)(6)(E)(iii).

8. Venue is proper pursuant to 28 U.S.C. § 1391(e) and 5 U.S.C. § 552(a)(4)(B).

PARTIES

9. CoA Institute is a non-profit strategic oversight group committed to ensuring that government decision-making is open, honest, and fair. In carrying out its mission, CoA Institute uses various investigative and legal tools to educate the public about the importance of government transparency and accountability. CoA Institute regularly requests access under the FOIA to the public records of federal agencies, entities, and offices, including NOAA, and disseminates its findings, analysis, and commentary to the general public.

10. NOAA is an agency within the meaning of 5 U.S.C. § 552(f)(1). NOAA has possession, custody, and control of the records to which CoA Institute seeks access and that are the subject of this Complaint.

FACTS

11. By letter, dated July 13, 2016, CoA Institute submitted a FOIA request to NOAA seeking access to “[a]ll documents related to the appointment or reappointment of members of the New England Fishery Management Council[.]” Ex. 1 at 1. CoA Institute further specified that its request included “all communications, both inside the government and with outside parties, including .gov e-mail, personal e-mail, text messaging, and any other methods of communication.” Ex. 1 at 1. The time period for the request was “November 1, 2015 to the present.” Ex. 1 at 1.

12. CoA Institute provided a non-exhaustive list of potential record custodians whose correspondence on personal or official e-mail accounts could be responsive to the July 13, 2016 FOIA request. *See* Ex. 1 at 2.

13. CoA Institute also requested a public interest fee waiver and classification as a representative of the news media for fee purposes. Ex. 1 at 2 4.

14. By letter, dated July 29, 2016, NOAA informed CoA Institute that it received the FOIA request on July 19, 2016. Ex. 2 at 1. NOAA indicated that it would invoke the ten-day automatic statutory extension of its response deadline due to “unusual circumstances,” namely, the “need to search for and collect the requested records from field facilities or other establishments separate from the office processing the request[.]” Ex. 2 at 1.

15. This same letter assigned the CoA Institute FOIA request the tracking number “DOC-NOAA-2016-001453.” Ex. 2 at 1.

16. On August 1, 2016, NOAA granted the CoA Institute request for a public interest fee waiver. Ex. 3. The agency did not issue a determination on the CoA Institute request for categorization as a representative of the news media for fee purposes.

17. By letter, dated August 30, 2016, NOAA released its first interim response and production of responsive records. Ex. 4. The agency indicated that it “located 19 documents,” to which CoA Institute was “granted full access.” Ex. 4. The interim production also provided CoA Institute with appeal rights. Ex. 4.

18. On September 26, 2016, CoA Institute filed an administrative appeal from the August 30, 2016 interim production because NOAA improperly withheld material from three (3) responsive records. Ex. 5. The material in question was redacted as “non-responsive.” Ex. 5.

19. The Department of Commerce (“DOC”) acknowledged receipt of the CoA Institute administrative appeal on September 29, 2016. Ex. 6. The agency has failed to provide a final response or to provide an estimate date of completion for processing the appeal.

20. To date, NOAA has failed to provide any additional interim responses or productions of responsive records, let alone a final determination. According to FOIAonline, the current estimated date of completion for the CoA Institute request is “August 30, 2016.” Ex. 7.

COUNT 1

Violation of the FOIA: Failure to Comply with Statutory Deadlines

21. CoA Institute repeats paragraphs 1 through 20.

22. The FOIA requires an agency to respond to a record request within twenty (20) business days or, in “unusual circumstances,” within thirty (30) business days. 5 U.S.C. §§ 552(a)(6)(A) (B). If an agency requires additional time, it must provide the requester “an

opportunity to arrange . . . an alternative time frame for processing the request[.]” *Id.*

§ 552(a)(6)(B)(ii).

23. More than thirty (30) business days have passed since NOAA received CoA Institute’s FOIA request on July 19, 2016.

24. NOAA has failed to issue a final determination on and promptly produce all records responsive to CoA Institute’s FOIA request within the applicable statutory time limits.

25. When attempting to cite “unusual circumstances,” NOAA failed to comply with the FOIA in that it never “arrange[d] . . . an alternative time frame” for responding to CoA Institute’s request, failed to issue an estimated date of completion, and did not invite CoA Institute to contact NOAA for the purposes of negotiating an “alternative” response date.

26. CoA Institute has fully exhausted its administrative remedies under 5 U.S.C. § 552(a)(6)(C).

RELIEF REQUESTED

WHEREFORE, CoA Institute respectfully requests and prays that this Court:

- a. Order NOAA to process the July 13, 2016 FOIA request and to make a final determination within twenty (20) business days of the date of the Order;
- b. Order NOAA to produce all responsive records promptly after issuing its final determination;
- c. Order NOAA to issue a *Vaughn* index accompanying the records produced and explaining each redaction or withholding, if applicable;¹

¹ See generally *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973) (requiring an agency to prepare an index correlating each withheld document, or portion thereof, with a specific FOIA exemption and nondisclosure justification).

d. Award CoA Institute its costs and reasonable attorney fees incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and

e. Grant such other relief as the Court may deem just and proper.

Dated: November 1, 2016

Respectfully submitted,

/s/ Ryan P. Mulvey

Ryan P. Mulvey

D.C. Bar No. 1024362

Eric R. Bolinder

D.C. Bar No. 1028335

CAUSE OF ACTION INSTITUTE

1875 Eye Street, N.W., Suite 800

Washington, D.C. 20006

Telephone: (202) 499-4232

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ryan.mulvey@causeofaction.org

eric.bolinder@causeofaction.org

Counsel for Plaintiff

EXHIBIT

1



July 13, 2016

VIA CERTIFIED MAIL AND E-MAIL

National Oceanic and Atmospheric Administration
Public Reference Facility (SOU1000)
1315 East-West Highway (SSMC3)
Room 9719
Silver Spring, Maryland 20910
FOIA@noaa.gov

Re: Freedom of Information Act Request

Dear FOIA Officer:

I write on behalf of Cause of Action Institute (“CoA Institute”), a nonprofit strategic oversight group committed to ensuring that government decision-making is open, honest, and fair.¹ In carrying out its mission, CoA Institute uses various investigative and legal tools to educate the public about the importance of government transparency and accountability. Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), CoA Institute hereby requests access to records maintained by the National Oceanic and Atmospheric Administration (“NOAA”).

CoA Institute is investigating recent appointments to the New England Fishery Management Council, a regulatory body created by the Magnuson-Stevens Fishery Conservation and Management Act. *See* 16 U.S.C. § 1852. Voting members of the Council are appointed to staggered three-year terms by the Secretary of Commerce from lists of candidates submitted by the governors of States within the Council’s jurisdiction. *Id.* § 1852(b). To aid in its investigation, CoA Institute requests:

All documents related to the appointment or reappointment of members of the New England Fishery Management Council from November 1, 2015 to the present. This request includes all communications, both inside the government and with outside parties, including .gov e-mail, personal e-mail, text messaging, and any other methods of communication. This request specifically includes communications to or from the personal and official e-mail accounts of the following persons and entities:

¹ *See* CAUSE OF ACTION INSTITUTE, www.causeofaction.org.

1. The Office of the Secretary of Commerce
2. The Office of Dr. Kathryn Sullivan, Administrator of NOAA and Under Secretary of Commerce for Oceans and Atmosphere
3. Lois J. Schiffer, NOAA General Counsel
4. Eileen Sobeck, Assistant Administrator for Fisheries
5. Samuel D. Rauch III, Deputy Assistant Administrator for Regulatory Programs
6. Dr. Alan D. Risenhoover, Director, Office of Sustainable Fisheries
7. John Bullard, Northeast Regional Administrator
8. Michael Pentony, Assistant Regional Administrator for Sustainable Fisheries
9. Dr. William A. Karp, Science and Research Director, Northeast Fisheries Science Center

Request for a Public Interest Fee Waiver

CoA Institute requests a waiver of any and all applicable fees.² FOIA and applicable regulations provide that agencies shall furnish requested records without or at reduced charge if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”³ In this case, the requested records will shed light on “operations or activities of the government,” including potential abuses in determining the membership of the New England Council. Disclosure is likely to “contribute significantly” to public understanding of these matters because NOAA’s internal records and third-party communications on the subject have not been made publicly available. CoA Institute is interested in educating the public about NOAA’s decision-making, and the requested records are likely to contribute to that effort and attract public interest.

CoA Institute has both the intent and ability to make the results of this request available to a reasonably broad public audience through various media. The CoA Institute staff has significant experience and expertise in government oversight, investigative reporting, and federal public interest litigation. These professionals will analyze the information responsive to this request, use their editorial skills to turn raw materials into a distinct work, and share the resulting analysis with the public, whether through CoA Institute’s regularly published online newsletter, memoranda, reports, or press releases. Further, CoA Institute, a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code, has no commercial interest in making this request.

Request To Be Classified as a Representative of the News Media

For fee status purposes, CoA Institute also qualifies as a “representative of the news media” under FOIA.⁴ As the D.C. Circuit recently held, the “representative of the news media” test is properly focused on the requestor, not the specific FOIA request at issue.⁵ CoA Institute satisfies this test because it gathers information of potential interest to a segment of the public,

² 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 15 C.F.R. § 4.11 (a).

³ 5 U.S.C. § 552(a)(4)(A)(iii); *see Cause of Action v. Fed. Trade Comm’n*, 799 F.3d 1108, 1115-19 (D.C. Cir. 2015) (discussing proper application of public-interest fee waiver test).

⁴ 5 U.S.C. § 552(a)(4)(A)(ii)(II); 15 C.F.R. § 4.11(b)(6).

⁵ *See Cause of Action*, 799 F.3d at 1121.

National Oceanic and Atmospheric Administration

July 13, 2016

Page 3

uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience.⁶ Although it is not required by the statute, CoA Institute gathers the news it regularly publishes from a variety of sources, including FOIA requests, whistleblowers/insiders, and scholarly works. CoA Institute does not merely make raw information available to the public, but rather distributes distinct work products, including articles, blog posts, investigative reports, newsletters, and congressional testimony and statements for the record.⁷ These distinct works are distributed to the public through various media, including CoA Institute's website, Twitter, and Facebook. CoA Institute also provides news updates to subscribers via e-mail.

The statutory definition of a "representative of the news media" contemplates that organizations such as CoA Institute, which electronically disseminate information and publications via "alternative media[,] shall be considered to be news-media entities."⁸ In light of the foregoing, numerous federal agencies have appropriately recognized CoA Institute's news media status in connection with its FOIA requests.⁹

⁶ Cause of Action notes that the agency's definition of "representative of the news media" (15 C.F.R. § 4.11(b)(6)) is in conflict with the statutory definition and controlling case law. The agency has improperly retained the outdated "organized and operated" standard that Congress abrogated when it provided a statutory definition in the OPEN Government Act of 2007. *Id.* at 1125 ("Congress . . . omitted the 'organized and operated' language when it enacted the statutory definition in 2007. . . . [Therefore,] there is no basis for adding an 'organized and operated' requirement to the statutory definition."). Under either definition, Cause of Action qualifies as a representative of the news media.

⁷ See, e.g., *Cause of Action Testifies Before Congress on Questionable White House Detail Program*, CAUSE OF ACTION (May 19, 2015), available at <http://goo.gl/Byditl>; *CAUSE OF ACTION, 2015 GRADING THE GOVERNMENT REPORT CARD* (Mar. 16, 2015), available at <http://goo.gl/MqObwV>; *Cause of Action Launches Online Resource: ExecutiveBranchEarmarks.com*, CAUSE OF ACTION (Sept. 8, 2014), available at <http://goo.gl/935qAi>; *CAUSE OF ACTION, GRADING THE GOVERNMENT: HOW THE WHITE HOUSE TARGETS DOCUMENT REQUESTERS* (Mar. 18, 2014), available at <http://goo.gl/BiaEaH>; *CAUSE OF ACTION, GREENTECH AUTOMOTIVE: A VENTURE CAPITALIZED BY CRONYISM* (Sept. 23, 2013), available at <http://goo.gl/N0xSvs>; *CAUSE OF ACTION, POLITICAL PROFITEERING: HOW FOREST CITY ENTERPRISES MAKES PRIVATE PROFITS AT THE EXPENSE OF AMERICAN TAXPAYERS PART I* (Aug. 2, 2013), available at <http://goo.gl/GpP1wR>.

⁸ 5 U.S.C. § 552(a)(4)(A)(ii)(II).

⁹ See, e.g., FOIA Request CFPB-2016-222-F, Consumer Fin. Prot. Bureau (Apr. 20, 2016); FOIA Request CFPB-2016-207-F, Consumer Fin. Prot. Bureau (Apr. 14, 2016); FOIA Request 796939, Dep't of Labor (Mar. 7, 2016); FOIA Request 2015-HQFO-00691, Dep't of Homeland Sec. (Sept. 22, 2015); FOIA Request F-2015-12930, Dept. of State (Sept. 2, 2015); FOIA Request 14-401-F, Dep't of Educ. (Aug. 13, 2015); FOIA Request HQ-2015-01689-F, Dep't of Energy (Aug. 7, 2015); FOIA Request 2015-OSEC-04996-F, Dep't of Agric. (Aug. 6, 2015); FOIA Request OS-2015-00419, Dep't of Interior (Aug. 3, 2015); FOIA Request 780831, Dep't of Labor (Jul 23, 2015); FOIA Request 15-05002, Sec. & Exch. Comm'n (July 23, 2015); FOIA Request 145-FOI-13785, Dep't of Justice (Jun. 16, 2015); FOIA Request 15-00326-F, Dep't of Educ. (Apr. 08, 2015); FOIA Request 2015-26, Fed. Energy Regulatory Comm'n (Feb. 13, 2015); FOIA Request HQ-2015-00248, Dep't of Energy (Nat'l Headquarters) (Dec. 15, 2014); FOIA Request F-2015-106, Fed. Comm'n Comm'n (Dec. 12, 2014); FOIA Request HQ-2015-00245-F, Dep't of Energy (Dec. 4, 2014); FOIA Request F-2014-21360, Dep't of State, (Dec. 3, 2014); FOIA Request LR-2015-0115, Nat'l Labor Relations Bd. (Dec. 1, 2014); FOIA Request 201500009F, Exp.-Imp. Bank (Nov. 21, 2014); FOIA Request 2015-OSEC-00771-F, Dep't of Agric. (OCIO) (Nov. 21, 2014); FOIA Request OS-2015-00068, Dep't of Interior (Office of Sec'y) (Nov. 20, 2014); FOIA Request CFPB-2015-049-F, Consumer Fin. Prot. Bureau (Nov. 19, 2014); FOIA Request GO-14-307, Dep't of Energy (Nat'l Renewable Energy Lab.) (Aug. 28, 2014); FOIA Request HQ-2014-01580-F, Dep't of Energy (Nat'l Headquarters) (Aug. 14, 2014); FOIA Request LR-20140441, Nat'l Labor Relations Bd. (June 4, 2014); FOIA Request 14-01095, Sec. & Exch. Comm'n (May 7, 2014); FOIA Request 2014-4QFO-00236, Dep't of Homeland Sec. (Jan. 8, 2014); FOIA Request DOC-OS-2014-000304, Dep't of Commerce (Dec. 30, 2013); FOIA Request 14F-036, Health Res. & Serv. Admin. (Dec. 6, 2013);

National Oceanic and Atmospheric Administration
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CoA Institute has no commercial interest in the requested documents. CoA Institute, as a nonprofit organization, did not receive financial compensation in submitting this request, and it will not receive financial compensation from the intended use of the requested records. CoA Institute submits this requests on its own behalf and in pursuit of its government accountability mission, not on behalf of any other party, including any CoA Institute client. CoA Institute primarily intends to use the requested records for investigative and educational purposes.

CoA Institute represents the plaintiffs in *Goethel v. Pritzker*, No. 15-497 (D.N.H.), which involves various legal challenges to programs enacted by the New England Council. In addition, Ellen Goethel, the wife of plaintiff David Goethel, is now ended her term as a member of the New England Council. Participation in litigation, however, does not establish a commercial interest in requested documents,¹⁰ and as set forth above, CoA Institute is the relevant requester — not the *Goethel* plaintiffs. CoA Institute has ethical obligations to its clients that may require it to use the requested records in litigation, but that is not the primary purpose of the requests, which are instead sought for CoA Institute's investigative efforts and educational mission rather than for any party's personal use or commercial gain.¹¹ At any rate, the parties in *Goethel* case have completed summary judgment briefing based on the certified administrative record produced by the defendant agencies, and it is unlikely that the parties will seek to introduce additional information.

Record Preservation Requirement

CoA Institute requests that the disclosure officer responsible for the processing of this request issue an immediate hold on all records responsive, or potentially responsive, to this request, so as to prevent their disposal until such time as a final determination has been issued on CoA Institute's request and any administrative remedies for appeal have been exhausted. It is unlawful for BOEM to destroy or dispose of any record subject to a FOIA request.¹²

Record Production and Contact Information

In an effort to facilitate document review, please provide the responsive documents in electronic form in lieu of a paper production. If a certain portion of responsive records can be

FOIA Request 2013-073, Dep't of Homeland Sec. (Apr. 5, 2013); FOIA Request 2012-RMA-02563F, Dep't of Agric. (May 3, 2012); FOIA Request 2012-00270, Dep't of Interior (Feb. 17, 2012); FOIA Request 12-00455-F, Dep't of Educ. (Jan. 20, 2012).

¹⁰ Cf. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987); *Muffoletto v. Sessions*, 760 F. Supp. 268, 277–78 (E.D.N.Y. 1991).

¹¹ See Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 Fed. Reg. 10,012, 10,018 (Mar. 27, 1987).

¹² See 15 C.F.R. § 4.3(d) (“Components shall not dispose of records while they are the subject of a pending request, appeal, or lawsuit under the FOIA.”); see also 36 C.F.R. § 1230.3(b) (“Unlawful or accidental destruction (also called unauthorized destruction) means disposal of an unscheduled or permanent record; disposal prior to the end of the NARA-approved retention period of a temporary record . . . ; and disposal of a record subject to a FOIA request, litigation hold, or any other hold requirement to retain the records.”); *Chambers v. Dep't of the Interior*, 568 F.3d 998, 1004–05 (D.C. Cir. 2009) (“[A]n agency is not shielded from liability if it intentionally transfers or destroys a document after it has been requested under the FOIA or the Privacy Act.”); *Judicial Watch, Inc. v. Dep't of Commerce*, 34 F. Supp. 2d 28, 41–44 (D.D.C. 1998).

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produced more readily, CoA Institute requests that those records be produced first and the remaining records be produced on a rolling basis as circumstances permit.

If you have any questions about this request, please contact me by telephone at (202) 499-4232 or by e-mail at stephen.schwartz@causeofaction.org. Thank you for your attention to this matter.

Sincerely,


STEPHEN S. SCHWARTZ
COUNSEL

EXHIBIT

2



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
55 Great Republic Drive
Gloucester, MA 01930-2276

July 29, 2016

Stephen S. Schwartz
Cause of Action Institute
1875 Eye St. N.W.,
Suite 800
Washington, DC 20006

Re: FOIA Request DOC-NOAA-2016-001453

Dear Mr. Schwartz:

This letter acknowledges receipt of your Freedom of Information Act (FOIA) request.

Your request was entered into FOIAonline, our request tracking database, on July 19, 2016. Your request tracking number is DOC-NOAA-2016-001453.

You requested:

"All documents related to the appointment or reappointment of members of the New England Fishery Management Council from November 1, 2015 to the present. This request includes all communications, both inside the government and with outside parties, including .gov e-mail, personal e-mail, text messaging, and any other methods of communication. This request specifically includes communications to or from the personal and official e-mail accounts of the following persons and entities:

- 1. The Office of the Secretary of Commerce*
- 2. The Office of Dr. Kathryn Sullivan, Administrator of NOAA and Under Secretary of Commerce for Oceans and Atmosphere*
- 3. Lois J. Schiffer, NOAA General Counsel*
- 4. Eileen Sobeck, Assistant Administrator for Fisheries*
- 5. Samuel D. Rauch III, Deputy Assistant Administrator for Regulatory Programs*
- 6. Dr. Alan D. Risenhoover, Director, Office of Sustainable Fisheries*
- 7. John Bullard, Northeast Regional Administrator*
- 8. Michael Pentony, Assistant Regional Administrator for Sustainable Fisheries*
- 9. Dr. William A. Karp, Science and Research Director, Northeast Fisheries Science Center"*

15 C.F.R. 4.6(d) (2) allows an agency to extend the FOIA response deadline by ten business days for unusual circumstances. Due to *the need to search for and collect the requested records from field facilities or other establishments separate from the office processing the request*; we are choosing to invoke this 10 day extension and anticipate completing your request by August 30, 2016.

Please contact us if you are interested in narrowing the scope of your request. Narrowing your request will help expedite its processing.



If you have questions regarding your request, please contact Amanda Patterson at Amanda.Patterson@NOAA.gov or call (978) 281-9210.

Sincerely,

Amanda J. Patterson, MLS
FOIA Coordinator, Greater Atlantic Region

EXHIBIT

3



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of the Chief Information Officer
High Performance Computing and Communications

Via FOIAonline

August 1, 2016

Attn: Stephen S. Schwartz
Cause of Action Institute
1875 Eye St. NW, Suite 800
Washington, DC 20006

Re: FOIA Request No. DOC-NOAA-2016-001453

Dear Mr. Schwartz:

This letter is in response to your Freedom of Information Act (FOIA) request entered into FOIAonline on July 14, 2016, seeking the following records:

All documents related to the appointment or reappointment of members of the New England Fishery Management Council from November 1, 2015 to the present. This request includes all communications, both inside the government and with outside parties, including .gov e-mail, personal e-mail, text messaging, and any other methods of communication. This request specifically includes communications to or from the personal and official e-mail accounts of the following persons and entities: 1. The Office of the Secretary of Commerce 2. The Office of Dr. Kathryn Sullivan, Administrator of NOAA and Under Secretary of Commerce for Oceans and Atmosphere 3. Lois J. Schiffer, NOAA General Counsel 4. Eileen Sobeck, Assistant Administrator for Fisheries 5. Samuel D. Rauch III, Deputy Assistant Administrator for Regulatory Programs 6. Dr. Alan D. Risenhoover, Director, Office of Sustainable Fisheries 7. John Bullard, Northeast Regional Administrator 8. Michael Pentony, Assistant Regional Administrator for Sustainable Fisheries 9. Dr. William A. Karp, Science and Research Director, Northeast Fisheries Science Center

In order to determine whether your request qualifies for a fee waiver or reduction in fees, pursuant to 5 C.F.R. § 4.11(k) (2010), we must evaluate whether disclosure of the requested information is: 1) in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, and 2) not primarily in the commercial interest of the requester.

In determining whether your request meets the first fee waiver requirement, we considered the following factors.

1) Whether the subject of the requested records concerns the operations of activities of the

Government.

- 2) Whether the disclosure is “Likely to contribute” to an understanding of Government operations or activities.
- 3) Whether disclosure of the requested information will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester.
- 4) Where the disclosure is likely to contribute “significantly” to public understanding of Government operations or activities.

In determining whether your request meets the second fee waiver requirement, we considered the following factors:

- 1) Whether the requester has a commercial interest that would be furthered by the requested disclosure.
- 2) Whether any identified commercial interests of the requester is sufficiently great, in comparison with the public interest in disclosure that disclosures are “primarily in the commercial interest of the requester.”

Based on the above criteria we have determined that you adequately addressed the statutory requirements for a waiver of fees in your July 14, 2016 submission. You have been granted a full waiver for the records requested. This supersedes the partial grant of your prior request for a waiver of fees. Please be advised however, granting this waiver does not automatically apply to future requests submitted by you or your organization. Requests for fee waivers are determined on a case-by-case basis for the records requested under statutory fee waiver requirements.

If you have any questions concerning the response to your fee waiver request, please call (301) 628-5658.

Sincerely,

/S/

Mr. Mark Graff
NOAA FOIA Officer

EXHIBIT

4



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
55 Great Republic Drive
Gloucester, MA 01930-2276

Stephen S. Schwartz
Cause of Action Institute
1875 Eye St. N.W.,
Suite 800
Washington, DC 20006

Aug 30, 2016

Re: FOIA Request DOC-NOAA-2016-001453

Dear Mr. Schwartz:

This letter is in response to your Freedom of Information Act (FOIA) request which was received by our office on, July 19, 2016 in which you requested:

"All documents related to the appointment or reappointment of members of the New England Fishery Management Council from November 1, 2015 to the present. This request includes all communications, both inside the government and with outside parties, including .gov e-mail, personal e-mail, text messaging, and any other methods of communication. This request specifically includes communications to or from the personal and official e-mail accounts of the following persons and entities:

- 1. The Office of the Secretary of Commerce*
- 2. The Office of Dr. Kathryn Sullivan, Administrator of NOAA and Under Secretary of Commerce for Oceans and Atmosphere*
- 3. Lois J. Schiffer, NOAA General Counsel*
- 4. Eileen Sobeck, Assistant Administrator for Fisheries*
- 5. Samuel D. Rauch III, Deputy Assistant Administrator for Regulatory Programs*
- 6. Dr. Alan D. Risenhoover, Director, Office of Sustainable Fisheries*
- 7. John Bullard, Northeast Regional Administrator*
- 8. Michael Pentony, Assistant Regional Administrator for Sustainable Fisheries*
- 9. Dr. William A. Karp, Science and Research Director, Northeast Fisheries Science Center"*

This is interim release number one. We have located 19 documents responsive to your request. You are granted full access to those records, and a copy is enclosed.

Although we do not consider this to be a denial of your request, you have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this release must be received within 90 calendar days of the date of this response letter at the following address:

Assistant General Counsel for Litigation, Employment, and Oversight
U.S. Department of Commerce
Office of General Counsel
Room 5875
14th and Constitution Avenue, N.W.
Washington, D.C. 20230



An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to 202-482-2552, or by FOIAonline at <https://foiaonline.regulations.gov/foia/action/public/home#>.

For your appeal to be complete, it must include the following items:

- a copy of the original request,
- our response to your request,
- a statement explaining why the withheld records should be made available, and why the denial of the records was in error.
- “Freedom of Information Act Appeal” must appear on your appeal letter. It should also be written on your envelope, e-mail subject line, or your fax cover sheet.

FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

FOIA grants requesters the right to challenge an agency's final action in federal court. Before doing so, an adjudication of an administrative appeal is ordinarily required.

The Office of Government Information Services (OGIS), an office created within the National Archives and Records Administration, offers free mediation services to FOIA requesters. They may be contacted in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001

Email: ogis@nara.gov

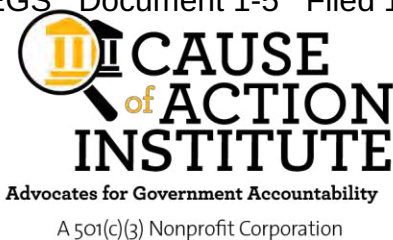
Phone: 301-837-1996
Fax: 301-837-0348
Toll-free: 1-877-684-6448

If you have questions regarding this correspondence please contact Amanda Patterson at Amanda.Patterson@NOAA.gov or call (978) 281-9210, or the NOAA FOIA Public Liaison Robert Swisher at (301) 628-5755.

Sincerely,

Amanda J. Patterson, MLS
FOIA Coordinator, Greater Atlantic Region

EXHIBIT
5



September 26, 2016

VIA ELECTRONIC MAIL

Assistant General Counsel for Litigation, Employment, and Oversight
ATTN: Freedom of Information Act Appeal
U.S. Department of Commerce
14th St. & Constitution Ave., N.W., Rm. 5875
Washington, D.C. 20230
E-mail: FOIAAppeals@doc.gov

Re: Freedom of Information Act Appeal, Request No. 2016-001453

Dear Appeals Officer:

This is a timely administrative appeal from the interim response of the National Oceanic and Atmospheric Administration (“NOAA”) to the July 13, 2016 Cause of Action Institute (“CoA Institute”) Freedom of Information Act (“FOIA”) request no. 2016-001453. Specifically, CoA Institute appeals the redaction of portions of responsive records as “non-responsive.”

Procedural Background

On July 13, 2016, CoA Institute submitted a FOIA request to NOAA.¹ The request sought various records concerning the appointment or reappointment of members to the New England Fishery Management Council. CoA Institute also requested a public interest fee waiver and treatment as a representative of the news media for fee purposes.²

NOAA acknowledged receipt of the CoA Institute FOIA request on July 29, 2016, assigned it tracking number 2016-001453, and invoked “unusual circumstances” to extend its response deadline by ten (10) business days.³ On August 15, 2016, NOAA issued an initial determination and release of responsive records, indicating that it had “located 19 documents,” to which CoA Institute was “granted full access.”⁴ In fact, however, three (3) documents, totaling six (6) pages, contained partial redactions marked as “non-responsive.” CoA Institute files this timely appeal from these “non-responsive” redactions.

Argument

NOAA must reprocess these three records with portions it redacted as “non-responsive.” As the D.C. Circuit recently decided in *American Immigration Lawyers Association v. Executive Office for Immigration Review*, there is “no statutory basis for redacting ostensibly non-responsive information from a record deemed responsive. . . . [O]nce the government concludes

¹ Letter from CoA Inst. to NOAA (July 13, 2016) (attached as Exhibit 1).

² *Id.*

³ Letter from Amanda J. Patterson, NOAA, to CoA Inst. (July 29, 2016) (attached as Exhibit 2).

⁴ Letter from Amanda J. Patterson, NOAA, to CoA Inst. (Aug. 15, 2016) (attached as Exhibit 3). To date, NOAA has yet to issue any determination on the CoA Institute fee category and public interest fee waiver requests.

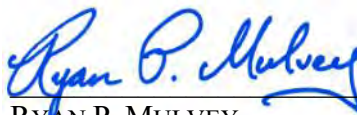
that a particular record is responsive to a disclosure request, the sole basis on which it may withhold particular information within that record is if the information falls within one of the statutory exemptions[.]”⁵ The records at issue include an e-mail from Michael Pentony, Assistant Regional Administrator for Sustainable Fisheries at the Greater Atlantic Regional Fisheries Office⁶; an e-mail from Peter Christopher, Team Supervisor in the Sustainable Fisheries Division of the Greater Atlantic Regional Fisheries Office⁷; and a list of Congressional endorsements for appointments to the New England Fishery Management Council.⁸

The D.C. Circuit rejected the use of “non-responsive” as an effective tenth exemption because the “sole FOIA provision enabling the government to withhold responsive records is section 552(b), which sets forth the nine statutory exemptions.”⁹ The FOIA “does not provide for withholding responsive but non-exempt records or for redacting nonexempt information within responsive records.”¹⁰ When NOAA “identifies a record it deems responsive to a FOIA request, the statute compels disclosure of the responsive record *i.e.*, as a unit except insofar as the agency may redact information falling within a statutory exemption.”¹¹ Such an approach was not taken with respect to the records at issue.¹² NOAA must review and release all non-exempt material contained in these documents.

Conclusion

The NOAA response to the CoA Institute FOIA request is inadequate. The agency has misunderstood the availability of “non-responsive” as a designation to withhold portions of records. NOAA should re-process the three records at issue and refrain from redacting material as “non-responsive” in any future productions.

Thank you for your attention to this matter. If you have any questions about this appeal or the underlying request, please contact me by telephone at (202) 499-4232 or by e-mail at ryan.mulvey@causeofaction.org.



RYAN P. MULVEY
COUNSEL

cc: Amanda J. Patterson, FOIA Coordinator, NMFS, Greater Atlantic Region

⁵ *Am. Immigration Lawyers Ass’n v. Exec. Office for Immigration Review*, No. 15-5201, 2016 WL 4056405, at *1 (D.C. Cir. July 29, 2016), slip op. available at <http://coainst.org/2aZCRgT>.

⁶ E-mail from Michael Pentony, Greater Atl. Reg’l Fisheries Office, to Michael Ruccio, *et al.* (Apr. 8, 2016) (attached as Exhibit 4).

⁷ E-mail from Peter Christopher, Greater Atl. Reg’l Fisheries Office, to Michael Pentony, Greater Atl. Reg’l Fisheries Office (Apr. 11, 2016) (attached as Exhibit 5).

⁸ 2016 Regional Fishery Management Councils Congressional Endorsements (attached as Exhibit 6).

⁹ *Am. Immigration Lawyers Ass’n*, 2016 WL 4056405 at *1.

¹⁰ *Id.* at 8.

¹¹ *Id.*

¹² See Exs. 4–6, *supra* notes 6–8.

EXHIBIT

1



July 13, 2016

VIA CERTIFIED MAIL AND E-MAIL

National Oceanic and Atmospheric Administration
Public Reference Facility (SOU1000)
1315 East-West Highway (SSMC3)
Room 9719
Silver Spring, Maryland 20910
FOIA@noaa.gov

Re: Freedom of Information Act Request

Dear FOIA Officer:

I write on behalf of Cause of Action Institute (“CoA Institute”), a nonprofit strategic oversight group committed to ensuring that government decision-making is open, honest, and fair.¹ In carrying out its mission, CoA Institute uses various investigative and legal tools to educate the public about the importance of government transparency and accountability. Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), CoA Institute hereby requests access to records maintained by the National Oceanic and Atmospheric Administration (“NOAA”).

CoA Institute is investigating recent appointments to the New England Fishery Management Council, a regulatory body created by the Magnuson-Stevens Fishery Conservation and Management Act. *See* 16 U.S.C. § 1852. Voting members of the Council are appointed to staggered three-year terms by the Secretary of Commerce from lists of candidates submitted by the governors of States within the Council’s jurisdiction. *Id.* § 1852(b). To aid in its investigation, CoA Institute requests:

All documents related to the appointment or reappointment of members of the New England Fishery Management Council from November 1, 2015 to the present. This request includes all communications, both inside the government and with outside parties, including .gov e-mail, personal e-mail, text messaging, and any other methods of communication. This request specifically includes communications to or from the personal and official e-mail accounts of the following persons and entities:

¹ *See* CAUSE OF ACTION INSTITUTE, www.causeofaction.org.

1. The Office of the Secretary of Commerce
2. The Office of Dr. Kathryn Sullivan, Administrator of NOAA and Under Secretary of Commerce for Oceans and Atmosphere
3. Lois J. Schiffer, NOAA General Counsel
4. Eileen Sobeck, Assistant Administrator for Fisheries
5. Samuel D. Rauch III, Deputy Assistant Administrator for Regulatory Programs
6. Dr. Alan D. Risenhoover, Director, Office of Sustainable Fisheries
7. John Bullard, Northeast Regional Administrator
8. Michael Pentony, Assistant Regional Administrator for Sustainable Fisheries
9. Dr. William A. Karp, Science and Research Director, Northeast Fisheries Science Center

Request for a Public Interest Fee Waiver

CoA Institute requests a waiver of any and all applicable fees.² FOIA and applicable regulations provide that agencies shall furnish requested records without or at reduced charge if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”³ In this case, the requested records will shed light on “operations or activities of the government,” including potential abuses in determining the membership of the New England Council. Disclosure is likely to “contribute significantly” to public understanding of these matters because NOAA’s internal records and third-party communications on the subject have not been made publicly available. CoA Institute is interested in educating the public about NOAA’s decision-making, and the requested records are likely to contribute to that effort and attract public interest.

CoA Institute has both the intent and ability to make the results of this request available to a reasonably broad public audience through various media. The CoA Institute staff has significant experience and expertise in government oversight, investigative reporting, and federal public interest litigation. These professionals will analyze the information responsive to this request, use their editorial skills to turn raw materials into a distinct work, and share the resulting analysis with the public, whether through CoA Institute’s regularly published online newsletter, memoranda, reports, or press releases. Further, CoA Institute, a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code, has no commercial interest in making this request.

Request To Be Classified as a Representative of the News Media

For fee status purposes, CoA Institute also qualifies as a “representative of the news media” under FOIA.⁴ As the D.C. Circuit recently held, the “representative of the news media” test is properly focused on the requestor, not the specific FOIA request at issue.⁵ CoA Institute satisfies this test because it gathers information of potential interest to a segment of the public,

² 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 15 C.F.R. § 4.11 (a).

³ 5 U.S.C. § 552(a)(4)(A)(iii); *see Cause of Action v. Fed. Trade Comm’n*, 799 F.3d 1108, 1115-19 (D.C. Cir. 2015) (discussing proper application of public-interest fee waiver test).

⁴ 5 U.S.C. § 552(a)(4)(A)(ii)(II); 15 C.F.R. § 4.11(b)(6).

⁵ *See Cause of Action*, 799 F.3d at 1121.

National Oceanic and Atmospheric Administration

July 13, 2016

Page 3

uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience.⁶ Although it is not required by the statute, CoA Institute gathers the news it regularly publishes from a variety of sources, including FOIA requests, whistleblowers/insiders, and scholarly works. CoA Institute does not merely make raw information available to the public, but rather distributes distinct work products, including articles, blog posts, investigative reports, newsletters, and congressional testimony and statements for the record.⁷ These distinct works are distributed to the public through various media, including CoA Institute's website, Twitter, and Facebook. CoA Institute also provides news updates to subscribers via e-mail.

The statutory definition of a "representative of the news media" contemplates that organizations such as CoA Institute, which electronically disseminate information and publications via "alternative media[,] shall be considered to be news-media entities."⁸ In light of the foregoing, numerous federal agencies have appropriately recognized CoA Institute's news media status in connection with its FOIA requests.⁹

⁶ Cause of Action notes that the agency's definition of "representative of the news media" (15 C.F.R. § 4.11(b)(6)) is in conflict with the statutory definition and controlling case law. The agency has improperly retained the outdated "organized and operated" standard that Congress abrogated when it provided a statutory definition in the OPEN Government Act of 2007. *Id.* at 1125 ("Congress . . . omitted the 'organized and operated' language when it enacted the statutory definition in 2007. . . . [Therefore,] there is no basis for adding an 'organized and operated' requirement to the statutory definition."). Under either definition, Cause of Action qualifies as a representative of the news media.

⁷ See, e.g., *Cause of Action Testifies Before Congress on Questionable White House Detail Program*, CAUSE OF ACTION (May 19, 2015), available at <http://goo.gl/Byditl>; *CAUSE OF ACTION, 2015 GRADING THE GOVERNMENT REPORT CARD* (Mar. 16, 2015), available at <http://goo.gl/MqObwV>; *Cause of Action Launches Online Resource: ExecutiveBranchEarmarks.com*, CAUSE OF ACTION (Sept. 8, 2014), available at <http://goo.gl/935qAi>; *CAUSE OF ACTION, GRADING THE GOVERNMENT: HOW THE WHITE HOUSE TARGETS DOCUMENT REQUESTERS* (Mar. 18, 2014), available at <http://goo.gl/BiaEaH>; *CAUSE OF ACTION, GREENTECH AUTOMOTIVE: A VENTURE CAPITALIZED BY CRONYISM* (Sept. 23, 2013), available at <http://goo.gl/N0xSvs>; *CAUSE OF ACTION, POLITICAL PROFITEERING: HOW FOREST CITY ENTERPRISES MAKES PRIVATE PROFITS AT THE EXPENSE OF AMERICAN TAXPAYERS PART I* (Aug. 2, 2013), available at <http://goo.gl/GpP1wR>.

⁸ 5 U.S.C. § 552(a)(4)(A)(ii)(II).

⁹ See, e.g., FOIA Request CFPB-2016-222-F, Consumer Fin. Prot. Bureau (Apr. 20, 2016); FOIA Request CFPB-2016-207-F, Consumer Fin. Prot. Bureau (Apr. 14, 2016); FOIA Request 796939, Dep't of Labor (Mar. 7, 2016); FOIA Request 2015-HQFO-00691, Dep't of Homeland Sec. (Sept. 22, 2015); FOIA Request F-2015-12930, Dept. of State (Sept. 2, 2015); FOIA Request 14-401-F, Dep't of Educ. (Aug. 13, 2015); FOIA Request HQ-2015-01689-F, Dep't of Energy (Aug. 7, 2015); FOIA Request 2015-OSEC-04996-F, Dep't of Agric. (Aug. 6, 2015); FOIA Request OS-2015-00419, Dep't of Interior (Aug. 3, 2015); FOIA Request 780831, Dep't of Labor (Jul 23, 2015); FOIA Request 15-05002, Sec. & Exch. Comm'n (July 23, 2015); FOIA Request 145-FOI-13785, Dep't of Justice (Jun. 16, 2015); FOIA Request 15-00326-F, Dep't of Educ. (Apr. 08, 2015); FOIA Request 2015-26, Fed. Energy Regulatory Comm'n (Feb. 13, 2015); FOIA Request HQ-2015-00248, Dep't of Energy (Nat'l Headquarters) (Dec. 15, 2014); FOIA Request F-2015-106, Fed. Comm'n Comm'n (Dec. 12, 2014); FOIA Request HQ-2015-00245-F, Dep't of Energy (Dec. 4, 2014); FOIA Request F-2014-21360, Dep't of State, (Dec. 3, 2014); FOIA Request LR-2015-0115, Nat'l Labor Relations Bd. (Dec. 1, 2014); FOIA Request 201500009F, Exp.-Imp. Bank (Nov. 21, 2014); FOIA Request 2015-OSEC-00771-F, Dep't of Agric. (OCIO) (Nov. 21, 2014); FOIA Request OS-2015-00068, Dep't of Interior (Office of Sec'y) (Nov. 20, 2014); FOIA Request CFPB-2015-049-F, Consumer Fin. Prot. Bureau (Nov. 19, 2014); FOIA Request GO-14-307, Dep't of Energy (Nat'l Renewable Energy Lab.) (Aug. 28, 2014); FOIA Request HQ-2014-01580-F, Dep't of Energy (Nat'l Headquarters) (Aug. 14, 2014); FOIA Request LR-20140441, Nat'l Labor Relations Bd. (June 4, 2014); FOIA Request 14-01095, Sec. & Exch. Comm'n (May 7, 2014); FOIA Request 2014-4QFO-00236, Dep't of Homeland Sec. (Jan. 8, 2014); FOIA Request DOC-OS-2014-000304, Dep't of Commerce (Dec. 30, 2013); FOIA Request 14F-036, Health Res. & Serv. Admin. (Dec. 6, 2013);

National Oceanic and Atmospheric Administration
 July 13, 2016
 Page 4

CoA Institute has no commercial interest in the requested documents. CoA Institute, as a nonprofit organization, did not receive financial compensation in submitting this request, and it will not receive financial compensation from the intended use of the requested records. CoA Institute submits this requests on its own behalf and in pursuit of its government accountability mission, not on behalf of any other party, including any CoA Institute client. CoA Institute primarily intends to use the requested records for investigative and educational purposes.

CoA Institute represents the plaintiffs in *Goethel v. Pritzker*, No. 15-497 (D.N.H.), which involves various legal challenges to programs enacted by the New England Council. In addition, Ellen Goethel, the wife of plaintiff David Goethel, is now ended her term as a member of the New England Council. Participation in litigation, however, does not establish a commercial interest in requested documents,¹⁰ and as set forth above, CoA Institute is the relevant requester — not the *Goethel* plaintiffs. CoA Institute has ethical obligations to its clients that may require it to use the requested records in litigation, but that is not the primary purpose of the requests, which are instead sought for CoA Institute's investigative efforts and educational mission rather than for any party's personal use or commercial gain.¹¹ At any rate, the parties in *Goethel* case have completed summary judgment briefing based on the certified administrative record produced by the defendant agencies, and it is unlikely that the parties will seek to introduce additional information.

Record Preservation Requirement

CoA Institute requests that the disclosure officer responsible for the processing of this request issue an immediate hold on all records responsive, or potentially responsive, to this request, so as to prevent their disposal until such time as a final determination has been issued on CoA Institute's request and any administrative remedies for appeal have been exhausted. It is unlawful for BOEM to destroy or dispose of any record subject to a FOIA request.¹²

Record Production and Contact Information

In an effort to facilitate document review, please provide the responsive documents in electronic form in lieu of a paper production. If a certain portion of responsive records can be

FOIA Request 2013-073, Dep't of Homeland Sec. (Apr. 5, 2013); FOIA Request 2012-RMA-02563F, Dep't of Agric. (May 3, 2012); FOIA Request 2012-00270, Dep't of Interior (Feb. 17, 2012); FOIA Request 12-00455-F, Dep't of Educ. (Jan. 20, 2012).

¹⁰ Cf. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987); *Muffoletto v. Sessions*, 760 F. Supp. 268, 277–78 (E.D.N.Y. 1991).

¹¹ See Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 Fed. Reg. 10,012, 10,018 (Mar. 27, 1987).

¹² See 15 C.F.R. § 4.3(d) (“Components shall not dispose of records while they are the subject of a pending request, appeal, or lawsuit under the FOIA.”); see also 36 C.F.R. § 1230.3(b) (“Unlawful or accidental destruction (also called unauthorized destruction) means disposal of an unscheduled or permanent record; disposal prior to the end of the NARA-approved retention period of a temporary record . . . ; and disposal of a record subject to a FOIA request, litigation hold, or any other hold requirement to retain the records.”); *Chambers v. Dep't of the Interior*, 568 F.3d 998, 1004–05 (D.C. Cir. 2009) (“[A]n agency is not shielded from liability if it intentionally transfers or destroys a document after it has been requested under the FOIA or the Privacy Act.”); *Judicial Watch, Inc. v. Dep't of Commerce*, 34 F. Supp. 2d 28, 41–44 (D.D.C. 1998).

National Oceanic and Atmospheric Administration


July 13, 2016

Page 5

produced more readily, CoA Institute requests that those records be produced first and the remaining records be produced on a rolling basis as circumstances permit.

If you have any questions about this request, please contact me by telephone at (202) 499-4232 or by e-mail at stephen.schwartz@causeofaction.org. Thank you for your attention to this matter.

Sincerely,


STEPHEN S. SCHWARTZ
COUNSEL

25. ...
26. ...
27. ...

28.

EXHIBIT

2



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
55 Great Republic Drive
Gloucester, MA 01930-2276

July 29, 2016

Stephen S. Schwartz
Cause of Action Institute
1875 Eye St. N.W.,
Suite 800
Washington, DC 20006

Re: FOIA Request DOC-NOAA-2016-001453

Dear Mr. Schwartz:

This letter acknowledges receipt of your Freedom of Information Act (FOIA) request.

Your request was entered into FOIAonline, our request tracking database, on July 19, 2016. Your request tracking number is DOC-NOAA-2016-001453.

You requested:

"All documents related to the appointment or reappointment of members of the New England Fishery Management Council from November 1, 2015 to the present. This request includes all communications, both inside the government and with outside parties, including .gov e-mail, personal e-mail, text messaging, and any other methods of communication. This request specifically includes communications to or from the personal and official e-mail accounts of the following persons and entities:

- 1. The Office of the Secretary of Commerce*
- 2. The Office of Dr. Kathryn Sullivan, Administrator of NOAA and Under Secretary of Commerce for Oceans and Atmosphere*
- 3. Lois J. Schiffer, NOAA General Counsel*
- 4. Eileen Sobeck, Assistant Administrator for Fisheries*
- 5. Samuel D. Rauch III, Deputy Assistant Administrator for Regulatory Programs*
- 6. Dr. Alan D. Risenhoover, Director, Office of Sustainable Fisheries*
- 7. John Bullard, Northeast Regional Administrator*
- 8. Michael Pentony, Assistant Regional Administrator for Sustainable Fisheries*
- 9. Dr. William A. Karp, Science and Research Director, Northeast Fisheries Science Center"*

15 C.F.R. 4.6(d) (2) allows an agency to extend the FOIA response deadline by ten business days for unusual circumstances. Due to *the need to search for and collect the requested records from field facilities or other establishments separate from the office processing the request*; we are choosing to invoke this 10 day extension and anticipate completing your request by August 30, 2016.

Please contact us if you are interested in narrowing the scope of your request. Narrowing your request will help expedite its processing.



If you have questions regarding your request, please contact Amanda Patterson at Amanda.Patterson@NOAA.gov or call (978) 281-9210.

Sincerely,

Amanda J. Patterson, MLS
FOIA Coordinator, Greater Atlantic Region

EXHIBIT

3



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
55 Great Republic Drive
Gloucester, MA 01930-2276

Stephen S. Schwartz
Cause of Action Institute
1875 Eye St. N.W.,
Suite 800
Washington, DC 20006

Aug 30, 2016

Re: FOIA Request DOC-NOAA-2016-001453

Dear Mr. Schwartz:

This letter is in response to your Freedom of Information Act (FOIA) request which was received by our office on, July 19, 2016 in which you requested:

"All documents related to the appointment or reappointment of members of the New England Fishery Management Council from November 1, 2015 to the present. This request includes all communications, both inside the government and with outside parties, including .gov e-mail, personal e-mail, text messaging, and any other methods of communication. This request specifically includes communications to or from the personal and official e-mail accounts of the following persons and entities:

- 1. The Office of the Secretary of Commerce*
- 2. The Office of Dr. Kathryn Sullivan, Administrator of NOAA and Under Secretary of Commerce for Oceans and Atmosphere*
- 3. Lois J. Schiffer, NOAA General Counsel*
- 4. Eileen Sobeck, Assistant Administrator for Fisheries*
- 5. Samuel D. Rauch III, Deputy Assistant Administrator for Regulatory Programs*
- 6. Dr. Alan D. Risenhoover, Director, Office of Sustainable Fisheries*
- 7. John Bullard, Northeast Regional Administrator*
- 8. Michael Pentony, Assistant Regional Administrator for Sustainable Fisheries*
- 9. Dr. William A. Karp, Science and Research Director, Northeast Fisheries Science Center"*

This is interim release number one. We have located 19 documents responsive to your request. You are granted full access to those records, and a copy is enclosed.

Although we do not consider this to be a denial of your request, you have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this release must be received within 90 calendar days of the date of this response letter at the following address:

Assistant General Counsel for Litigation, Employment, and Oversight
U.S. Department of Commerce
Office of General Counsel
Room 5875
14th and Constitution Avenue, N.W.
Washington, D.C. 20230



An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to 202-482-2552, or by FOIAonline at <https://foiaonline.regulations.gov/foia/action/public/home#>.

For your appeal to be complete, it must include the following items:

- a copy of the original request,
- our response to your request,
- a statement explaining why the withheld records should be made available, and why the denial of the records was in error.
- “Freedom of Information Act Appeal” must appear on your appeal letter. It should also be written on your envelope, e-mail subject line, or your fax cover sheet.

FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

FOIA grants requesters the right to challenge an agency's final action in federal court. Before doing so, an adjudication of an administrative appeal is ordinarily required.

The Office of Government Information Services (OGIS), an office created within the National Archives and Records Administration, offers free mediation services to FOIA requesters. They may be contacted in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001

Email: ogis@nara.gov

Phone: 301-837-1996
Fax: 301-837-0348
Toll-free: 1-877-684-6448

If you have questions regarding this correspondence please contact Amanda Patterson at Amanda.Patterson@NOAA.gov or call (978) 281-9210, or the NOAA FOIA Public Liaison Robert Swisher at (301) 628-5755.

Sincerely,

Amanda J. Patterson, MLS
FOIA Coordinator, Greater Atlantic Region

EXHIBIT

4

Michael Pentony - NOAA Federal

From: Michael Pentony NOAA Federal
Sent: Friday, April 08, 2016 2:32 PM
To: Michael Ruccio; Moira Kelly; Peter Christopher; Sarah Heil
Subject: CLOSE HOLD Council Nominees

The list of Council nominees is now public, and John and I will be meeting in the coming weeks to discuss the nominees and develop recommendations for Eileen. In prep for that, I'd appreciate any thoughts, insights, experiences you can share about any of the nominees. Here's who we have:

NEFMC Three incumbents' terms are up: Goethel (1st); Sissenwine (1st); and Blount (3rd). Goethel is obligatory NH; the other two are at large. Blount, obviously, is done.

Maine no nominees

New Hampshire Ellen Goethel; Dave Goethel; Mark Godfroy

Massachusetts James "Dan" Martino; Brendan Mitchell; Patrick Paquette; Charles Quinn; and Mike Sissenwine

Rhode Island Rich Bellavance; Zachary Harvey; and David Monti

Connecticut no nominees

Thoughts: I suspect there's no reason Sissenwine wouldn't be reappointed; so maybe don't spend too much time on the MA nominees. I really don't know anything about the RI nominees, so please help there. NH should be interesting. I can't see picking David over Ellen, but it could be very helpful to have some insight on Godfroy.

[Redacted] *Non-responsive*

[Redacted] *Non-responsive*

[Redacted] *Non responsive*

[Redacted] *Non-responsive*

[Redacted] *Non-responsive*

[Redacted] *Non-responsive*

[Redacted] *Non responsive*

[Redacted] *Non responsive*

Non-responsive

While it's very helpful if you have thoughts/insight/etc. on these candidates, it's also helpful to know if you've never heard of them.

Thanks,

Mike

Michael Pentony
Assistant Regional Administrator for Sustainable Fisheries
Greater Atlantic Regional Fisheries Office
55 Great Republic Drive
Gloucester, MA 01930
Phone: 978 281 9283
Fax: 978 281 9135
Web: greateratlantic.fisheries.noaa.gov

EXHIBIT

5

Peter Christopher - NOAA Federal

From: Peter Christopher NOAA Federal
Sent: Monday, April 11, 2016 3:44 PM
To: Michael Pentony NOAA Federal
Cc: Michael Ruccio; Moira Kelly; Sarah Heil
Subject: Re: CLOSE HOLD Council Nominees

Mike,

In this list of nominees, I've only heard of Goethals, Paquette, Quinn, Sissenwine, *non responsive*

Panacek, and *non respon...* so I have no input on RI, *non respon...*

non responsive

Pete

On Fri, Apr 8, 2016 at 2:31 PM, Michael Pentony NOAA Federal <michael.pentony@noaa.gov> wrote:

The list of Council nominees is now public, and John and I will be meeting in the coming weeks to discuss the nominees and develop recommendations for Eileen. In prep for that, I'd appreciate any thoughts, insights, experiences you can share about any of the nominees. Here's who we have:

NEFMC Three incumbents' terms are up: Goethel (1st); Sissenwine (1st); and Blount (3rd). Goethel is obligatory NH; the other two are at large. Blount, obviously, is done.

Maine no nominees

New Hampshire Ellen Goethel; Dave Goethel; Mark Godfroy

Massachusetts James "Dan" Martino; Brendan Mitchell; Patrick Paquette; Charles Quinn; and Mike Sissenwine

Rhode Island Rich Bellavance; Zachary Harvey; and David Monti

Connecticut no nominees

Thoughts: I suspect there's no reason Sissenwine wouldn't be reappointed; so maybe don't spend too much time on the MA nominees. I really don't know anything about the RI nominees, so please help there. NH should be interesting. I can't see picking David over Ellen, but it could be very helpful to have some insight on Godfroy.

non responsive

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *non responsive* [REDACTED]

[REDACTED]

While it's very helpful if you have thoughts/insight/etc. on these candidates, it's also helpful to know if you've never heard of them.

Thanks,

Mike

Michael Pentony
Assistant Regional Administrator for Sustainable Fisheries
Greater Atlantic Regional Fisheries Office
55 Great Republic Drive
Gloucester, MA 01930
Phone: [978 281 9283](tel:9782819283)
Fax: [978 281 9135](tel:9782819135)
Web: greateratlantic.fisheries.noaa.gov

Peter Christopher
Senior Fishery Policy Analyst
National Marine Fisheries Service
Sustainable Fisheries Division
Greater Atlantic Region Fisheries Office
978 281 9288



EXHIBIT

6

**2016 REGIONAL FISHERY MANAGEMENT COUNCILS
CONGRESSIONAL ENDORSEMENTS**

Updated April 27, 2016

NEW ENGLAND COUNCIL

Richard John Bellavance, Jr./RI

Rep. James R. Langevin/RI/D
Rep. David N. Cicilline/RI/D
Sen. Sheldon Whitehouse/RI/D
Sen. Jack Reed/RI/D

Zachary J. Harvey/RI

Rep. James R. Langevin/RI/D
Rep. David N. Cicilline/RI/D
Sen. Sheldon Whitehouse/RI/D
Sen. Jack Reed/RI/D

David Paul Monti/RI

Rep. James R. Langevin/RI/D
Rep. David N. Cicilline/RI/D
Sen. Sheldon Whitehouse/RI/D
Sen. Jack Reed/RI/D

Ellen Goethel/NH

Sen. Kelly A. Ayotte/NH/R

[REDACTED]	|	|	|	|	[REDACTED]
[REDACTED]	|	|	|	|	[REDACTED]
[REDACTED]	|	|	|	|	[REDACTED]
[REDACTED]	|	|	|	|	[REDACTED]
[REDACTED]	|	|	|	|	[REDACTED]
[REDACTED]	|	|	|	|	[REDACTED]
[REDACTED]	|	|	|	|	[REDACTED]
[REDACTED]	|	|	|	|	[REDACTED]
[REDACTED]	|	|	|	|	[REDACTED]
[REDACTED]	|	|	|	|	[REDACTED]

Non-responsive

Non responsive

EXHIBIT

6

Ryan Mulvey

From: Kelton, Cindy (Federal) <ckelton@doc.gov>
Sent: Thursday, September 29, 2016 9:50 AM
To: Ryan Mulvey
Subject: Cause of Action FOIA Appeal - Request No. 2016-001453 - Acknowledgement

**eneral
Couns
el for
Litigat
ion,
Emplo
yment
and
Oversi
ght**

U.S. Department of Commerce

14th and Constitution Avenue NW Room 5898-C

Washington, DC 20230

Dear Mr. Mulvey:

This is to acknowledge receipt of your Freedom of Information Act (5 U.S.C. § 552) (FOIA) appeal email dated September 26, 2016. In accordance with the FOIA and Departmental regulations, a final determination will be issued by the Assistant General Counsel for Litigation, Employment and Oversight. Your appeal has been assigned to Counsel.

If you have any questions about this matter, you may contact me at the above address or at 202-482-5772.

Thanks,

***Cindy Kelton
Administrative Assistant
Department of Commerce
Office of General Counsel
LEO/FOIA Group
202-482-8103***

Confidentiality Notice: This e-mail message is intended only for the named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.

From: Ryan Mulvey [mailto:ryan.mulvey@causeofaction.org]
Sent: Monday, September 26, 2016 12:59 PM
To: Appeals, FOIA <foiaappeals@doc.gov>
Cc: Patterson, Amanda (Federal) <Amanda.Patterson@noaa.gov>
Subject: Cause of Action FOIA Appeal - Request No. 2016-001453

Dear Appeals Officer:

Please find attached to this e-mail an administrative appeal of FOIA request No. 2016-001453, which was submitted to NOAA on July 13, 2016.

Thank you.

Best regards,

Ryan Mulvey

cc: Amanda Patterson, NOAA FOIA

Ryan P. Mulvey | Counsel

Cause of Action Institute
1875 Eye Street NW, Suite 800
Washington, D.C. 20006
(o) 202.400.2729 / (c) 202.603.7698
Ryan.Mulvey@causeofaction.org

Admitted to the practice of law in New York State and the District of Columbia



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EXHIBIT

7

Request Details

Tracking Number : DOC-NOAA-2016-001453

Submitted Evaluation Assignment Processing Closed

Request Information

Full Name : Under Agency Review Date Submitted : 07/14/2016
 Organization : Under Agency Review Estimated Date of Completion : August 30, 2016
 Final Disposition : Undetermined

Description :

All documents related to the appointment or reappointment of members of the New England Fishery Management Council from November 1, 2015 to the present. This request includes all communications, both inside the government and with outside parties, including .gov e-mail, personal e-mail, text messaging, and any other methods of communication. This request specifically includes communications to or from the personal and official e-mail accounts of the following persons and entities: 1. The Office of the Secretary of Commerce 2. The Office of Dr. Kathryn Sullivan, Administrator of NOAA and Under Secretary of Commerce for Oceans and Atmosphere 3. Lois J. Schiffer, NOAA General Counsel 4. Eileen Sobeck, Assistant Administrator for Fisheries 5. Samuel D. Rauch III, Deputy Assistant Administrator for Regulatory Programs 6. Dr. Alan D. Risenhoover, Director, Office of Sustainable Fisheries 7. John Bullard, Northeast Regional Administrator 8. Michael Pentony, Assistant Regional Administrator for Sustainable Fisheries 9. Dr. William A. Karp, Science and Research Director, Northeast Fisheries Science Center

Released Records

Filter by Title :

SUBMIT CLEAR

Results 1

One record found.

1

Download	Title	Type	Size (MB)	Release Date	Released With
<input type="checkbox"/>	Interim Release 1 UR	ZIP	4.31	08/31/2016	Request

One record found.

1

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Monday, November 7, 2016 10:07 AM
To: John Almeida - NOAA Federal; Robert Moller - NOAA Federal; Scott Smullen - NOAA Federal; Chua, Alvin; McKenna, Alice; Samuel Dixon - NOAA Affiliate; Stacey Nathanson - NOAA Federal
Cc: Robert Swisher - NOAA Federal; Lola Stith - NOAA Affiliate; Dennis Morgan - NOAA Federal; Velna Bullock - NOAA Federal; James LeDuc - NOAA Federal; Steven Goodman - NOAA Federal
Subject: New Cause of Action FOIA Requests
Attachments: 01-Complaint.pdf

Good Morning--

Just for awareness, NOAA has just received 3 new additional requests from Cause of Action. The three respective requests are generally seeking the following records:

1. Designations and proposals for designations under the Antiquities Act of 1906 regarding marine monuments referenced in an Oct. 7, 2015 letter from the House Committee on Natural Resources.
2. Records regarding a NOAA Town Hall Meeting on September 15, 2015, and a public event by the Conservation Law Foundation seeking designation of the Atlantic Coast's first Marine National Monument.
3. Records of communications referencing the use of the Antiquities Act to create a national monument in the Atlantic Ocean.

(b)(5) [Redacted]

[Redacted]

Thanks everyone--

Mark H. Graff
FOIA Officer/Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) (C)

Confidentiality Notice: This e-mail message is intended only for the named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CAUSE OF ACTION INSTITUTE)	
1875 Eye Street, N.W., Suite 800)	
Washington, D.C. 20006,)	
)	
Plaintiff,)	
)	
v.	)	Civil Action No. 16-2178
)	
NATIONAL OCEANIC & ATMOSPHERIC)	
ADMIN.)	
United States Department of Commerce)	
1401 Constitution Avenue, N.W., Room 5128)	
Washington, D.C. 20230,)	
)	
Defendants.)	

COMPLAINT

This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, seeking access to records requested by Plaintiff Cause of Action Institute (“CoA Institute”) and improperly withheld by Defendant National Oceanic and Atmospheric Administration (“NOAA”). The records at issue concern potential abuses in determining the membership of the New England Fishery Management Council (“NEFMC”), a regulatory body created by the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801 *et seq.*

NATURE OF THE ACTION

1. The Magnuson-Stevens Fishery Conservation and Management Act (“MSA”) establishes the basis for the federal management of domestic fisheries in the United States. 16 U.S.C. §§ 1801(a)(6), (b)(1), (b)(3). The MSA provides for eight Fishery Management Councils (“FMCs”), each charged with regulating a region of the national coastal waters. The NEFMC is

the FMC relevant to this lawsuit, and it includes the coastal waters of Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut. 16 U.S.C. § 1852(a)(1)(A).

2. The NEFMC is composed of eighteen (18) voting members, *id.*, including twelve (12) appointees chosen by the Secretary of Commerce from lists of nominees provided by the governors of states within the boundaries of the FMC. *Id.* §§ 1852(b)(1)(C), (b)(2)(A) (C). The NEFMC includes the “principal State official with marine fishery management responsibility and expertise” from each state, *id.* § 1852(b)(1)(A), as well as the Administrator of the National Marine Fisheries Service (“NMFS”) Mid-Atlantic Regional Office, or his designee. *Id.* § 1852(b)(1)(B).

3. Some commentators have suggested that the membership of the NEFMC and, indeed, the membership of all the regional FMCs is not representative of the fishing industry. Representation of the fishing industry is “generally skewed towards the larger corporate interests that support larger sized vessels, whereas the small-scale vessel fleets that are the traditional core of coastal communities (and more likely to have conservation interests) are often less represented[.]” Thomas A. Okey, *Membership in the Eight Regional Fishery Management Councils in the United States: Are Special Interests Over-Represented?*, 27 *Marine Pol’y* 193, 199 (2003).

4. Although the FMCs are supervised by NMFS, and ultimately by the Secretary of Commerce, their members exercise significant independent power. They propose Fishery Management Plans (“FMPs”), amendments, and framework adjustments; they conduct hearings; and they determine annual catch limits. *See* 16 U.S.C. § 1852(h). The FMCs even have the ability to constrain the Secretary of Commerce. *See* 16 U.S.C. § 1854(a) (Secretary may only

approve, disapprove, or partially approve FMPs given to him; he may not modify them on his own authority); *id.* § 1854(h) (Secretary may not repeal or revoke FMPs without FMC approval).

5. The FOIA request at issue here is aimed at providing transparency into how the Secretary of Commerce determines the membership of the FMCs, including the NEFMC. NOAA has not disclosed records about this process to the public before, and there is danger for politicization in how members are actually chosen.

6. The records at issue in this case, which include records of communication between high-ranking agency officials, will permit the public to understand how the most recent round of membership selection for the NEFMC was handled, and whether that process was at all tinged by political considerations or other untoward government action.

JURISDICTION AND VENUE

7. Jurisdiction is asserted pursuant to 28 U.S.C. § 1331 and 5 U.S.C. §§ 552(a)(4)(B), (a)(6)(E)(iii).

8. Venue is proper pursuant to 28 U.S.C. § 1391(e) and 5 U.S.C. § 552(a)(4)(B).

PARTIES

9. CoA Institute is a non-profit strategic oversight group committed to ensuring that government decision-making is open, honest, and fair. In carrying out its mission, CoA Institute uses various investigative and legal tools to educate the public about the importance of government transparency and accountability. CoA Institute regularly requests access under the FOIA to the public records of federal agencies, entities, and offices, including NOAA, and disseminates its findings, analysis, and commentary to the general public.

10. NOAA is an agency within the meaning of 5 U.S.C. § 552(f)(1). NOAA has possession, custody, and control of the records to which CoA Institute seeks access and that are the subject of this Complaint.

FACTS

11. By letter, dated July 13, 2016, CoA Institute submitted a FOIA request to NOAA seeking access to “[a]ll documents related to the appointment or reappointment of members of the New England Fishery Management Council[.]” Ex. 1 at 1. CoA Institute further specified that its request included “all communications, both inside the government and with outside parties, including .gov e-mail, personal e-mail, text messaging, and any other methods of communication.” Ex. 1 at 1. The time period for the request was “November 1, 2015 to the present.” Ex. 1 at 1.

12. CoA Institute provided a non-exhaustive list of potential record custodians whose correspondence on personal or official e-mail accounts could be responsive to the July 13, 2016 FOIA request. *See* Ex. 1 at 2.

13. CoA Institute also requested a public interest fee waiver and classification as a representative of the news media for fee purposes. Ex. 1 at 2 4.

14. By letter, dated July 29, 2016, NOAA informed CoA Institute that it received the FOIA request on July 19, 2016. Ex. 2 at 1. NOAA indicated that it would invoke the ten-day automatic statutory extension of its response deadline due to “unusual circumstances,” namely, the “need to search for and collect the requested records from field facilities or other establishments separate from the office processing the request[.]” Ex. 2 at 1.

15. This same letter assigned the CoA Institute FOIA request the tracking number “DOC-NOAA-2016-001453.” Ex. 2 at 1.

16. On August 1, 2016, NOAA granted the CoA Institute request for a public interest fee waiver. Ex. 3. The agency did not issue a determination on the CoA Institute request for categorization as a representative of the news media for fee purposes.

17. By letter, dated August 30, 2016, NOAA released its first interim response and production of responsive records. Ex. 4. The agency indicated that it “located 19 documents,” to which CoA Institute was “granted full access.” Ex. 4. The interim production also provided CoA Institute with appeal rights. Ex. 4.

18. On September 26, 2016, CoA Institute filed an administrative appeal from the August 30, 2016 interim production because NOAA improperly withheld material from three (3) responsive records. Ex. 5. The material in question was redacted as “non-responsive.” Ex. 5.

19. The Department of Commerce (“DOC”) acknowledged receipt of the CoA Institute administrative appeal on September 29, 2016. Ex. 6. The agency has failed to provide a final response or to provide an estimate date of completion for processing the appeal.

20. To date, NOAA has failed to provide any additional interim responses or productions of responsive records, let alone a final determination. According to FOIAonline, the current estimated date of completion for the CoA Institute request is “August 30, 2016.” Ex. 7.

COUNT 1

Violation of the FOIA: Failure to Comply with Statutory Deadlines

21. CoA Institute repeats paragraphs 1 through 20.

22. The FOIA requires an agency to respond to a record request within twenty (20) business days or, in “unusual circumstances,” within thirty (30) business days. 5 U.S.C. §§ 552(a)(6)(A) (B). If an agency requires additional time, it must provide the requester “an

opportunity to arrange . . . an alternative time frame for processing the request[.]” *Id.*

§ 552(a)(6)(B)(ii).

23. More than thirty (30) business days have passed since NOAA received CoA Institute’s FOIA request on July 19, 2016.

24. NOAA has failed to issue a final determination on and promptly produce all records responsive to CoA Institute’s FOIA request within the applicable statutory time limits.

25. When attempting to cite “unusual circumstances,” NOAA failed to comply with the FOIA in that it never “arrange[d] . . . an alternative time frame” for responding to CoA Institute’s request, failed to issue an estimated date of completion, and did not invite CoA Institute to contact NOAA for the purposes of negotiating an “alternative” response date.

26. CoA Institute has fully exhausted its administrative remedies under 5 U.S.C. § 552(a)(6)(C).

RELIEF REQUESTED

WHEREFORE, CoA Institute respectfully requests and prays that this Court:

- a. Order NOAA to process the July 13, 2016 FOIA request and to make a final determination within twenty (20) business days of the date of the Order;
- b. Order NOAA to produce all responsive records promptly after issuing its final determination;
- c. Order NOAA to issue a *Vaughn* index accompanying the records produced and explaining each redaction or withholding, if applicable;¹

¹ See generally *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973) (requiring an agency to prepare an index correlating each withheld document, or portion thereof, with a specific FOIA exemption and nondisclosure justification).

d. Award CoA Institute its costs and reasonable attorney fees incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and

e. Grant such other relief as the Court may deem just and proper.

Dated: November 1, 2016

Respectfully submitted,

/s/ Ryan P. Mulvey

Ryan P. Mulvey

D.C. Bar No. 1024362

Eric R. Bolinder

D.C. Bar No. 1028335

CAUSE OF ACTION INSTITUTE

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Washington, D.C. 20006

Telephone: (202) 499-4232

Facsimile: (202) 330-5842

ryan.mulvey@causeofaction.org

eric.bolinder@causeofaction.org

Counsel for Plaintiff

Image not available for this document, ID: 0.7.3707.13330

**U.S. Department of Commerce
National Oceanic and Atmospheric Administration**



**Privacy Threshold Analysis
For OAR ARL (NOAA3040)**

U.S. Department of Commerce Privacy Threshold Analysis

NOAA OAR ARL (NOAA3040)

Unique Project Identifier: NOAA3040

Introduction: This Privacy Threshold Analysis (PTA) is a questionnaire to assist with determining if a Privacy Impact Assessment (PIA) is necessary for this IT system. This PTA is primarily based from the Office of Management and Budget (OMB) privacy guidance and the Department of Commerce (DOC) IT security/privacy policy. If questions arise or further guidance is needed in order to complete this PTA, please contact your Bureau Chief Privacy Officer (BCPO).

Description of the information system and its purpose: The Office of Oceanic and Atmospheric Research’s Air Research Laboratory (ARL) is a research laboratory headquartered in College Park, Maryland with divisions in Oak Ridge, Tennessee (ATDD); Idaho Falls, Idaho (FRD); and Las Vegas, Nevada (SORL). ARL conducts research to gain new insights into atmospheric dispersion, atmospheric chemistry, climate change, and the complex behavior of the atmosphere near the Earth’s surface, called the atmospheric boundary layer. Its mission is to provide needed atmospheric information and tools to decision-makers and to the science community to improve the Nation’s ability to protect human health and the environment.

The E-Government Act of 2002 defines “information system” by reference to the definition section of Title 44 of the United States Code. The following is a summary of the definition: “Information system” means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information. See: 44. U.S.C. § 3502(8).

Questionnaire:

1. What is the status of this information system?

- This is a new information system. *Continue to answer questions and complete certification.*
- This is an existing information system with changes that create new privacy risks. *Complete chart below, continue to answer questions, and complete certification.*

Changes That Create New Privacy Risks (CTCNPR)					
a. Conversions		d. Significant Merging		g. New Interagency Uses	
b. Anonymous to Non-Anonymous		e. New Public Access		h. Internal Flow or Collection	
c. Significant System Management Changes		f. Commercial Sources		i. Alteration in Character of Data	
j. Other changes that create new privacy risks (specify):					

This is an existing information system in which changes do not create new privacy risks. *Skip questions and complete certification.*

2. Is the IT system or its information used to support any activity which may raise privacy concerns?

NIST Special Publication 800-53 Revision 4, Appendix J, states "Organizations may also engage in activities that do not involve the collection and use of PII, but may nevertheless raise privacy concerns and associated risk. The privacy controls are equally applicable to those activities and can be used to analyze the privacy risk and mitigate such risk when necessary." Examples include, but are not limited to, audio recordings, video surveillance, building entry readers, and electronic purchase transactions.

Yes. *Please describe the activities which may raise privacy concerns.*

No

3. Does the IT system collect, maintain, or disseminate business identifiable information (BII)?

As per DOC Privacy Policy: "For the purpose of this policy, business identifiable information consists of (a) information that is defined in the Freedom of Information Act (FOIA) as "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." (5 U.S.C.552(b)(4)). This information is exempt from automatic release under the (b)(4) FOIA exemption. "Commercial" is not confined to records that reveal basic commercial operations" but includes any records [or information] in which the submitter has a commercial interest" and can include information submitted by a nonprofit entity, or (b) commercial or other information that, although it may not be exempt from release under FOIA, is exempt from disclosure by law (e.g., 13 U.S.C.)."

Yes, the IT system collects, maintains, or disseminates BII about: *(Check all that apply.)*

Companies

Other business entities

No, this IT system does not collect any BII.

4. Personally Identifiable Information

4a. Does the IT system collect, maintain, or disseminate personally identifiable information (PII)?

As per OMB 07-16, Footnote 1: "The term 'personally identifiable information' refers to information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc... alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc..."

Yes, the IT system collects, maintains, or disseminates PII about: *(Check all that apply.)*

- DOC employees
- Contractors working on behalf of DOC
- Members of the public

No, this IT system does not collect any PII.

If the answer is “yes” to question 4a, please respond to the following questions.

4b. Does the IT system collect, maintain, or disseminate PII other than user ID?

Yes, the IT system collects, maintains, or disseminates PII other than user ID.

No, the user ID is the only PII collected, maintained, or disseminated by the IT system.

4c. Will the purpose for which the PII is collected, stored, used, processed, disclosed, or disseminated (context of use) cause the assignment of a higher PII confidentiality impact level?

Examples of context of use include, but are not limited to, law enforcement investigations, administration of benefits, contagious disease treatments, etc.

Yes, the context of use will cause the assignment of a higher PII confidentiality impact level.

No, the context of use will not cause the assignment of a higher PII confidentiality impact level.

If any of the answers to questions 2, 3, 4b, and/or 4c are “Yes,” a Privacy Impact Assessment (PIA) must be completed for the IT system. This PIA and the approved PIA must be a part of the IT system’s Assessment and Authorization Package.

CERTIFICATION

I certify the criteria implied by one or more of the questions above **apply** to the OAR ARL (NOAA3040) and as a consequence of this applicability, I will perform and document a PIA for this IT system.

I certify the criteria implied by the questions above **do not apply** to the OAR ARL (NOAA3040) and as a consequence of this non-applicability, a PIA for this IT system is not necessary.

Name of Information System Security Officer (ISSO) or System Owner (SO): Rick Jiang

Signature of ISSO or SO: JIANG.WEIFENG.13796 Digitally signed by JIANG.WEIFENG.1379621224
DN: c US, o U.S. Government, ou DoD, ou PKI,
ou OTHER, cn JIANG.WEIFENG.1379621224
Date: 2016.06.24 10:02:42 -04'00' 21224 Date: _____

Name of Information Technology Security Officer (ITSO): Jeremy Warren

Signature of ITSO: WARREN.JEREMY.C.13 Digitally signed by WARREN.JEREMY.C.1397791897
DN: c US, o U.S. Government, ou DoD, ou PKI,
ou OTHER, cn WARREN.JEREMY.C.1397791897
Date: 2016.08.23 10:33:53 -04'00' 97791897 Date: _____

Name of Authorizing Official (AO): Rick Artz

Signature of AO: ARTZ.RICHARD.S.1365848900 Digitally signed by ARTZ.RICHARD.S.1365848900
DN: c US, o U.S. Government, ou DoD, ou PKI, ou OTHER
cn ARTZ.RICHARD.S.1365848900
Date: 2016.06.24 09:44:44 -04'00' Date: _____

Name of Bureau Chief Privacy Officer (BCPO): Mark Graff

Signature of BCPO: GRAFF.MARK.HYRU Digitally signed by GRAFF.MARK.HYRUM.1514447892
DN: c US, o U.S. Government, ou DoD, ou PKI,
ou OTHER, cn GRAFF.MARK.HYRUM.1514447892
Date: 2016.11.07 12:44:57 -05'00' M.1514447892 Date: _____

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Monday, November 7, 2016 12:48 PM
To: Sarah Brabson - NOAA Federal
Subject: NOAA3070 PTA
Attachments: NOAA3070 OAR GFDL PTA +VR+jps Signed by ITSO mhg.pdf

Just curious on this one (b)(5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Mark H. Graff
FOIA Officer/Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) (C)

**U.S. Department of Commerce
National Oceanic and Atmospheric Administration**



**Privacy Threshold Analysis
For OAR GFDL (NOAA3070)**

U.S. Department of Commerce Privacy Threshold Analysis

NOAA OAR GFDL (NOAA3070)

Unique Project Identifier: NOAA3070

Introduction: This Privacy Threshold Analysis (PTA) is a questionnaire to assist with determining if a Privacy Impact Assessment (PIA) is necessary for this IT system. This PTA is primarily based from the Office of Management and Budget (OMB) privacy guidance and the Department of Commerce (DOC) IT security/privacy policy. If questions arise or further guidance is needed in order to complete this PTA, please contact your Bureau Chief Privacy Officer (BCPO).

Description of the information system and its purpose: The Office of Oceanic and Atmospheric Research’s Geophysical Fluid Dynamics Laboratory (GFDL) is general support facility. GFDL is engaged in comprehensive long lead-time research fundamental to NOAA's mission. Scientists at GFDL develop and use mathematical models and computer simulations to improve our understanding and prediction of the behavior of the atmosphere, the oceans, and climate. GFDL scientists focus on model-building relevant for society, such as hurricane research, prediction, and seasonal forecasting, and understanding global and regional climate change.

The primary function of NOAA3070 is to provide: 1) Local Area Network and Wide Area Network services within the NOAA3070 boundary only, which includes the office space areas of the GFDL facility, 2) VoIP, 3) Wireless Internet connectivity, 4) VTC, 5) Print services, 6) Co-location or hosting services. GFDL is located in Princeton, NJ in a leased facility.

The E-Government Act of 2002 defines “information system” by reference to the definition section of Title 44 of the United States Code. The following is a summary of the definition: “Information system” means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information. See: 44. U.S.C. § 3502(8).

Questionnaire:

1. What is the status of this information system?

- This is a new information system. *Continue to answer questions and complete certification.*
- This is an existing information system with changes that create new privacy risks. *Complete chart below, continue to answer questions, and complete certification.*

Changes That Create New Privacy Risks (CTCNPR)					
a. Conversions		d. Significant Merging		g. New Interagency Uses	

b. Anonymous to Non-Anonymous		e. New Public Access		h. Internal Flow or Collection	
c. Significant System Management Changes		f. Commercial Sources		i. Alteration in Character of Data	
j. Other changes that create new privacy risks (specify):					

This is an existing information system in which changes do not create new privacy risks. *Skip questions and complete certification.*

2. Is the IT system or its information used to support any activity which may raise privacy concerns?

NIST Special Publication 800-53 Revision 4, Appendix J, states "Organizations may also engage in activities that do not involve the collection and use of PII, but may nevertheless raise privacy concerns and associated risk. The privacy controls are equally applicable to those activities and can be used to analyze the privacy risk and mitigate such risk when necessary." Examples include, but are not limited to, audio recordings, video surveillance, building entry readers, and electronic purchase transactions.

Yes. *Please describe the activities which may raise privacy concerns.*

No

3. Does the IT system collect, maintain, or disseminate business identifiable information (BII)?

As per DOC Privacy Policy: "For the purpose of this policy, business identifiable information consists of (a) information that is defined in the Freedom of Information Act (FOIA) as "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." (5 U.S.C.552(b)(4)). This information is exempt from automatic release under the (b)(4) FOIA exemption. "Commercial" is not confined to records that reveal basic commercial operations" but includes any records [or information] in which the submitter has a commercial interest" and can include information submitted by a nonprofit entity, or (b) commercial or other information that, although it may not be exempt from release under FOIA, is exempt from disclosure by law (e.g., 13 U.S.C.)."

Yes, the IT system collects, maintains, or disseminates BII about: *(Check all that apply.)*

Companies

Other business entities

No, this IT system does not collect any BII.

4. Personally Identifiable Information

4a. Does the IT system collect, maintain, or disseminate personally identifiable information (PII)?

As per OMB 07-16, Footnote 1: “The term ‘personally identifiable information’ refers to information which can be used to distinguish or trace an individual’s identity, such as their name, social security number, biometric records, etc... alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name, etc...”

_____ Yes, the IT system collects, maintains, or disseminates PII about: *(Check all that apply.)*

- _____ DOC employees
- _____ Contractors working on behalf of DOC
- _____ Members of the public

No, this IT system does not collect any PII.

If the answer is “yes” to question 4a, please respond to the following questions.

4b. Does the IT system collect, maintain, or disseminate PII other than user ID?

_____ Yes, the IT system collects, maintains, or disseminates PII other than user ID.

_____ No, the user ID is the only PII collected, maintained, or disseminated by the IT system.

4c. Will the purpose for which the PII is collected, stored, used, processed, disclosed, or disseminated (context of use) cause the assignment of a higher PII confidentiality impact level?

Examples of context of use include, but are not limited to, law enforcement investigations, administration of benefits, contagious disease treatments, etc.

_____ Yes, the context of use will cause the assignment of a higher PII confidentiality impact level.

_____ No, the context of use will not cause the assignment of a higher PII confidentiality impact level.

If any of the answers to questions 2, 3, 4b, and/or 4c are “Yes,” a Privacy Impact Assessment (PIA) must be completed for the IT system. This PTA and the approved PIA must be a part of the IT system’s Assessment and Authorization Package.

CERTIFICATION

I certify the criteria implied by one or more of the questions above **apply** to the OAR GFDL (NOAA3070) and as a consequence of this applicability, I will perform and document a PIA for this IT system.

I certify the criteria implied by the questions above **do not apply** to the OAR GFDL (NOAA3070) and as a consequence of this non-applicability, a PIA for this IT system is not necessary.


Name of Information System Security Officer (ISSO) or System Owner (SO): John Sheldon

Signature of ISSO or SO: SHELDON.JOHN.P.1365825 Digitally signed by SHELDON.JOHN.P.1365825935 Date: 2016.07.01 10:05:11 -04'00'

Name of Information Technology Security Officer (ITSO): Jeremy Warren

Signature of ITSO: WARREN.JEREMY.C.1 Digitally signed by WARREN.JEREMY.C.1397791897 DN: c US, o U.S. Government, ou DoD, ou PKI, ou OTHER, cn WARREN.JEREMY.C.1397791897 Date: 2016.08.23 10:32:41 -04'00' Date: _____

Name of Authorizing Official (AO): V. Ramaswamy

Signature of AO:  Date: 6/30/16

Name of Bureau Chief Privacy Officer (BCPO): Mark Graff

Signature of BCPO: GRAFF.MARK.HYRU Digitally signed by GRAFF.MARK.HYRU.1514447892 DN: c US, o U.S. Government, ou DoD, ou PKI, ou OTHER, cn GRAFF.MARK.HYRU.1514447892 Date: 2016.11.07 12:46:53 -05'00' Date: _____

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**U.S. Department of Commerce
National Oceanic and Atmospheric Administration**



**Privacy Threshold Analysis
For OAR PMEL (NOAA3100)**

U.S. Department of Commerce Privacy Threshold Analysis

NOAA OAR PMEL (NOAA3100)

Unique Project Identifier: NOAA3100

Introduction: This Privacy Threshold Analysis (PTA) is a questionnaire to assist with determining if a Privacy Impact Assessment (PIA) is necessary for this IT system. This PTA is primarily based from the Office of Management and Budget (OMB) privacy guidance and the Department of Commerce (DOC) IT security/privacy policy. If questions arise or further guidance is needed in order to complete this PTA, please contact your Bureau Chief Privacy Officer (BCPO).

Description of the information system and its purpose: The Office of Oceanic and Atmospheric Research's Pacific Marine Environmental Laboratory (PMEL) is a federal laboratory that makes critical observations and conducts groundbreaking research to advance our knowledge of the global ocean and its interactions with the earth, atmosphere, ecosystems, and climate. PMEL's mission is to a) observe, analyze, and predict oceanic and atmospheric phenomena, b) lead the development and deployment of innovative technologies, c) identify and understand ocean-related issues of major consequence, and d) inform society with well-documented, high quality science. Key research areas at PMEL include ocean acidification, tsunami detection and forecasting, hydrothermal vent systems, fisheries oceanography, and long term climate monitoring and analysis.

NOAA3100 is a General Support System, whose purpose is to provide information technology services required to achieve the mission of the programs in Seattle, WA and Newport OR. It provides central computing resources needed to conduct interdisciplinary scientific investigations in oceanography, marine meteorology, and related subjects to enhance the understanding of the complex physical and geochemical processes that characterize the marine environment. The system supports administrative and engineering functions.

The E-Government Act of 2002 defines "information system" by reference to the definition section of Title 44 of the United States Code. The following is a summary of the definition: "Information system" means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information. See: 44. U.S.C. § 3502(8).

Questionnaire:

1. What is the status of this information system?

_____ This is a new information system. *Continue to answer questions and complete certification.*

This is an existing information system with changes that create new privacy risks.
Complete chart below, continue to answer questions, and complete certification.

Changes That Create New Privacy Risks (CTCNPR)			
a. Conversions		d. Significant Merging	g. New Interagency Uses
b. Anonymous to Non-Anonymous		e. New Public Access	h. Internal Flow or Collection
c. Significant System Management Changes		f. Commercial Sources	i. Alteration in Character of Data
j. Other changes that create new privacy risks (specify):			

This is an existing information system in which changes do not create new privacy risks. *Skip questions and complete certification.*

2. Is the IT system or its information used to support any activity which may raise privacy concerns?

NIST Special Publication 800-53 Revision 4, Appendix J, states “Organizations may also engage in activities that do not involve the collection and use of PII, but may nevertheless raise privacy concerns and associated risk. The privacy controls are equally applicable to those activities and can be used to analyze the privacy risk and mitigate such risk when necessary.” Examples include, but are not limited to, audio recordings, video surveillance, building entry readers, and electronic purchase transactions.

Yes. *Please describe the activities which may raise privacy concerns.*

No

3. Does the IT system collect, maintain, or disseminate business identifiable information (BII)?

As per DOC Privacy Policy: “For the purpose of this policy, business identifiable information consists of (a) information that is defined in the Freedom of Information Act (FOIA) as “trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.” (5 U.S.C.552(b)(4)). This information is exempt from automatic release under the (b)(4) FOIA exemption. “Commercial” is not confined to records that reveal basic commercial operations” but includes any records [or information] in which the submitter has a commercial interest” and can include information submitted by a nonprofit entity, or (b) commercial or other information that, although it may not be exempt from release under FOIA, is exempt from disclosure by law (e.g., 13 U.S.C.).”

Yes, the IT system collects, maintains, or disseminates BII about: *(Check all that apply.)*

Companies

Other business entities

No, this IT system does not collect any BII.

4. Personally Identifiable Information

4a. Does the IT system collect, maintain, or disseminate personally identifiable information (PII)?

As per OMB 07-16, Footnote 1: "The term 'personally identifiable information' refers to information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc... alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc..."

_____ Yes, the IT system collects, maintains, or disseminates PII about: *(Check all that apply.)*

- _____ DOC employees
- _____ Contractors working on behalf of DOC
- _____ Members of the public

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If the answer is "yes" to question 4a, please respond to the following questions.

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CERTIFICATION

I certify the criteria implied by one or more of the questions above **apply** to the OAR PMEL (NOAA3100) and as a consequence of this applicability, I will perform and document a PIA for this IT system.

I certify the criteria implied by the questions above **do not apply** to the OAR PMEL (NOAA3100) and as a consequence of this non-applicability, a PIA for this IT system is not necessary.

Name of Information System Security Officer (ISSO) or System Owner (SO): Nancy Soreide

Signature of ISSO or SO: SOREIDE.NANCY.N.1365837836
Digitally signed by SOREIDE.NANCY.N.1365837836
Date: 2016.07.06 10:49:39 -07'00' Date: _____

Name of Information Technology Security Officer (ITSO): Jeremy Warren

Signature of ITSO: WARREN.JEREMY.C.1397791897
Digitally signed by WARREN.JEREMY.C.1397791897
DN: c US, o U.S. Government, ou DoD, ou PKI, ou OTHER, cn WARREN.JEREMY.C.1397791897
Date: 2016.08.23 10:31:56 -04'00' Date: _____

Name of Authorizing Official (AO): Chris Sabine

Signature of AO: SABINE.CHRISTOPHER.L.1365865376
Digitally signed by SABINE.CHRISTOPHER.L.1365865376
DN: c US, o U.S. Government, ou DoD, ou PKI, ou OTHER, cn SABINE.CHRISTOPHER.L.1365865376
Date: 2016.09.29 08:57:31 -07'00' Date: _____

Name of Bureau Chief Privacy Officer (BCPO): Mark Graff

Signature of BCPO: GRAFF.MARK.HYRUM.1514447892
Digitally signed by GRAFF.MARK.HYRUM.1514447892
DN: c US, o U.S. Government, ou DoD, ou PKI, ou OTHER, cn GRAFF.MARK.HYRUM.1514447892
Date: 2016.11.07 12:49:28 -05'00' Date: _____

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(b) (5)

From: Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov>
Sent: Monday, November 7, 2016 2:26 PM
To: Mark Graff - NOAA Federal
Subject: RE: UPDATES on DOC-NOAA-2015-001376
Attachments: DRAFTPart5 FAL.DOCX

Not that one...this one sorry! Attached

From: Mark Graff - NOAA Federal [mailto:mark.graff@noaa.gov]
Sent: Monday, November 07, 2016 2:24 PM
To: Arlyn Penaranda - NOAA Federal
Subject: Re: UPDATES on DOC-NOAA-2015-001376

I woul (b)(5)

Mark H. Graff
FOIA Officer/Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) (C)

On Mon, Nov 7, 2016 at 1:25 PM, Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov> wrote:

Sorry (b)(5)

From: Arlyn Penaranda - NOAA Federal [mailto:arlyn.penaranda@noaa.gov]
Sent: Monday, November 07, 2016 1:21 PM
To: Mark Graff - NOAA Federal
Cc: Lola Stith - NOAA Affiliate; Samuel Dixon - NOAA Affiliate; Lorna Martin-Gross - N... (lorna.martin-gross@noaa.gov)
Subject: RE: UPDATES on DOC-NOAA-2015-001376

Mark,

(b)(5)

(b) (5)

Thanks in advance!

Arlyn

From: Mark Graff - NOAA Federal [<mailto:mark.graff@noaa.gov>]
Sent: Monday, November 07, 2016 10:17 AM
To: Arlyn Penaranda - NOAA Federal
Cc: Lola Stith - NOAA Affiliate; Samuel Dixon - NOAA Affiliate
Subject: Re: UPDATES on DOC-NOAA-2015-001376

(b)(5)

[Redacted]

Mark H. Graff
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National Oceanic and Atmospheric Administration

[\(301\) 628-5658](tel:3016285658) (O)

(b)(6) (C)

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Good morning. I'm just getting back to this FOIA...aiming to get the FAL to Sam today...then close ASAP!

Anyway (b)(5) [Redacted].

Thanks!

Arlyn

From: Arlyn Penaranda - NOAA Federal [mailto:arlyn.penaranda@noaa.gov]
Sent: Wednesday, October 05, 2016 1:45 PM
To: Mark Graff - NOAA Federal; Lola Stith - NOAA Affiliate; Louise Milkman - NOAA Federal; James LeDuc - NOAA Federal; Velna Bullock - NOAA Federal; Danielle Rioux - NOAA Federal
Cc: Milena Seelig - NOAA Federal; Logan Gregory - NOAA Federal; Charles Green - NOAA Federal; Samuel Dixon - NOAA Affiliate; Steven Goodman - NOAA Federal; Lorna Martin-Gross - N... (lorna.martin-gross@noaa.gov)
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Please, any questions, comments or concerns, call or email me! I plan on working on this FOIA next week (finishing up other FOIAs this time).

Thanks everyone!

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Affiliate; Steven Goodman - NOAA Federal; Lorna Martin-Gross - N... (lorna.martin-gross@noaa.gov)

Subject: RE: UPDATES on DOC-NOAA-2015-001376

Was not able to have the call with the requester today. He is in the west coast. He informed me yesterday that he will call in the morning his time but did not. I was not able to reach him and I sent him an email. I'm signing off at 3PM today and will try to reach him tomorrow.

R/

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From: Arlyn Penaranda - NOAA Federal [<mailto:arlyn.penaranda@noaa.gov>]

Sent: Tuesday, September 27, 2016 4:22 PM

To: Mark Graff - NOAA Federal; Lola Stith - NOAA Affiliate; Louise Milkman - NOAA Federal; James LeDuc - NOAA Federal; Velna Bullock - NOAA Federal; Danielle Rioux - NOAA Federal

Cc: Milena Seelig - NOAA Federal; Logan Gregory - NOAA Federal; Charles Green - NOAA Federal; Samuel Dixon - NOAA Affiliate; Steven Goodman - NOAA Federal; Lorna Martin-Gross - N... (lorna.martin-gross@noaa.gov)

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Good afternoon everyone.

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[Redacted text block]

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I will let you all know the outcome of the discussion. Have a good day.

R/

Arlyn

[\(301\) 427-8256](tel:(301)427-8256)

Arlyn.Penaranda@noaa.gov

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Attachments: DRAFTPart5 FAL.DOCX

WRONG ATTACHMENT AGAIN...It's this one...see highlighted in yellow

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(b)(6) (C)

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Arlyn.Penaranda@noaa.gov

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Attachments: snowe letter enforcement 8 1 12.pdf; 5.15.12 Letter to Administrator Lubchenco Incoming.pdf; 04.02.12 Hastings Ltr to Lubchenco.pdf; FOIA 12-041 to Congressman Tierney 2-16-11 (1).pdf; RE: Informal Consultation re: DOC-NOAA-2015-001376; DRAFTPart5 FAL.docx

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Arlyn.Penaranda@noaa.gov

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Accessibility Report

Filename:
NOAA8850 Privacy Threshold Analysis.pdf

Report created by:
Organization:

[Enter personal and organization information through the Preferences > Identity dialog.]

Summary

The checker found problems which may prevent the document from being fully accessible.

- Needs manual check: 0
- Passed manually: 2
- Failed manually: 0
- Skipped: 2
- Passed: 27
- Failed: 1

Detailed Report

Document

Rule Name	Status	Description
Accessibility permission flag	Passed	Accessibility permission flag must be set
Image-only PDF	Passed	Document is not image-only PDF
Tagged PDF	Passed	Document is tagged PDF
Logical Reading Order	Passed manually	Document structure provides a logical reading order
Primary language	Passed	Text language is specified
Title	Passed	Document title is showing in title bar
Bookmarks	Passed	Bookmarks are present in large documents
Color contrast	Passed manually	Document has appropriate color contrast

Page Content

Rule Name	Status	Description
Tagged content	Passed	All page content is tagged
Tagged annotations	Skipped	All annotations are tagged
Tab order	Passed	Tab order is consistent with structure order
Character encoding	Passed	Reliable character encoding is provided
Tagged multimedia	Passed	All multimedia objects are tagged
Screen flicker	Passed	Page will not cause screen flicker
Scripts	Passed	No inaccessible scripts
Timed responses	Passed	Page does not require timed responses
Navigation links	Passed	Navigation links are not repetitive

Forms

Rule Name	Status	Description
Tagged form fields	Failed	All form fields are tagged
Field descriptions	Passed	All form fields have description

Alternate Text

Rule Name	Status	Description
Figures alternate text	Passed	Figures require alternate text
Nested alternate text	Passed	Alternate text that will never be read
Associated with content	Passed	Alternate text must be associated with some content
Hides annotation	Passed	Alternate text should not hide annotation
Other elements alternate text	Passed	Other elements that require alternate text

Tables

Rule Name	Status	Description
Rows	Passed	TR must be a child of Table, THead, TBody, or TFoot
TH and TD	Passed	TH and TD must be children of TR
Headers	Passed	Tables should have headers
Regularity	Passed	Tables must contain the same number of columns in each row and rows in each column

[Summary](#) Passed Tables must have a summary

Lists

Rule Name	Status	Description
List items	Passed	LI must be a child of L
Lbl and LBody	Passed	Lbl and LBody must be children of LI

Headings

Rule Name	Status	Description
Appropriate nesting	Skipped	Appropriate nesting

[Back to Top](#)

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Monday, November 14, 2016 2:13 PM
To: Sarah Brabson - NOAA Federal
Cc: Robert Swisher - NOAA Federal
Subject: NOAA8850 PTA
Attachments: NOAA8850 - Privacy Threshold Analysis mhg.pdf

Hey Sarah--

I got this directly from Eduardo this morning. It reflects what we discussed with Jeremy several months ago (no PII collection). Here it is, signed and ready to go.

Mark H. Graff
FOIA Officer/Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) (C)

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Accessibility Report

Filename:
NOAA8850 Privacy Threshold Analysis.pdf

Report created by:
Organization:

[Enter personal and organization information through the Preferences > Identity dialog.]

Summary

The checker found problems which may prevent the document from being fully accessible.

- Needs manual check: 0
- Passed manually: 2
- Failed manually: 0
- Skipped: 2
- Passed: 27
- Failed: 1

Detailed Report

Document

Rule Name	Status	Description
Accessibility permission flag	Passed	Accessibility permission flag must be set
Image-only PDF	Passed	Document is not image-only PDF
Tagged PDF	Passed	Document is tagged PDF
Logical Reading Order	Passed manually	Document structure provides a logical reading order
Primary language	Passed	Text language is specified
Title	Passed	Document title is showing in title bar
Bookmarks	Passed	Bookmarks are present in large documents
Color contrast	Passed manually	Document has appropriate color contrast

Page Content

Rule Name	Status	Description
Tagged content	Passed	All page content is tagged
Tagged annotations	Skipped	All annotations are tagged
Tab order	Passed	Tab order is consistent with structure order
Character encoding	Passed	Reliable character encoding is provided
Tagged multimedia	Passed	All multimedia objects are tagged
Screen flicker	Passed	Page will not cause screen flicker
Scripts	Passed	No inaccessible scripts
Timed responses	Passed	Page does not require timed responses
Navigation links	Passed	Navigation links are not repetitive

Forms

Rule Name	Status	Description
Tagged form fields	Failed	All form fields are tagged
Field descriptions	Passed	All form fields have description

Alternate Text

Rule Name	Status	Description
Figures alternate text	Passed	Figures require alternate text
Nested alternate text	Passed	Alternate text that will never be read
Associated with content	Passed	Alternate text must be associated with some content
Hides annotation	Passed	Alternate text should not hide annotation
Other elements alternate text	Passed	Other elements that require alternate text

Tables

Rule Name	Status	Description
Rows	Passed	TR must be a child of Table, THead, TBody, or TFoot
TH and TD	Passed	TH and TD must be children of TR
Headers	Passed	Tables should have headers
Regularity	Passed	Tables must contain the same number of columns in each row and rows in each column

[Summary](#) Passed Tables must have a summary

Lists

Rule Name	Status	Description
List items	Passed	LI must be a child of L
Lbl and LBody	Passed	Lbl and LBody must be children of LI

Headings

Rule Name	Status	Description
Appropriate nesting	Skipped	Appropriate nesting

[Back to Top](#)

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Tuesday, November 15, 2016 6:28 PM
To: Beverly Hernandez - NOAA Affiliate
Cc: Denise Hamilton; Lola Stith - NOAA Affiliate
Subject: Re: DOC-NOAA-2016-001808
Attachments: Final Letter - DOC-NOAA-2016-001638 BLipton signed mhg.pdf

Hi Bev,

No problem--here is an example. (b)(5)

Thanks, Bev!

Mark H. Graff
FOIA Officer/Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) (C)

On Tue, Nov 15, 2016 at 6:09 PM, Beverly Hernandez - NOAA Affiliate <beverly.hernandez@noaa.gov> wrote:

Hi Mark,

(b)(5)

Please advise. (b)(5).

Thank you.

On Tue, Nov 15, 2016 at 5:56 PM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

Hey Bev,

(b)(5)

Thanks, Bev!

Mark H. Graff
FOIA Officer/Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)

(b)(6) (C)

--

Beverly Hernandez <beverly.hernandez@noaa.gov>
Syneren Technologies Corporation
NOAA/National Weather Service
Office of the Chief Financial Officer
Management and Organization Division
Ph: [301-427-6936](tel:301-427-6936)

(b) (5)

(b) (5)

From: Susan Beresford - NOAA Federal <susan.s.beresford@noaa.gov>
Sent: Wednesday, November 16, 2016 4:04 PM
To: Mark Graff - NOAA Federal
Cc: Lola Stith - NOAA Affiliate; Arlyn Penaranda - NOAA Federal
Subject: URGENT ACTION REQUESTED: FAL for DOC-NOAA-2016-001765.
Attachments: DOC-NOAA- 2016-001765 draft FAL response letter for Graff.docx

Hi Mark,

(b)(5)

A copy of this document is in FOIAonline.

Thanks for your time.

Susie.

P.S. I would like to get this out NLT tomorrow, as the requester has asked about it.

--

Susan S. Beresford
Paralegal
Enforcement Section
NOAA Office of the General Counsel
U.S. Department of Commerce
1315 East-West Highway
SSMC3, Room 15829
Silver Spring, MD 20910
(301) 427-8285 Office
(301) 427-2211 Fax

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From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, November 16, 2016 5:53 PM
To: Susan Beresford - NOAA Federal
Subject: Re: URGENT ACTION REQUESTED: FAL for DOC-NOAA-2016-001765.
Attachments: DOC-NOAA- 2016-001765 signed FAL response letter for Graff mhg.docx.pdf

Ha (b)(5)
If you can upload this into FOIAOnline.

Mark H. Graff
FOIA Officer/Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) (C)

On Wed, Nov 16, 2016 at 5:24 PM, Susan Beresford - NOAA Federal <susan.s.beresford@noaa.gov> wrote:
I was anxious to get this out, so I took the liberty and cut and pasted your letterhead logo onto your signed letter, attached.

----- Forwarded message -----

From: Susan Beresford - NOAA Federal <susan.s.beresford@noaa.gov>
Date: Wed, Nov 16, 2016 at 4:33 PM
Subject: Re: URGENT ACTION REQUESTED: FAL for DOC-NOAA-2016-001765.
To: Mark Graff - NOAA Federal <mark.graff@noaa.gov>

(b)(5)

?

On Wed, Nov 16, 2016 at 4:30 PM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:
Hi Susie--

No problem. See the signed version attached. Let me know whenever this is ready for my final review in FOIAOnline.

Mark H. Graff
FOIA Officer/Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) (C)

On Wed, Nov 16, 2016 at 4:03 PM, Susan Beresford - NOAA Federal <susan.s.beresford@noaa.gov> wrote:
Hi Mark,

(b)(5)

A copy of this document is in FOIAonline.

Thanks for your time.

Susie.

P.S. I would like to get this out NLT tomorrow, as the requester has asked about it.

--

Susan S. Beresford
Paralegal
Enforcement Section
NOAA Office of the General Counsel
U.S. Department of Commerce
1315 East-West Highway
SSMC3, Room 15829
Silver Spring, MD 20910
[\(301\) 427-8285](tel:3014278285) Office
[\(301\) 427-2211](tel:3014272211) Fax

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Susan S. Beresford
Paralegal
Enforcement Section
NOAA Office of the General Counsel
U.S. Department of Commerce
1315 East-West Highway
SSMC3, Room 15829
Silver Spring, MD 20910
[\(301\) 427-8285](tel:3014278285) Office
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--

Susan S. Beresford
Paralegal
Enforcement Section
NOAA Office of the General Counsel
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From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
Sent: Monday, November 21, 2016 8:42 AM
To: Lola Stith - NOAA Affiliate; Mark Graff - NOAA Federal; Arlyn Penaranda - NOAA Federal
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Good morning Mark and Lola,

The 2016-001270 FOIA is sitting with your office for approval of the 2nd interim release (OIG docs).

Thank you,

Lorna

On Fri, Nov 18, 2016 at 4:29 PM, Scott Doyle <scottdoyle137@aol.com> wrote:

Nothing from OIG, today was the day it was estimated to upload its docs. OSY has now had close to 3 months and nothing from them.

Can you check and give me a update next week.

Also the reimbursement had not be paid.

Scott Doyle

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
To: lola.m.stith <lola.m.stith@noaa.gov>
Cc: scottdoyle137 <scottdoyle137@aol.com>
Sent: Wed, Nov 2, 2016 2:05 pm
Subject: FW: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Ms. Stith,

Please provide Mr. Doyle with an update of his fee reimbursement.

Thank you,

Ms. Lorna Martin-Gross

OLE Records Manager

Office: [301-427-8244](tel:301-427-8244)

From: Scott Doyle [mailto:scottdoyle137@aol.com]
Sent: Wednesday, November 02, 2016 1:51 PM
To: lorna.martin-gross@noaa.gov
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

I have not received my reimbursement and update.?.

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
To: Scott Doyle <scottdoyle137@aol.com>

Sent: Tue, Oct 18, 2016 1:39 pm
Subject: RE: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Hello Mr. Doyle,

If you did not hear back from Ms. Stith yesterday, based on her email response to you on 10/14, I recommend you follow-up with her directly. The NOAA FOIA office handles all FOIA related funds and they will be the first to know the status.

Kind regards,

Ms. Lorna Martin-Gross

OLE Records Manager
Office: [301-427-8244](tel:301-427-8244)

From: Scott Doyle [mailto:scottdoyle137@aol.com]
Sent: Tuesday, October 18, 2016 1:15 PM
To: lorna.martin-gross@noaa.gov
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Thank you for the response.

Can you please let me know when the refund has been issued.

Scott

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
To: Scott Doyle <scottdoyle137@aol.com>
Cc: arlyn.penaranda <arlyn.penaranda@noaa.gov>; foia <foia@noaa.gov>
Sent: Tue, Oct 18, 2016 12:58 pm
Subject: RE: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Hello Mr. Doyle,

I understand your concern about not having received the remaining documents responsive to your FOIA request, DOC-NOAA-2016-001270. I will address each item of your email as it was written:

1. "I have not received my reimbursement as per the email below. That was well over a 2 months ago."

The NOAA FOIA office is following up on the status of your refund.

2. "I have not received all the additional FOIA documents that were originally identified. Can you give me an idea when I will receive them and reason for the continued delay?"

The latest follow-up with the Department of Commerce was this morning. DOC's Office of Inspector General (OIG) estimates to have the documents uploaded into FOIAonline by November 18, 2016. DOC's Office of Security (OSY) has not provided an estimate, but we will continue to check the status. Once the OIG documents are uploaded into FOIAonline, you will be provided a second interim release letter with instructions to access responsive documents to your request. When the documents are provided by DOC OSY, a third interim release letter will be sent electronically with instructions to access responsive documents.

3. "I would like to appeal that parts have been redacted which I don't believe which should have been redacted. I want to send in one comprehensive request. Items like complete email addresses, names, titles, the

body of reports that speak to the internal investigate as it relates to my interview, witness statements and general facts of the investigation etc.”

The appeal language from the interim release letter states:

“We encourage you to speak with us if you have concerns as we continue to process this request. Although you have the ability to appeal at this time, we encourage you to focus the appeal/mediation/NOAA discussion, if needed, on exemptions applied to the documents thus far, but hold specific challenges about production until you have received and reviewed more of the voluminous records that the agency is still in the process of gathering and processing.

You have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this release must be received within 90 calendar days of the date of this response letter at the following address:

*Assistant General Counsel for Litigation, Employment, and Oversight
U.S. Department of Commerce
Office of General Counsel
Room 5875*

14th and Constitution Avenue, N.W.

Washington, D.C. 20230

An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to [202-482-2552](tel:202-482-2552), or by FOIAonline at <https://foiaonline.regulations.gov/foia/action/public/home#>.

For your appeal to be complete, it must include the following items:

- *a copy of the original request,*
- *our response to your request,*
- *a statement explaining why the withheld records should be made available, and why the denial of the records was in error.*
- *“Freedom of Information Act Appeal” must appear on your appeal letter. It should also be written on your envelope, e-mail subject line, or your fax cover sheet.*

FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

FOIA grants requesters the right to challenge an agency's final action in federal court. Before doing so, an adjudication of an administrative appeal is ordinarily required.

The Office of Government Information Services (OGIS), an office created within the National Archives and Records Administration, offers free mediation services to FOIA requesters. They may be contacted in any of the following ways:

*Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001
Email: ogis@nara.gov*

Phone: [301-837-1996](tel:301-837-1996)

Fax: [301-837-0348](tel:301-837-0348)

Toll-free: [1-877-684-6448](tel:1-877-684-6448)

If you choose to submit a formal appeal, as noted in your email, all activity on your request will be stopped until the appeal is vetted and fully processed. This means all DOC documents will be on hold until the appeal is final.

Before you decide to submit a formal appeal, I can offer to schedule a telephone call with you to discuss your specific exemption concerns of the OLE documents. Prior to the call, I ask that you provide me with identifying information of the documents in question in order to avoid searching for specific documents during the call.

4. "I have a time limit of 90 days on which to appeal (Started 8/3/16), which I would like to request be extended until the all the FOIA documents have been delivered. It is unfair to ask me to make my appeal decision without the totality of all the information. I have received less than 100 of the over 320 documents.

If this is not the proper way to request an extension of an appeal please let me know the method you require."

The interim release was uploaded and sent via FOIAonline on August 16, 2016. After our call, if you choose to submit a formal appeal, you will be within the 90 calendar days limit (November 14, 2016 by 5:00 p.m., Eastern Time). The correct procedure to submit a formal appeal is found in paragraph 3, above, and in the interim release letter sent on August 16, 2016.

Please contact me if you would like to schedule a call to discuss your exemption concerns. I can be reached by email, Monday - Friday, at lorna.martin-gross@noaa.gov, or by phone on Tuesday, Thursday, and Friday, at [301-427-8244](tel:301-427-8244).

Kind regards,

Ms. Lorna Martin-Gross
Records Manager
Office of Law Enforcement
NOAA Fisheries
U.S. Department of Commerce
1315 East-West Highway
SSMC 3, Suite 3301
Office: [301-427-8244](tel:301-427-8244)
lorna.martin-gross@noaa.gov

From: FOIA Office - NOAA Service Account [mailto:foia@noaa.gov]
Sent: Friday, October 14, 2016 2:20 PM
To: Scott Doyle
Cc: Lorna Martin-Gross - NOAA Federal
Subject: Re: Fee Reimbursement Request

Good afternoon Mr. Doyle,

Thank you for your inquiry.

Lorna and Mark will address the FOIA request status and appeal questions. I can be your point of contact concerning the refund for your FOIA request.

I will follow-up with the NOAA finance office to check the status of your refund, and will have an update for you on Monday.

Please do not hesitate to contact me at the number below should you have additional questions concerning your refund.

Regards,

Lola Stith

NOAA FOIA Office
[703-298-8005](tel:703-298-8005)

Mark H. Graff
FOIA Officer
National Oceanic and Atmospheric Administration
[\(301\)-628-5658](tel:301-628-5658)

On Fri, Oct 14, 2016 at 2:14 PM, Scott Doyle <scottdoyle137@aol.com> wrote:
Mr Graff, Ms. Martin,

Several items

1. I have not received my reimbursement as per the email below. That was well over a 2 months ago.
2. I have not received all the additional FOIA documents that were originally identified. Can you give me an idea when I will receive them and reason for the continued delay?
3. I would like to appeal that parts have been redacted which I don't believe which should have been redacted. I want to send in one comprehensive request. Items like complete email addresses, names, titles, the body of reports that speak to the internal investigate as it relates to my interview, witness statements and general facts of the investigation etc.
4. I have a time limit of 90 days on which to appeal (Started 8/3/16), which I would like to request be extended until the all the FOIA documents have been delivered. It is unfair to ask me to make my appeal decision without the totality of all the information. I have received less than 100 of the over 320 documents.

If this is not the proper way to request an extension of an appeal please let me know the method you require.

I appreciate your consideration on this matter and realize your office is not the reason for the delay.

Sincerely

Scott Doyle

-----Original Message-----

From: foia <foia@noaa.gov>
To: scottdoyle137 <scottdoyle137@aol.com>
Sent: Thu, Sep 1, 2016 9:08 am
Subject: Fee Reimbursement Request

09/01/2016 09:03 AM

FOIA Request: DOC-NOAA-2016-001270

This is in response to your request for the reimbursement of the fees paid for the processing of your FOIA request. You have argued that the 2016 FOIA Improvent Act of 2016 mandates the return of fees paid to you. Although that act is not retroactive, it is correct that your request is past due, and unusual circumstances have not been cited as justifying billable processing with fees assessed in your request after the statutory time frame for responding to your request. As such, I have determined that your request is not billable, and that fees should be returned to you. A request for a refund of your fees paid will be submitted to the Office of the Chief Financial Officer.

Mark Graff
NOAA FOIA Officer

--

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: 301-427-8244

lorna.martin-gross@noaa.gov

From: Susan Beresford - NOAA Federal <susan.s.beresford@noaa.gov>
Sent: Friday, November 18, 2016 10:14 AM
To: Mark Graff - NOAA Federal
Cc: Lola Stith - NOAA Affiliate
Subject: Fwd: Close out in 2016-001765.
Attachments: DOC-NOAA- 2016-001765 signed FAL response letter for Graff mhg.docx.pdf

Hi Mark,

I am on leave today and I don't have upload access to this FOIA anymore because it is in "Review." Lola usually helps me, but I see that she is out until Monday.

(b)(5)

If you can't do it today, then it can wait until Monday. Thanks.

Susie.

----- Forwarded message -----

From: Susan Beresford - NOAA Federal <susan.s.beresford@noaa.gov>
Date: Wed, Nov 16, 2016 at 7:33 PM
Subject: Fwd: Close out in 2016-001765.
To: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>

Can you please upload this current version (with FOIAonline blurb on top) into FOIAonline -- and delete the other one? I don't have access now. Thanks.

----- Forwarded message -----

From: Susan Beresford - NOAA Federal <susan.s.beresford@noaa.gov>
Date: Wed, Nov 16, 2016 at 5:38 PM
Subject: Close out in 2016-001765.
To: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>

Lola,

(b)(5)

I will be out of pocket tomorrow AM, but can you take a look at this and possibly correct and send the documents and letter out for me? (It is a partial grant/partial denial.) I will try calling you at some point tomorrow.

Thanks.

Susie.

--

Susan S. Beresford
Paralegal
Enforcement Section
NOAA Office of the General Counsel
U.S. Department of Commerce
1315 East-West Highway
SSMC3, Room 15829
Silver Spring, MD 20910
(301) 427-8285 Office
(301) 427-2211 Fax

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Susan S. Beresford
Paralegal
Enforcement Section
NOAA Office of the General Counsel
U.S. Department of Commerce
1315 East-West Highway
SSMC3, Room 15829
Silver Spring, MD 20910
(301) 427-8285 Office
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(b) (5)

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From: Susan Beresford - NOAA Federal <susan.s.beresford@noaa.gov>
Sent: Monday, November 21, 2016 10:09 AM
To: Lola Stith - NOAA Affiliate
Cc: Mark Graff - NOAA Federal
Subject: Fwd: Close out in 2016-001765.
Attachments: DOC-NOAA- 2016-001765 signed FAL response letter for Graff mhg.docx.pdf

Lola,

Can you call me at home today, 301-424-3070, or set up a Google appointment, to assist me in closing out this FOIA today? Thanks so much.

----- Forwarded message -----

From: Susan Beresford - NOAA Federal <susan.s.beresford@noaa.gov>
Date: Fri, Nov 18, 2016 at 10:14 AM
Subject: Fwd: Close out in 2016-001765.
To: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Cc: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>

Hi Mark,

I am on leave today and I don't have upload access to this FOIA anymore because it is in "Review." Lola usually helps me, but I see that she is out until Monday.

(b)(5)

If you can't do it today, then it can wait until Monday. Thanks.

Susie.

----- Forwarded message -----

From: Susan Beresford - NOAA Federal <susan.s.beresford@noaa.gov>
Date: Wed, Nov 16, 2016 at 7:33 PM
Subject: Fwd: Close out in 2016-001765.
To: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>

(b)(5)

I don't have access now. Thanks.

----- Forwarded message -----

From: Susan Beresford - NOAA Federal <susan.s.beresford@noaa.gov>
Date: Wed, Nov 16, 2016 at 5:38 PM
Subject: Close out in 2016-001765.

To: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>

Lola,

(b)(5)

I will be out of pocket tomorrow AM, but can you take a look at this and possibly correct and send the documents and letter out for me? (It is a partial grant/partial denial.) I will try calling you at some point tomorrow.

Thanks.

Susie.

--

Susan S. Beresford
Paralegal
Enforcement Section
NOAA Office of the General Counsel
U.S. Department of Commerce
1315 East-West Highway
SSMC3, Room 15829
Silver Spring, MD 20910
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U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of the Chief Information Officer
High Performance Computing and Communications

Via FOIAonline

November 16, 2016

Elizabeth A. Mitchell
Association for Professional Observers
P.O. Box 933
Eugene, OR 97440

Re: FOIA Request DOC-NOAA-2016-001765

Dear Ms. Mitchell:

This letter is in response to your Freedom of Information Act (FOIA) request which was received by our office on September 29, 2016, in which you requested, regarding the Environmental Protection Agency's Administrative Law Judge's Initial Decision and Order for NOAA Enforcement Case PI1401544:

A copy of the hearing transcript; A copy of the Respondents' and the Agency's exhibits; and A copy of Respondents' and Agency's post-hearing briefs and related reply briefs.

We have located 711 pages of documents responsive to your request. After two failed e-mail attempts, 207 of these pages were released to you in their entirety, on November 15, 2016.

An additional 230 pages are being released to you in their entirety, in this final response.

Two videos (Agency Exhibit 7), are available for viewing on YouTube at:

<https://www.youtube.com/watch?v=YfGp1Kdf-ds>

and

<https://www.youtube.com/watch?v=bkM09bzU-08>

We are also releasing 241 pages of documents responsive to your request that are partially redacted under exemptions 5 U.S.C. 552(b)(3); 5 U.S.C. 552(b)(4); 5 U.S.C. 552(b)(5); 5 U.S.C. 552(b)(6); and 5 U.S.C. 552(b)(7)(C), which prohibits from disclosure of records: information that is prohibited from disclosure by another federal statute; trade secrets or commercial or financial information that is confidential or privileged; privileged communications within or

between agencies, including attorney-client privilege; information that, if disclosed, would invade another individual's personal privacy; and information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy, respectively.

33 pages of documents responsive to your request are exempt under 5 U.S.C. 552(b)(3); 5 U.S.C. 552(b)(4); 5 U.S.C. 552(b)(6); and 5 U.S.C. 552(b)(7)(C), which prohibits from disclosure of records: information that is prohibited from disclosure by another federal statute; trade secrets or commercial or financial information that is confidential or privileged; information that, if disclosed, would invade another individual's personal privacy; and information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy, respectively. These pages are being withheld in their entirety.

You have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this release must be received within 90 calendar days of the date of this response letter at the following address:

Assistant General Counsel for Litigation, Employment, and Oversight
U.S. Department of Commerce
Office of General Counsel
Room 5875
14th and Constitution Avenue, N.W.
Washington, D.C. 20230

An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to [202-482-2552](tel:202-482-2552), or by FOIAonline at <https://foiaonline.regulations.gov/foia/action/public/home#>.

For your appeal to be complete, it must include the following items:

- a copy of the original request,
- our response to your request,
- a statement explaining why the withheld records should be made available, and why the denial of the records was in error.
- "Freedom of Information Act Appeal" must appear on your appeal letter. It should also be written on your envelope, e-mail subject line, or your fax cover sheet.

FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

FOIA grants requesters the right to challenge an agency's final action in federal court. Before doing so, an adjudication of an administrative appeal is ordinarily required.

The Office of Government Information Services (OGIS), an office created within the National Archives and Records Administration, offers free mediation services to FOIA requesters. They may be contacted in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001

Email: ogis@nara.gov

Phone: 301-837-1996
Fax: 301-837-0348
Toll-free: 1-877-684-6448

If you have questions regarding this correspondence please contact Susan S. Beresford at Susan.S.Beresford@noaa.gov, or by phone at (301) 427-8285, or the NOAA FOIA Public Liaison Robert Swisher at (301) 628-5755.

Sincerely,

GRAFF.MARK.HYRU
M.1514447892

Digitally signed by
GRAFF.MARK.HYRUM.1514447892
DN: c US, o U.S. Government, ou DoD, ou PKI,
ou OTHER, cn GRAFF.MARK.HYRUM.1514447892
Date: 2016.11.16 17:49:22 -05'00'

Mark H. Graff
FOIA Officer/Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Monday, November 21, 2016 10:26 AM
To: Robert Swisher - NOAA Federal; Lola Stith - NOAA Affiliate; Kimberly Katzenbarger - NOAA FEDERAL; John Almeida - NOAA Federal; Arlyn Penaranda - NOAA Federal; Samuel Dixon - NOAA Affiliate
Subject: Final NOAA Draft Comments to DOC Regulation Changes
Attachments: DraftNOAACComments-FOIAREgs2016-11-14-draftclean.docx

Hey Guys--

Here is my final draft for the NOAA Comments on the regs. I've taken each of the comments we already had, and included draft language as appropriate as a suggested change. We'll see how this is received, and hopefully these can be implemented at the Department Level. If no one has any objections, I'll be sending this out later today--

Mark H. Graff
FOIA Officer/Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
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From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Tuesday, November 29, 2016 12:22 PM
To: Steven Goodman - NOAA Federal
Subject: Re: Bradley White
Attachments: resume.doc

Hi Steve,

(b)(5) [REDACTED]
[REDACTED]
[REDACTED].

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) [REDACTED] (C)

On Tue, Nov 29, 2016 at 11:52 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:
Hi Steve,

I have not. (b)(5) [REDACTED]
[REDACTED].

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) [REDACTED] (C)

On Tue, Nov 29, 2016 at 11:33 AM, Steven Goodman - NOAA Federal <steven.goodman@noaa.gov> wrote:
Hi Mark,

(b)(5) [REDACTED].

Thanks,

Steve

Sent from my iPhone

On Nov 14, 2016, at 9:46 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

Hi Steve--

Yes (b)(5) [redacted]
[redacted]
[redacted]

- [redacted]
[redacted]
[redacted]
[redacted]
- [redacted]
[redacted]
[redacted]
[redacted]
[redacted]

[redacted]. Let me know if you need any other suggested options--

Mark H. Graff
FOIA Officer/Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) [redacted] (C)

On Thu, Nov 10, 2016 at 12:26 PM, Steven Goodman - NOAA Federal <steven.goodman@noaa.gov> wrote:

Hi Mark,

(b)(5) [redacted]?

Steve

On Mon, Oct 24, 2016 at 3:43 PM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

Hi Steve--

(b)(5) [redacted]
[redacted] --

Mark H. Graff
FOIA Officer/Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) [redacted] (C)

On Mon, Oct 24, 2016 at 3:25 PM, Steven Goodman - NOAA Federal <steven.goodman@noaa.gov> wrote:

Mark,

(b)(5)

Thanks,

Steve

--

Steven Goodman

NOAA Fisheries

Chief
National Appeals Office, Office of Management and Budget
1315 East-West Hwy.
SSMC 3 Route F/MB7 Room 10841
Silver Spring, MD 20910

Tel: [301-427-8732](tel:301-427-8732)
Cell: (b)(6)
Fax: [301-713-2384](tel:301-713-2384)

--

Steven Goodman

NOAA Fisheries

Chief
National Appeals Office, Office of Management and Budget
1315 East-West Hwy.
SSMC 3 Route F/MB7 Room 9515
Silver Spring, MD 20910

Tel: [301-427-8732](tel:301-427-8732)
Cell: (b)(6)
Fax: [301-713-2384](tel:301-713-2384)

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From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, November 30, 2016 1:05 PM
To: Eric Williams - NOAA Affiliate; Stefan Leeb - NOAA Federal; Robert Hembrook - NOAA Federal; Robert Swisher - NOAA Federal; Jerry McNamara; David Bedell - NOAA Federal; Sarah Brabson - NOAA Federal; Lola Stith - NOAA Affiliate
Subject: DLP Docs for the discussion today
Attachments: DLP-Memo(Signed-EHerbst and CPurvis (4-15-16).pdf; DLP Plan Final signed.pdf; DLPBroadcastMessage-Final.pdf; NOAA DLP Plan Final signed.pdf; Sample Email Message Temporarily Quarantined.pdf; Census - Non-Disclosure Agreement - FINAL.docx; Census Data Loss Prevention FAQs.pdf

Hey Everyone--

Attached are the docs that we are going over today.

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) (C)

**CENSUS BUREAU
NON-DISCLOSURE AGREEMENT**

I, _____, an individual official, employee, consultant, or subcontractor of or to _____ (the Authorized Entity), intending to be legally bound, hereby consent to the terms in this Agreement in consideration of my being granted conditional access to certain information, specified below, that is owned by, produced by, or in the possession of the Census Bureau.

As used in this Agreement, sensitive but unclassified information is an over-arching term that covers any information, which the loss of, misuse of, or unauthorized access to or modification of could adversely affect the national interest or the conduct of Federal programs, or the privacy to which individuals are entitled under Section 552a of Title 5, as amended, but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense or foreign policy.

I attest that I am familiar with, and I will comply with the standards for access, dissemination, handling, and safeguarding of the information to which I am granted access through the Census Bureau's Data Loss Prevention (DLP) scan and its related components as cited in this Agreement and in accordance with the guidance provided to me relative to the specific category of information.

I understand and agree to the following terms and conditions of my access to the information indicated above:

1. I hereby acknowledge that I have received privacy and data security training concerning the nature and protection of information to which I have been provided conditional access, including the procedures to be followed in ascertaining whether other persons to whom I contemplate disclosing this information have been approved for access to it, and that I understand these procedures.
2. By being granted conditional access to the information indicated above, the Census Bureau has placed special confidence and trust in me and I am obligated to protect this information from unauthorized disclosure, in accordance with the terms of this Agreement and the laws, regulations, and directives applicable to the specific categories of information to which I am granted access.
3. I attest that I understand my responsibilities and that I am familiar with and will comply with the standards for protecting such information that I may have access to in accordance with the terms of this Agreement and the laws, regulations, and/or directives applicable to the specific categories of information to which I am granted access. I understand that the Census Bureau may conduct inspections, at any time or place, for the purpose of ensuring compliance with the conditions for access, dissemination, handling and safeguarding information under this Agreement.

4. I will not disclose or release any information provided to me pursuant to this Agreement without proper authority or authorization. Should situations arise that warrant the disclosure or release of such information I will do so only under approved circumstances and in accordance with the laws, regulations, or directives applicable to the specific categories of information. I will honor and comply with any and all dissemination restrictions cited or verbally relayed to me by the proper authority.
5. I hereby agree that material which I have in my possession and containing information covered by this Agreement, will be handled and safeguarded in a manner that affords sufficient protection to prevent the unauthorized disclosure of or inadvertent access to such information, consistent with the laws, regulations, or directives applicable to the specific categories of information. I agree that I shall return all information to which I have had access or which is in my possession 1) upon demand by an authorized individual; and/or 2) upon the conclusion of my duties, association, or support to the Census Bureau; and/or 3) upon the determination that my official duties do not require further access to such information.
6. I hereby agree that I will not alter or remove markings, which indicate a category of information or require specific handling instructions, from any material I may come in contact with, unless such alteration or removal is consistent with the requirements set forth in the laws, regulations, or directives applicable to the specific category of information. I agree that if I use information from a sensitive document or other medium, I will carry forward any markings or other required restrictions to derivative products, and will protect them in the same matter as the original.
7. I hereby agree that I shall promptly report to the appropriate official, in accordance with the guidance issued for the applicable category of information, any loss, theft, misuse, misplacement, unauthorized disclosure, or other security violation, I have knowledge of and whether or not I am personally involved. I also understand that my anonymity will be kept to the extent possible when reporting security violations.
8. If I violate the terms and conditions of this Agreement, such violation may result in the cancellation of my conditional access to the information covered by this Agreement. This may serve as a basis for denying me conditional access to other types of information, and may affect the performance of my duties.
9. I hereby assign to the Census Bureau all royalties, remunerations, and emoluments that have resulted, will result, or may result from any disclosure, publication, or revelation of the information not consistent with the terms of this Agreement.
10. This Agreement is made and intended for the benefit of the Census Bureau and may be enforced by the Census Bureau or the Authorized Entity. I understand that if I violate the terms and conditions of this Agreement, I could be subjected to administrative, disciplinary, civil, or criminal action, as appropriate, under the laws, regulations, or directives applicable to the category of information involved and neither the Census

Bureau nor the Authorized Entity have waived any statutory or common law evidentiary privileges or protections that they may assert in any administrative or court proceeding to protect any sensitive information to which I have been given conditional access under the terms of this Agreement.

11. Each provision of this Agreement is severable. If a court should find any provision of this Agreement to be unenforceable, all other provisions shall remain in full force and effect.
12. My execution of this Agreement shall not nullify or affect in any manner any other secrecy or non-disclosure Agreement which I have executed or may execute with the Census Bureau.
13. These restrictions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958, as amended; Section 7211 of Title 5, United States Code (governing disclosures to Congress); Section 1034 of Title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military); Section 2302(b)(8) of Title 5, United States Code, as amended by the Whistleblower Protection Act (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 USC 421 et seq.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosure that may compromise the national security, including Sections 641, 793, 794, 798, and 952 of Title 18, United States Code, and Section 4(b) of the Subversive Activities Act of 1950 (50 USC 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by said Executive Order and listed statutes are incorporated into this agreement and are controlling.
14. I represent and warrant that I have the authority to enter into this Agreement.
15. I have read this Agreement carefully and my questions, if any, have been answered. I acknowledge that the briefing officer has made available to me any laws, regulations, or directives referenced in this document so that I may read them at this time, if I so choose.

EMPLOYEE		
Print Name	Signature	Date
WITNESS		
Witness Name	Signature	Date

Census Data Loss Prevention (DLP) Email Scan FAQs:

Q. What is the Census Bureau's Data Loss Prevention Email Scan?

A. The Census Bureau's Data Loss Prevention Email Scan, or DLP, is an off the shelf software designed to scan all outgoing unencrypted email messages for certain sensitive key words. Data loss prevention email scan is content-level scanning of unencrypted email messages and attachments to detect inappropriate transport of sensitive information. Examples of sensitive information include health information, Social Security Numbers, Tax Identification Numbers, and credit card information. Such information is prohibited by Federal policy from unencrypted email transmission.

Implementation of the DLP is required by the Department of Commerce, and by related regulations, the Office of Management and Budget.

Q. How does the DLP for email work?

A. When a message is sent from the Census Bureau to any location outside of Census email servers, the DLP system will immediately scan the message and any attachments for specific sensitive information. If sensitive information is detected in an unencrypted email (include attachments), the email message, and any attachments will immediately be placed in quarantine. A separate email is automatically sent to the sender stating this action and with additional instructions to encrypted the email or redacts all sensitive information that is prohibited from electronic transmission in an unencrypted email.

Q. Can the DLP for email detect Title 13 & 26 data?

A. Not at this time, understanding the data format needs to occur so that custom policies can be developed for the email DLP system.

Q. What does the DLP quarantined notice look like?

A. A copy of the DLP quarantined notice can be found by clicking this link.

Q. Can the DLP scan email messages from personal email accounts such as Gmail, Hotmail, Yahoo, etc.

A. No. At the current time only messages sent from an official Census Bureau account that are being transmitted outside of Census email servers are being scanned. However, to better protect yourself from unauthorized disclosure, it is best to not send unencrypted sensitive PII through any email account.

Q. Are all incoming and outgoing email messages scanned by the DLP?

No. At the present time, only non-encrypted email messages leaving the Census firewall are scanned by the DLP for privacy and data protection considerations. In-coming messages are currently not scanned by the DLP.

Q. Why is DLP for email important?

A. With more and more sensitive information being transported electronically, there is greater potential for inadvertent (or malicious) disclosure of sensitive information by users. By implementing DLP for email, we can proactively prevent inadvertent/malicious disclosure of sensitive information while encouraging the use of Census Bureau approved encryption software.

Q. What to do if an email message was quarantined by the DLP in error?

If, after thoroughly reviewing the email it is determined that the email message was quarantined in error (otherwise known as a false positive), that is, no sensitive information is found in the email message, the sender should contact a Privacy Analyst with the Policy Coordination Office on ext. 3-6440. After confirming that the quarantined email was a false positive, the Privacy Analyst will release the email message to the intended recipient(s).

Q. What happens to an email that is quarantined by the DLP?

If the email message is not authorized to be released by a Privacy Analyst within 15 days of being quarantined, it will be automatically deleted by the DLP.

Q. How soon are individuals notified that their email message has been quarantined?

Quarantined messages from the DLP are automatically sent to the sender within 5 minutes of the attempted transmission of the email message.

Q. Are incoming messages scanned by DLP for email?

A. No, not at the present time. Only outbound messages are scanned by the DLP system. Messages between internal users (within the Census firewall) are not be scanned.

Q. How many email messages are sent/receive daily and of those how many potential incidents?

A. The Census Bureau process approximately 2 million messages daily and less than 1% of those messages potentially contain sensitive information.

Q. Are email messages that are quarantined by the DLP considered a breach?

No, but it is a violation of DOC policy. Email messages that were quarantined by the DLP were prevented from leaving the Census firewall, thus, preventing a breach from occurring. However, attempting to send an unencrypted email message containing sensitive information is a violation of the [U.S. Department of Commerce Office of the Chief Information Officer Electronic Transmission of Personally Identifiable Information](#).

The Bottom Line –

The DLP is for your protection. It allows the agency to proactively detect and contain potential data breaches.

NOAA Data Loss Prevention Plan

**Office of the Chief Information Officer
Governance and Portfolio Division
August 2016**



Background

[01] The protection of sensitive and personal information is more important than ever with electronic communications becoming increasingly prevalent. Safeguarding Personally Identifiable Information (PII) in the possession of the Federal Government and preventing its breach are essential to retaining the trust of the American public¹. This responsibility is shared by officials accountable for administering operational, privacy, and security programs. PII is any information that, by itself or in combination with other information, may be used to uniquely identify an individual. Within NOAA systems, this primarily can consist of Social Security Numbers (SSN), names, addresses, dates and places of birth, bank account numbers, e-mail addresses, telephone numbers, and passport numbers. The Office of Management and Budget (OMB) and the Department of Commerce (Commerce) released several memoranda to address the issue of safeguarding PII².

[02] This plan is intended as a framework for future action that will address user and system specific restrictions, controls, use cases, parameters, and other actions implemented based on the needs of individual systems and mission goals. This plan is intended to satisfy the implementation plan obligations to meet the minimum Privacy DLP Standards within 1 year as outlined in the April 15, 2016 Memorandum entitled “Departmental Privacy Standards for Commerce Data Loss Prevention (DLP) Security Tools”, as well as the corresponding May 3, 2016 data call issued by Commerce.

NOAA Data Overview

[01] NOAA provides the data, science, and information that allow the economy to function effectively and grow sustainably. NOAA helps to ensure a competitive economy by monitoring and predicting changes in the Earth's environment, protecting lives and property, and conserving and managing the nation's coastal and marine resources. NOAA's data portfolio mirrors the diversity and complexity of its mission ... and NOAA is very complex! Our mission and data diversity includes:

- 21,335 Staff (federal, contractor, associate)
- 435 Buildings
- 122 Weather Forecast Offices
- 13 River Forecast Centers
- 1,429 Real-Time Weather Stations
- 17 Satellites
- 8 Buoy Networks: 1042 Stations Deployed
- 13 National Marine Sanctuaries and 1 Marine National Monument
- 286 Data Centers

¹ The definition of PII can be found in the OMB Memorandum M-06-19, July 12, 2006.

² See, e.g., Memorandum from David A. Sampson, RE: Safeguarding Personally Identifiable Information, November 6, 2006.

- 94 Federal Information System Management Act Systems
- 33 Exhibit 300 IT Investments

NOAA DLP Strategy Overview

[01] NOAA uses, and will further deploy, a “Defense in Depth” approach to DLP. NOAA will use existing operational controls and privacy enhancing technologies. These include PII identifying solutions, encryption, firewalls, authorized use system access controls, and system audit logs. To further reduce the risk of compromise of sensitive PII in agency communications, NOAA will implement a Data Loss Prevention (DLP) solution set that monitors network communications and prevents sensitive PII from leaving the network, in addition to other sensitive data, as determined when the scope and capability of the solution is determined. Other sensitive data may include law enforcement sensitive data, business identifiable data, or other data sets for which the DLP solution can feasibly be leveraged. Each of these data sets may have one or more data owners, who will classify the information type, as described in the fourth development step below. In addition to these technical controls, NOAA utilizes administrative policies and procedures, as well as privacy training, to further safeguard information privacy and control access to information systems and information assets.

[02] NOAA conducts Privacy Threshold Analyses, (PTA’s), and, where applicable, Privacy Impact Assessments (PIAs) on all information systems to ensure privacy implications are addressed when planning, developing, implementing, and operating information technology (IT) systems that maintain information on individuals. NOAA utilizes a PIA template and guidance on conducting PIAs. The NOAA Bureau Chief Privacy Officer (BCPO) collaborates with system owners and IT security professionals to assess existing, new, or proposed programs, systems or applications for privacy risks, and recommends methods to protect individual privacy.

[03] The NOAA DLP solution(s) will be designed to monitor and prevent data from being leaked. NOAA’s DLP strategy, however, is to make sure the DLP solution(s) are as efficient and effective as possible. DLP needs to be rationally deployed in order to ensure that false positives do not overwhelm the system and the capacity of NOAA privacy and cyber security managers and staff. DLP tools such as McAfee Security, as powerful as they may be, require careful and organized deployment, otherwise reported incidents may be of little value.

[04] In response to the OMB M-07-16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information, and NIST SP 800-122, at 2.1, the NOAA Governance and Portfolio Division is leading the DLP initiative to promote secure practices in electronic communications (e-mails and Internet access) on the NOAA network to protect Controlled Unclassified Information (CUI) data. Taking a phased approach, the DLP initiative may include plans to implement specific solutions, for example, McAfee’s Data Loss Prevention (DLP) commercial off-the-shelf software solution that is capable of identifying and tracking a number of NOAA’s defined PII datasets. The NOAA DLP solution(s) will be designed to give NOAA an enterprise view into where it's most sensitive data are stored, who has access to the data, and where and by whom the data are sent outside the NOAA network. By using this information, NOAA can spot broken business processes and reduce the overall risk of exposure. The DLP solution(s) will take a data-centric approach to security, in which policies can be developed

around the content that should be protected and then deployed across multiple data states or functionalities, such as identifying, monitoring, and preventing.

DLP Development Steps

[01] A multi-layered approach will be applied to prevent data leakage for all routes and states. Data is classified under one of several schemes like data in motion, data in use, and at rest; or by data in-store, in-use and in-transit.

- Data in motion: Data that needs to be protected when in transit including HTTP/S, S/FTP/S, IM, P2P, SMTP.
- Data in use: Data that resides on end user workstation and needs to be protected from being leaked through removable media devices like USB, DVD, CD's.
- Data at rest: Data that resides on local storage media or server storage.

[02] Each of these layered types of data will be considered during deployment to maximize the prevention of data leakage. A multi-step approach to deployment, shown below, will be used as well. These steps are discussed in detail below.

1. Define policies
2. Identify sensitive data
3. Determine information flows
4. Identify data owners
5. Identify deployment scenarios
6. Plan DLP operations
7. Deploy DLP product(s)

Define Policies

[01] NOAA will build policies to protect the sensitive data. Every policy will consist of some rules, such as to protect credit card numbers, PII, and social security numbers, if such policies are not already in place. If there is a requirement for NOAA to protect sensitive information and a DLP product such as McAfee DLP does not support it out of the box, then NOAA will create rules using regular expressions (regex). It should be noted that DLP policies at this stage will be defined and not applied.

[02] Those policies will reflect the internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our objective: Commerce Directives; and OMB, White House, and National Institute for Standards and Technology (NIST) guidelines. Each of these sources provide a framework for implementing an automatic tool to monitor transfers of PII and for developing, or implementing, a commercial off-the-shelf product. We are evaluating these controls against an enterprise life cycle approach, and by reviewing enterprise life cycle commercial off-the-shelf artifacts and documents supporting the procurement, budget, and expenses for the DLP solution.

[03] Policies will take into consideration existing guidelines and recommendations as well as other factors, such as impact and dependency for other systems, also needed to be considered when implementing a DLP solution. The National Institute for Standards and Technology Special Publication 800-122, Guide to Protecting the Confidentiality of Personally Identifiable Information³[1], recommends that agencies implement automated tools, such as a network data leakage prevention tool, to monitor transfers of PII and to monitor inbound and outbound communications for unauthorized activities. In addition, the Government Accountability Office's Standards for Internal Control in the Federal Government⁴[2] provides that application controls should be designed to help ensure completeness, accuracy, authorization, and validity of all transactions during application processing. Controls should be installed as an application interfaces with other systems to ensure that all inputs are received and are valid and that outputs are correct and properly distributed.

Identify Sensitive Data

[01] NOAA will identify all the confidential, restricted, and highly restricted data across the whole organization and across the three categories, i.e. for data in-transit, in-store and in-use. In identifying the sensitive data, NOAA will define the scope within which the DLP Solution will function. Each data set analyzed will be considered as to whether or not leveraging the DLP product would be an efficient use of resources, whether the data is non-sensitive, or whether the DLP would be an effective tool in further securing the data. DLP products work with signatures to identify any restricted data when it is crossing boundaries. To identify the critical data and develop its signatures, there is a term in DLP products known as fingerprinting. Data is stored in various forms at various locations in an organization and it requires identifying and fingerprinting. Various products come with a discovery engine which crawl all searchable data in a given data store, index it and make it accessible through an intuitive interface which allows quick searching on data to find its sensitivity and ownership details.

Determine Information Flows

[01] It is very important for an organization to identify their information flow. NOAA OCIO will prepare a questionnaire to identify and extract all the useful information. A sample questionnaire would address, at a minimum, the following three issues:

- What is a standard data flow, and what should be the source and destination of the identified data?
- What are all the egress points present in the network?
- What processes are in place to govern the informational flow?

³ National Institute of Standards and Technology, NIST SP 800-122, Guide to Protecting the Confidentiality of Personally Identifiable Information (PII) (April 2010).

⁴ Government Accountability Office (formerly known as the General Accounting Office), GAO/AIMD-00-21.3.1, Internal Control: Standards for Internal Control in the Federal Government (Nov. 1999).

Identify Data Owners

[01] Identification of the NOAA staff and line office owners of data is also an important step in the planning strategy of DLP, so a list will be prepared by OCIO of whom to send the notifications to in case any sensitive data is lost. NOAA OCIO will distribute an assessment to identify the owners of each of the different sensitive data elements across the organization. The data owners also will be responsible for classifying the information types⁵. Many types of data will have multiple owners, governed by separate line and staff office policies for the collection and use of that data, depending on mission needs. The assessment will attempt to identify each offices ownership, collection, storage, and transmission of sensitive data so that when an incident occurs, the incident is properly triaged, escalated where necessary, reported⁶, and the DLP processes and application are modified and tuned as necessary.

Identify Deployment Scenarios

[01] The following questions arise in identifying potential Deployment Scenarios. Each of these must be addressed prior to agency-wide deployment of a mature DLP solution.

1. Will the Initial Deployment be applied to all of the traffic of data in use, or in motion, or at rest?
2. Alternatively, should NOAA deploy the DLP appliance by copying the network traffic and analyzing it at a different port before deploying it directly to the data states of the network traffic?
3. Should the deployment occur in high availability mode or should we configure in bypass mode?
4. How will the setup of endpoints with the DLP manager occur?
5. How do we maintaining integrity between communication ports and firewalls?
6. How do we ensure proper configuration of a crawling agent?

[02] As discussed above, sensitive data falls under three categories, i.e. data in motion, data at rest and data in use. After identifying the sensitive data and defining policies, NOAA will prepare for the deployment of DLP product(s). DLP deployment scenario of all three categories include :

- Data in motion: Data that needs to be protected when in transit, i.e. data on the wire. This includes channels like HTTP/S, S/FTP/S, IM, P2P, SMTP etc. NOAA will install the DLP protector appliance or software so it is not directly inline with the traffic. This is prudent to start with a minimally invasive method by not putting the appliances inline, to prevent a huge number of false positives or a network outage if the inline device fails. The NOAA approach will be to deploy DLP appliances or software in a span port first,

⁵ See, NIST SP 800-60.

⁶ Reporting here is referring to both internal reporting to the Office that owns the information, the Bureau Chief Privacy Officer, and N-CIRT as necessary, as well as external notifications (such as Privacy Incident reporting to DOC) and external reporting to OMB. Organizations report annually on specific privacy and security activities in their annual FISMA reports to OMB. The most recent memorandum is OMB M-10-15, FY 2010 Reporting Instructions for the Federal Information Security Management Act and Agency Privacy Management, available at http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-15.pdf

and then after the DLP strategy is mature, then put into inline mode. In order to mitigate the second risk, NOAA may deploy two options: first, deploy DLP in High Availability mode, and second, configure the inline DLP product in bypass mode, which will enable the traffic to bypass the inline DLP product in case the DLP product is down.

- **Data in Use:** Data that resides on the end user workstation and needs to be protected from being leaked through removable media devices like USB, DVD, CDs, etc. will fall under this category. In Data in Use, an agent may be installed in every NOAA endpoint device like laptop, desktop, etc. which is loaded with policies and is managed by a centralized DLP management server. Agents would be distributed on the endpoints via pushing strategies like SMS, GPO, etc.
- **Data in Store:** Data that resides on file servers and DBs and needs to be monitored from being getting leaked will fall under this category. All NOAA data that resides in storage servers or devices would be crawled using a DLP crawling agent. After crawling, data is fingerprinted to see if any unstructured data is present or not.

Plan DLP Operations

[01] NOAA will need to split the DLP operations into three phases: a triaging phase, a reporting and escalation phase, and a tuning phase. The security operation's team will monitor the alerts fired or triggered by the policies set up in the DLP product. N-CIRT will fine tune the policies as a result of some mis-configurations earlier or due to eventual policy or guidance changes and apply the changes to the DLP product. NOAA will need to identify the staffing, budget, training, and other resource demands that each phase of the DLP Operations will require, and determine the capabilities in effectively carrying out each phase with the available resources.

Deploy DLP Product(s)

[01] Deployment of security components is of no use if they cannot be monitored, and a DLP product is no exception. Below is an overview of what a DLP operation of an organization can be. First of all, the DLP product needs to be created with the right set of policies on the identified data among data at rest, in motion or in transit categories. The DLP operations can be separated into three phases, namely: the triaging phase, the reporting and escalation phase, and the tuning phase. These will need to be modified depending on the nature of the incident identified in the triaging phase for referral to N-CIRT and for DOC notification, as necessary. The triaging phase, incident reporting and escalation, as well as the any parameter modifications and tuning will be carried out in accordance with existing PII/BII Breach Response and Notification Plan.

Conclusion

[01] NOAA will employ a Defense in Depth approach to DLP. NOAA's DLP solution(s) need to minimize deployment and operating costs. As an off-the-shelf product, the McAfee Total Protection, or a similar product solution would potentially be an additional tool within the DID approach to effectively protect PII and BII data wherever it may be.

[02] NOAA has maintained a high awareness of data security, and is vigilant in protecting the sensitive information located within its systems. These Data Loss Prevention measures will

enhance the security of NOAA information systems and maintain the highest level of compliance with all regulatory and guidance documents that govern Data Loss Prevention at the agency⁷.

Definitions

Business Identifiable Information (BII) Information that is defined in the Freedom of Information Act (FOIA) as "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Commercial or financial information is considered confidential if disclosure is likely to cause substantial harm to the competitive position of the person from whom the information was obtained.

Personally Identifiable Information (PII) Information that can be used to distinguish or trace an individual's identity, such as name, Social Security number (SSN), biometric records, etc., alone, or when combined with other personal or identifying information, which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc. [OMB M-07-16].

Sensitive Personally Identifiable Information (Sensitive PII) Sensitive PII is defined as PII which, when disclosed, could result in harm to the individual whose name or identity is linked to the information. Further, in determining what PII is sensitive, the context in which the PII is used must be considered. For example, a list of people subscribing to a government newsletter is not sensitive PII; a list of people receiving treatment for substance abuse is sensitive PII. As well as context, the association of two or more non-sensitive PII elements may result in sensitive PII. For instance, the name of an individual would be sensitive when grouped with place and date of birth and/or mother's maiden name, but each of these elements would not be sensitive independent of one another. For the purpose of determining which PII may be electronically transmitted, the following types of PII are considered sensitive when they are associated with an individual. Secure methods must be employed in transmitting this data when associated with an individual:

- Place of birth
- Date of birth
- Mother's maiden name
- Biometric information
- Medical information, except brief references to absences from work
- Personal financial information
- Credit card or purchase card account numbers
- Passport numbers

⁷ NIST SP 800-53A, Recommended Security Controls for Federal Information Systems, establishes common criteria for assessing the effectiveness of security controls in federal information systems. Organizations use the recommended assessment procedures from NIST SP 800-53A to develop their own assessment procedures.

- Potentially sensitive employment information, e.g., personnel ratings, disciplinary actions, and result of background investigations
- Criminal history
- Any information that may stigmatize or adversely affect an individual.

This list is not exhaustive, and other data may be sensitive depending on specific circumstances. Social Security Numbers (SSNs), including truncated SSNs that include only the last four digits, are sensitive regardless of whether they are associated with an individual. If it is determined that such transmission is required, then secure methods must be employed. [DOC Electronic Transmission of PII Policy].

Controlled Unclassified Information (CUI) Information that requires safeguarding or dissemination controls pursuant to and consistent with applicable law, regulations, and government-wide policies but is not classified under Executive Order 13526 or the Atomic Energy Act, as amended.

Signed this ____ day of _____, 2016.

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Date: 2016.08.30 15:28:33 -0400


Zachary Goldstein, NOAA CIO




APR 15 2016

MEMORANDUM FOR: Heads of Operating Units and Secretarial Officers

FROM:

Catrina D. Purvis 
Senior Agency Official for Privacy (SAOP) &
Chief Privacy Officer

Ellen Herbst 
Chief Financial Officer &
Assistant Secretary for Administration

SUBJECT: Departmental Privacy Standards for Commerce Data Loss
Prevention (DLP) Security Tools

The purpose of this memorandum is to establish a requirement for all bureaus/operating units (BOUs) to configure their Data Loss Prevention (DLP) security tools to implement privacy control capabilities that meet Departmental privacy DLP standards. This requirement will enhance privacy protections and reduce personally identifiable information (PII) breaches within Commerce.

BACKGROUND

DLP is a term that refers to both the policy and information security tools used to identify, restrict, monitor, and protect sensitive data in use, in motion, and at rest. DLP security tools detect and prevent unauthorized attempts to copy or send sensitive data, intentionally or unintentionally, without authorization. On July 7, 2010, Departmental guidance announcing the implementation of a DLP program was issued in a document titled "Immediate Enablement of a DLP Security Tool."

On December 17, 2014, the Commerce Privacy Council's DLP Working Group (commissioned by the then-General Counsel) produced a *Privacy DLP Working Group Recommendations Report*. In furtherance of the 2010 guidance, the report recommended requiring all BOUs to implement DLP-based privacy control capabilities and provided minimum privacy DLP standards for electronic transmissions of sensitive PII (incoming and outgoing email messages or internet postings). Implementation of these standards results in all unsecured electronic transmission of sensitive PII attempts on any Commerce system to be blocked and redirects senders to use an approved secured

transmission method. Many BOUs have implemented the recommended privacy DLP standards across all of their systems and others have made significant progress toward that end. This memorandum formally requires all BOUs to implement privacy DLP capabilities that satisfy the existing minimum standards set forth in the working group's attached report.

REQUIRED ACTIONS

Accordingly, the following actions are required and must be submitted to the Commerce Senior Agency Official for Privacy at CPO@doc.gov within 120 days from the date of this memorandum:

- BOUs with existing DLP security tool capabilities – Provide a confirmation email that the minimum privacy DLP control standards identified in the DLP Working Group Report have been implemented.
- BOUs with no existing DLP security tool capabilities – Provide an implementation plan to meet the minimum Privacy DLP Standards within one (1) year. (The implementation plan may propose an alternative method/process to achieve the standards).

Please direct any questions regarding this memorandum to Lisa Martin, Deputy Director of Departmental Privacy Operations, who can be reached at (202) 482-2459 and lmartin1@doc.gov.

cc: BOU Chief Privacy Officers
Chief Information Officers
Chief Financial Officers

Attachment:

DOC Privacy DLP Working Group Recommendations

United States Department of Commerce

Privacy Data Loss Prevention (DLP)
Working Group
Recommendations

December 17, 2014



Working Group Members

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**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

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**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

SUMMARY

This document contains recommendations from the Department of Commerce (DOC) inter-agency network based Privacy Data Loss Prevention (DLP) Working Group for implementing a DOC wide DLP privacy program. Information in this recommendation will change as we gain greater experience using DLP email scan, new technologies are introduced, and new OMB requirements are implemented. As a result, it is the recommendation of the Privacy DOC Privacy DLP Working Group that these recommendations be reviewed annually and updated as appropriate.

The DOC inter-agency Privacy DLP Working Group was commissioned to research, investigate, and propose recommendations for implementing a department wide DLP privacy program. The group's primary objective was to provide high-level recommendations for a department wide DLP privacy program that will minimize the number of sensitive personally identifiable information (PII) email incidents while considering the level of technical, human, and financial resources needed to implement a DLP privacy program. DLP accomplishes these tasks using automated tools that implement policies and processes to identify where sensitive information is stored throughout the department's network, restrict access to that sensitive information, and monitor transmission of sensitive data in and out of the network boundary.

The Privacy DLP working group consisted of a small group of privacy advocates from the Department of Commerce, the Bureau of Industry and Security (BIS), the Bureau of Economic Analysis (BEA), the U.S. Census Bureau, the National Oceanic and Atmospheric Administration (NOAA), the National Institute of Standards and Technology (NIST), and the U.S. Patent and Trademark Office (USPTO). Byron Crenshaw, Privacy Compliance Chief of the U.S. Census Bureau, chaired this group.

This document describes the following recommendations from the Privacy DLP Working Group:

1. Security/Sensitivity Classification of DLP Personnel
2. Department-wide Privacy DLP Standard Process
3. DLP Minimum Scanning (filtering) Configuration – Incoming & Outgoing Mail
4. Filtering Criteria
5. Internet Postings
6. Handling of False Positives
7. Email Message Alerts to the Email Sender
8. Implementation Plan & Deadline
9. Reporting Requirements

**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

SCOPE

The recommendations of this document are for all unencrypted HTTP entities and messaging traffic (incoming or outgoing email messages or internet postings) that are leaving or entering a DOC network.

RECOMMENDATIONS

1. Security/Sensitivity Classification of DLP Personnel

Standard DLP operating procedures may allow DLP personnel access to confidential and/or sensitive information pertaining to persons, government or private entities. The DOC Privacy DLP Working Group recommends that DLP personnel sign a non-disclosure form prior to working with DLP technologies, acknowledging the requirements and responsibilities for information that is handled and made available. In addition, agencies may consider conducting additional security/suitability clearances for personnel involved with DLP.

2. Department-Wide DLP Standards

It is the recommendation of the DOC Privacy DLP Working Group that the DOC adopt the following practice as standard DLP privacy operating procedures:

- all unencrypted electronic messages (email messages or internet postings) that are leaving or entering a DOC network be filtered through the DLP solution (minimum scanning configuration is described in Section 3);
- suspected sensitive PII detected by the DLP shall be quarantined for a specified number of days as determined by the department or the OU;
- for each day an email is stored in quarantined, the email sender shall be sent an auto-generated email message from the DLP stating that his/her email will be deleted on [specified date] unless action is taken;
- if no action is taken on email messages quarantined by the DLP within the pre-determined number of days, the email message shall be deleted and the sender shall be notified;
- to resolve a suspected false positive, the email sender can either:
 - retransmit the email message with proper encryption,
 - redact the message of all sensitive information and retransmit, or,
 - contact the privacy staff to resolve suspected false positive (described in Section 6 – Handling of False Positives).

3. DLP Minimum Scanning Configuration

A successful department wide DLP privacy program must begin with a standard set of personally identifiable information (PII) items that each operating unit must consistently treat with special handling procedures during electronic transmission. The identification of sensitive PII is often based on the context of how the information is used. Since there are limitations on contextual understanding by DLP software, the list of sensitive PII identified by the DOC inter-agency Privacy DLP Working Group will consist primarily of single (standalone) sensitive PII items, with some basic grouping or combination of other PII or commonly associated text. Examples of these items are listed in Table 1.

**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

A. Egress Scanning

It is the recommendation of the DOC Privacy DLP Working Group that all outgoing email messages sent from a DOC network be subject to DLP filtering for sensitive PII based on the minimum filtering criteria as outlined in this document.

Note on Agencies' Rights: DOC operating units must reserve the right to add additional PII to their DLP filter as necessary. However, minimum DLP items identified by the DOC DLP Team cannot be detracted.

B. Ingress Scanning

Historical research by DOC operating units that are currently using a DLP software has revealed that incoming email messages will sometime contain sensitive PII which can go undetected by the operating unit. It is not until the operating unit attempts to reply or forward the message outside of the DOC network that the sensitive PII in the e-mail message is detected. It was also revealed that sometimes the incoming e-mail message will be copied and filed in an unsecure environment because the sensitive PII within the e-mail message remained undetected.

To address this problem, it is the recommendation of the DOC Privacy DLP Working Group that all e-mail messages coming into DOC networks be subject to the same DLP filtering criteria as outgoing email messages. Incoming e-mail messages containing sensitive PII as identified by the DLP filtering scan shall be blocked by the DLP from entering the DOC network. It is recommended that electronic notification be sent to the sender describing the policy prohibition, with instructions for using DOC approved encryption software (i.e., Accellion). In addition, it is also recommended that the intended recipient of the blocked email message be electronically notified that an incoming e-mail message has been blocked from receipt into the DOC network because of a possible DLP policy prohibition. Recommended suggestions for the wording of these notification messages are included in Appendix A.

4. Filtering Standard

The DOC Privacy DLP Working Group has identified a minimum standard for DLP privacy implementation. This filtering standard includes sensitive PII, and non-sensitive PII combined with other information, such as financial and/or medical information, which when combined, becomes sensitive PII.

DOC operating units must include these items in the standard filters of their DLP filtering items, additional filtering items can be added by DOC operating units as necessary.

If a quarantined message matches for more than one DLP filter item, the DLP scanning rules should terminate examination and trigger countermeasures on the first matching item.

It is the recommendation of the DOC Privacy DLP Working Group that the DLP filtering hierarchy be in this order.

**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

1. Social security number
2. Passport number
3. Driver's license/state identification number
4. Bank account/credit card number
5. Medical/HIPAA Information
6. Date of birth
7. Mother's maiden name

This order means if there is an email message that has content that recognize the SNN and HIPPA Patient Identification Number, the DLP would recognize the SSN as the violation and not continue processing for the HIPAA Patient Identifier.

4.1 U.S. Social Security Number Filters

The U.S. Social Security Number classifier requires a properly formatted number as well as other supporting data, such as a date of birth, name, or the text string "SSN".

U.S. SSN Examples:

- 123-45-6789 (No match because of no supporting information)
- 123-45-6789 July 4 (Match because a partial date is linked to 9-digit string number)
- 123-45-6789 7/4/1980 (Match because a possible date is linked to 9-digit string number)
- 123-45-6789 7/4 (No match)
- 123-45-6789 987-65-4321 (Match because of more than one 9-digit string number increases risk, threat, and harm)
- SSN: 123-45-6789 (Match)
- Joe Smith 123-45-6789 (Match because name linked to 9-digit number)
- 123-45-6789 CA 94066 (Match because state and zip code associated with 9-digit number)

4.2 Passport Number

The Passport Number filter requires inspection for the word "Passport," in English and Spanish, followed by a string of digits.

4.3 Driver's License/State Identification Number

Driver's license or other state identification number must be filtered by the words "Driver's License" or "State Identification," followed by a string of numeric or alphanumeric values.

String of numeric data including punctuation (dashes, periods, etc.).

**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

4.4 Financial Account/Credit Card Number

The words "routing," "accounting," "credit card," or "cc," followed by a string of numbers with or without dashes.

4.5 Medical and Health Insurance Portability and Accountability (HIPAA) Filters

It is the recommendation of the DOC Privacy DLP Working Group that medical and other HIPAA considerations be included in the DLP data dictionary. The Medical/HIPAA DLP scan shall require a match on the medical classifier AND a match on a personal information identifier such as full name, U.S. Social Security Number, U.S. National Provider Identifier, or custom patient identification number, to be considered a Medical/HIPAA DLP violation.

Medical Information Examples:

personal identifier such as, full name, SSN, national provider identifier, or custom patient identification number -

- ADHD
- AIDS
- Arthritis
- Asthma
- Autism
- Cancer
- Chlamydia
- Diabetes
- Epilepsy
- Flu (Influenza)
- Herpes
- Giardiasis
- Gonorrhea
- Heart Disease
- Hepatitis
- HIV
- HPV (Human papillomavirus)
- Influenza
- Meningitis
- MRSA (Methicillin Resistant Staphylococcus aureus)
- Obesity
- Salmonella
- Scabies

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- Sexually Transmitted Diseases
- Stroke
- Trichomonas
- Trichomoniasis
- Tuberculosis (TB)

4.6 Date of Birth

Date of birth filter must include a combination of numeric or alphanumeric dates associated with the words “date of birth”, “DOB”, or “birth date,” and must be linked with a unique personal identifiable such as name or social security number.

5. Internet Postings

Sensitive PII posted for consumption via private or public websites can present a much greater risk of harm than sensitive PII transmitted through email because of the potential for a wider audience and exposure. It is the recommendation of this group that Internet traffic be scanned for DLP filtering items. This includes posts from DOC controlled networks going out to official DOC social media websites and pages, and posts inbound to DOC controlled and monitored websites and pages, i.e., Web forums. Attempted postings containing information prohibited by DLP filter criteria shall be blocked from release on the DOC controlled websites and pages, to the Internet.

6. Handling of False Positives

For the purpose of this recommendation, a “false positive” is defined as an electronic message that was falsely quarantined by the DLP solution.

If a sender suspects that his/her email message has been falsely quarantined by the DLP, it is the recommendation of the DOC Privacy DLP Working Group that the following actions be taken:

- the sender shall notify the privacy staff of the suspected false positive;
- a privacy professional will review the email to determine if the quarantined email message is a DLP false positive;
- upon confirmation by privacy professional that the email message was falsely quarantined by the DLP, the email message will be released by the privacy professional to the addressee(s);
- the sender shall be notified that the message has been reviewed by a privacy staff member and released to the intended recipient(s).

If the privacy professional determines that the email message is not a false positive, i.e., contains PII that is prohibited from unencrypted electronic transmission, it is the recommendation of this group that the following actions be taken:

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- the email message will be manually deleted by the privacy staff;
- the sender will be notified that the message has been reviewed by a privacy staff member and found to contain information that is prohibited by policy from unencrypted email transmission.

If no action is taken by the sender for a message that has been quarantined by the DLP after a specified number of days (as defined by either the department or the OU), it is the recommendation of this group that the following actions be taken:

- the email message be automatically deleted by the DLP solution;
- the sender shall receive an auto-generated email message from the DLP solution stating that the email message [email subject and date] has been deleted by the DLP.

7. Email Messages

It is the recommendation of the DOC Privacy DLP Working Group that when an email message is quarantined by the DLP email scan, the sender shall receive an auto-generated email message describing the possible violation, the quarantine of the email message, and the steps to take to release the email message to the intended recipients. If the employee suspects the DLP quarantined the email in error (false positive) and contacts the privacy office for assistance, another email message will be sent stating the results of the privacy review. An example of each of these letters is included under the Email Messages section of the Appendix A.

8. Implementation Plan & Deadline

It is the recommendation of the DOC Privacy DLP Working Group that a department-wide policy be written based on these recommendations. All DOC operating units shall be given one year from date of issue to comply with the policy.

9. Reporting Requirements

Incidents captured by the DLP are not released from a DOC controlled environment. Since they remain within the control of the DOC, the DOC Privacy DLP Working Group recommends that DLP incidents be considered an attempted violation of policy and not an actual breach. Therefore, DLP incidents shall not be required for CIRT reporting.

To monitor the effectiveness of the DLP program, it is the recommendation of the DOC Privacy DLP Working Group that all operating units maintain record of the number of incidents captured by the DLP, the number of false positives, the number of avoid breaches, and the number of attempted self disclosed sensitive information.

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**Table 1
Examples of Specific Sensitive Items**

Name		X
Address		X
Telephone (cell/land)		X
Date of Birth		X
Mother's maiden name		X
Social Security Number	X	
Bio-metric (fingerprint, palm print, hand geometry, iris recognition, retina, etc.)		X
Medical information, except brief references to absences from work		X
Passport Number		X
Bank Account/Credit Card Number or Account	X	
Driver's license/state identification number		X
Potentially sensitive employment information, e.g., personnel ratings, disciplinary actions, and results of background investigations		X
Criminal history		X
Any information that may stigmatize or adversely affect an individual		X

This list is not exhaustive, and other data may be sensitive depending on specific circumstances. Social Security Numbers, including truncated SSNs that include only the last four digits, are sensitive regardless of whether they are associated with an individual.

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Table 2

DLP Solutions by DOC Operating Unit

	None	RSA	Iron Port	ScanMail	Secure Zip (Google cloud solution)	Trend Micro	Websense	Axways
BEA						X		
Census			X					
NIST	X							
PTO				X				X¹

¹ Used for email messages coming and going to the internet.

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Appendix A

Related Laws, Regulations, Policies, and Documents

- Privacy Act of 1974
- U.S. Department of Commerce Office of the Chief Information Officer, Electronic Transmission of Personally Identifiable Information
- U.S. Department of Commerce Office of the Chief Information Officer, IT Privacy Policy
- Office of Management and Budget Memorandum M-07-16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information
- Office of Management and Budget Memorandum M-06-19, Reporting Incidents Involving PII
- Office of Management and Budget Memorandum M-06-16, Protection of Sensitive Agency Information
- Office of Management and Budget Memorandum M-06-15, Safeguarding PII
- Commerce CIO's Memorandum on Safeguarding PII

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Appendix B

Email Messages

Employees can potentially receive two of the three DLP email messages:

1. **Message #1 - alerts the user that his/her message, and if appropriate any attachments, have been quarantined by the DLP. This message is to be sent each day until the quarantined email is either released by the privacy office or deleted.**

EXAMPLE

Subject: Email Message Temporarily Quarantined: [original email subject with date]

A scan by the [insert name of agency] Data Loss Prevention (DLP) system has detected that your email with the subject: [subject], dated [date email was sent] may contain sensitive information that by policy is prohibited from email transmission without proper encryption. As a result, your email has been placed in quarantine for [specified] days. Please take one of the following actions to resolve this issue:

1. *Re-transmit your message using approved email encryption; or,*
2. *Contact the privacy staff on (777) 777-7777, if you think your email was quarantined by the DLP email scan in error.*

Sending unencrypted email messages containing sensitive PII, including personal messages sent from a Department of Commerce email systems, is a violation of the Department of Commerce's "Electronic Transmission of Personally Identifiable Information" policy. Additional information regarding acceptable use of government IT systems is contained in the [insert the name of agency's IT Acceptable Use Policy]. A copy of this policy can be found on [insert http address].

In the future, to avoid delays in email transmissions, please ensure that emails containing sensitive personally identifiable information or sensitive financial information are transmitted using approved encryption software, such as Accellion – Secure File Sharing software, or other approved secure transmission [insert link to other encryption software approved by the agency].

Please direct any questions to the [insert privacy office's name and telephone number].

2. **Message #2 – is sent to the email sender who requested review by a privacy professional because a false positive is suspected, and after review, the message is released to the intended recipients.**

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EXAMPLE

Subject: Email Message Temporarily Quarantined: [original email subject with date]

YOUR EMAIL MESSAGE HAS BEEN SENT

The below email has been reviewed by the [name of agency's privacy office] and released to the intended receiver(s) on [date original message released].

If you have any questions please contact the [insert privacy office's name and telephone number].

- 3. Message #3 - alerts the user that his/her email message, and any attachments, has been deleted and not sent. This message is to be sent after a quarantined message has not been acted upon after the pre-determined period of time.**

EXAMPLE

Subject: Email Message Temporarily Quarantined: [original email subject with date]

The detention period of your quarantined email message has expired and your message has been deleted. Your message was not sent to the intended recipient.

Sending unencrypted email messages containing sensitive PII, including personal messages sent from a Department of Commerce email systems, is a violation of the Department of Commerce's "Electronic Transmission of Personally Identifiable Information" policy. Additional information regarding acceptable use of government IT systems is contained in the [insert the name of agency's IT Acceptable Use Policy]. A copy of this policy can be found on [insert http address].

In the future, to avoid delays in email transmissions, please ensure that emails containing sensitive personally identifiable information or sensitive financial information are transmitted using approved encryption software, such as Accellion – Secure File Sharing software, or other approved secure transmission [insert link to other encryption software approved by the agency].

Please direct any questions to the [insert privacy office's name and telephone number].

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Appendix C

DEFINITIONS

Business Identifiable Information (BI): consists of (a) information that is defined in the Freedom of Information Act (FOIA) as “trade secrets, and commercial or financial information obtained from a person [that is] privileged or confidential.” (5 U.S.C.552(b)(4)). This information is exempt from automatic release under the (b)(4) FOIA exemption. “Commercial” is not confined to records that reveal “basic commercial operations” but includes any records [or information] in which the submitter has a “commercial interest” and can include information submitted by a nonprofit entity. Or (b) commercial or other information that, although it may not be exempt from release under FOIA, is exempt from disclosure by law (e.g., 13 U.S.C. 9).

False Positive: messages quarantined by the DLP that were later determined to not have contained any information that is prohibited from electronic transmission.

Personally Identifiable Information (PII): OMB Memorandum M-07-16 states that PII “refers to information which can be used to distinguish or trace an individual’s identity, such as name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name, etc.”

Sensitive But Unclassified (SBU): is a designation of information in the United States federal government that, though unclassified, often requires strict controls over its distribution. SBU is a broad category of information that includes material covered by such designations as For Official Use Only (FOUO), Law Enforcement Sensitive (LES), Sensitive Homeland Security Information, Security Sensitive Information (SSI), Critical Infrastructure Information (CII), etc. It also includes Internal Revenue Service materials like individual tax records, systems information, and enforcement procedures. Some categories of SBU information have authority in statute or regulation (e.g. SSI, CII) while others, including FOUO, do not.

Sensitive Personally Identifiable Information (SPII): Department of Commerce’s policy on Electronic Transmission of PII states that “sensitive PII is defined as PII which, when disclosed, could result in harm to the individual whose name or identity is linked to the information. Further, in determining what PII is sensitive, the context in which the PII is used must be considered. For example, a list of people subscribing to a government newsletter is not sensitive PII; a list of people receiving treatment for substance abuse is sensitive PII. As well as context, the association of two or more non-sensitive PII elements may result in sensitive PII. For instance, the name of an individual would be sensitive when grouped with place and date of birth and/or mother’s maiden name, but each of these elements would not be sensitive independent of one another.”

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Sensitive Security Information (SSI): is a category of sensitive but unclassified information under the United States government's information sharing and control rules, often used by TSA and CBP. SSI is information obtained in the conduct of security activities whose public disclosure would, in the judgment of specified government agencies, harm transportation security, be an unwarranted invasion of privacy, or reveal trade secrets or privileged or confidential information.

UNCLASSIFIED/FOUO: is used for documents or products that contain material that is exempt from release under the Freedom of Information Act. It is treated as confidential, which means it cannot be discarded in the open trash, made available to the general public, or posted on an uncontrolled website. It can, however, be shared with individuals with a need to know the content, while still under the control of the individual possessing the document or product.

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UNRESOLVED ISSUES

Issue 1: Identify BII DLP requirements.

Resolution: Pending

Issue 2: How to resolve false positives of incoming email messages?

Resolution: Pending

RESOLVED ISSUES

Issue 1: Definition of a DLP breach:

Resolution: The official OMB definition of a breach is *“The loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to situations where persons other than authorized users and for an other than authorized purpose have access or potential access to personally identifiable information, whether physical or electronic.”*

The lost of PII email incidents captured by the DLP shall not be considered breaches since the email containing the PII has never left our control.

Issue 2: Treatment of truncated IDs (SSNs, Passports numbers, credit card numbers, etc.)

Resolution: Page 2 of the Department of Commerce Policy on the Electronic Transmission of Personally Identifiable Information states the following:

“Social Security Numbers (SSNs), including truncated SSNs that include only the last four digits, are sensitive regardless of whether they are associated with an individual. If it is determined that such transmission is required, then secure methods must be employed.”

The treatment of truncated SSNs will be handled in accordance with the official DOC policy until such time when this requirement is rescinded by the department.

Other truncated numbers, i.e., passport numbers, credit card numbers, shall not be considered sensitive unless it is accompanied by other identifying information. (this adds to the DOC policy, since the policy does not address the use of truncated numbers other than SSN.

Issue 3: How to handle DLP incidents flagged after hours.

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Resolution: The automated email alert will immediately notify the sender that his/her email message has been quarantined. The message shall provide instructions for the sender to re-transmit the email using approved encryption software or through Accellion to successfully transmit the email. Secure FTP.

Issue 4: Treatment of incoming messages containing sensitive PII.

Resolution: The Privacy DLP Working Group recommends incoming messages be subject to DLP filtering, however, the decision to flag and quarantine incoming email messages containing sensitive PII shall be at the discretion of each operating unit.

Issue 5: Treatment of messages posted on agency's social media site

Resolution: traffic to the internet should be considered.

Issue 6: Shall we consider one DLP solution for all DOC OUs?

Resolution: No. Each operating unit must be able to employ a DLP solution that is compatible with existing technical capabilities and policies.

March 13, 2013

TO: All Census Bureau Employees

FROM: Nancy Potok, Deputy Director

Subject: Data Loss Prevention Email Scan

Privacy and confidentiality are cornerstones of our mission at the Census Bureau, and we're taking another step to protect sensitive and Personally Identifiable Information (PII).

Beginning Thursday, March 14, 2013, all outgoing messages from the Census Bureau's email systems (Lotus iNotes, SMTP gateway, etc.) will be automatically scanned prior to electronic transmission to ensure sensitive information is properly encrypted.

The automated scan will search email messages and unencrypted attachments for specific sensitive personally identifiable information, such as Social Security Numbers, sensitive financial information, credit card numbers, and medical information that is protected by the Health Insurance Portability and Accountability Act (HIPAA).

Messages flagged as containing a possible privacy or data security breach will be quarantined for further review by the Policy Coordination Office's Privacy Compliance Branch. You will be notified, via auto response email, of any message that is quarantined. The Privacy Compliance Branch will review all quarantined messages within one (1) business day from the date it was quarantined, and if appropriate, will contact you for additional information. You will also be notified when messages are cleared for electronic transmission and sent to the addressee(s).

Email messages containing unencrypted sensitive PII, **including personal messages sent from Census Bureau** email systems, is a violation of the Department of Commerce's "[Electronic Transmission of Personally Identifiable Information](#)" policy and other Federal statutes and will be deleted from the email system by the Privacy Compliance Branch, and again, you will be notified. This is intended to protect you from a disclosure, inadvertent or otherwise, that would put you at risk of violating these policies and statutes.

If this sounds cumbersome, it's because we take confidentiality seriously. Sensitive information, including sensitive information about yourself, must not be included in the body of an email. If it is necessary to send sensitive information in an email the information must be sent as an encrypted attachment following Departmental encryption policy – encrypt it even if the email is sent to your coworker who works on the same IT environment.

The encryption method that has been approved to meet Federal Information Processing Standards (FIPS) 140-2, "Security Requirements for Cryptographic Models" is Secret Agent. The Secret Agent software does NOT encrypt the body of email messages, nor does it encrypt email header information (email address of the sender, email address of recipient(s), date, time, etc.). Instructions on how to encrypt using [Secret Agent can be found on the Lan Technology Support Office's \(LTSO\) website](#). For details on the requirements for protecting PII and other sensitive information during electronic transmissions, refer to the [DOC Electronic Transmission of PII Policy](#). Additional information can also be obtained from the [Acceptable Use Policy for U.S. Census Bureau Information Technology Systems](#).

The Privacy Compliance Branch has developed a document entitled [“Understanding Types of Data and How They Are Protected”](#) which provides a brief summary of different categories of data, a short explanation of what information should be protected, gives pointers on assessing information that contains PII, and explains the laws and guidelines that govern the Census Bureau.

Enough emphasis cannot be placed on the importance of protecting sensitive information and the integral role each of us plays in ensuring sensitive information is handled properly. We appreciate your help and if you have any questions regarding the protection of PII and other sensitive information, please contact Byron Crenshaw, Chief of the Privacy Compliance Branch on 301-763-6440.

NOAA Data Loss Prevention Plan

**Office of the Chief Information Officer
Governance and Portfolio Division
August 2016**



Background

[01] The protection of sensitive and personal information is more important than ever with electronic communications becoming increasingly prevalent. Safeguarding Personally Identifiable Information (PII) in the possession of the Federal Government and preventing its breach are essential to retaining the trust of the American public¹. This responsibility is shared by officials accountable for administering operational, privacy, and security programs. PII is any information that, by itself or in combination with other information, may be used to uniquely identify an individual. Within NOAA systems, this primarily can consist of Social Security Numbers (SSN), names, addresses, dates and places of birth, bank account numbers, e-mail addresses, telephone numbers, and passport numbers. The Office of Management and Budget (OMB) and the Department of Commerce (Commerce) released several memoranda to address the issue of safeguarding PII².

[02] This plan is intended as a framework for future action that will address user and system specific restrictions, controls, use cases, parameters, and other actions implemented based on the needs of individual systems and mission goals. This plan is intended to satisfy the implementation plan obligations to meet the minimum Privacy DLP Standards within 1 year as outlined in the April 15, 2016 Memorandum entitled “Departmental Privacy Standards for Commerce Data Loss Prevention (DLP) Security Tools”, as well as the corresponding May 3, 2016 data call issued by Commerce.

NOAA Data Overview

[01] NOAA provides the data, science, and information that allow the economy to function effectively and grow sustainably. NOAA helps to ensure a competitive economy by monitoring and predicting changes in the Earth's environment, protecting lives and property, and conserving and managing the nation's coastal and marine resources. NOAA's data portfolio mirrors the diversity and complexity of its mission ... and NOAA is very complex! Our mission and data diversity includes:

- 21,335 Staff (federal, contractor, associate)
- 435 Buildings
- 122 Weather Forecast Offices
- 13 River Forecast Centers
- 1,429 Real-Time Weather Stations
- 17 Satellites
- 8 Buoy Networks: 1042 Stations Deployed
- 13 National Marine Sanctuaries and 1 Marine National Monument
- 286 Data Centers

¹ The definition of PII can be found in the OMB Memorandum M-06-19, July 12, 2006.

² See, e.g., Memorandum from David A. Sampson, RE: Safeguarding Personally Identifiable Information, November 6, 2006.

- 94 Federal Information System Management Act Systems
- 33 Exhibit 300 IT Investments

NOAA DLP Strategy Overview

[01] NOAA uses, and will further deploy, a “Defense in Depth” approach to DLP. NOAA will use existing operational controls and privacy enhancing technologies. These include PII identifying solutions, encryption, firewalls, authorized use system access controls, and system audit logs. To further reduce the risk of compromise of sensitive PII in agency communications, NOAA will implement a Data Loss Prevention (DLP) solution set that monitors network communications and prevents sensitive PII from leaving the network, in addition to other sensitive data, as determined when the scope and capability of the solution is determined. Other sensitive data may include law enforcement sensitive data, business identifiable data, or other data sets for which the DLP solution can feasibly be leveraged. Each of these data sets may have one or more data owners, who will classify the information type, as described in the fourth development step below. In addition to these technical controls, NOAA utilizes administrative policies and procedures, as well as privacy training, to further safeguard information privacy and control access to information systems and information assets.

[02] NOAA conducts Privacy Threshold Analyses, (PTA’s), and, where applicable, Privacy Impact Assessments (PIAs) on all information systems to ensure privacy implications are addressed when planning, developing, implementing, and operating information technology (IT) systems that maintain information on individuals. NOAA utilizes a PIA template and guidance on conducting PIAs. The NOAA Bureau Chief Privacy Officer (BCPO) collaborates with system owners and IT security professionals to assess existing, new, or proposed programs, systems or applications for privacy risks, and recommends methods to protect individual privacy.

[03] The NOAA DLP solution(s) will be designed to monitor and prevent data from being leaked. NOAA’s DLP strategy, however, is to make sure the DLP solution(s) are as efficient and effective as possible. DLP needs to be rationally deployed in order to ensure that false positives do not overwhelm the system and the capacity of NOAA privacy and cyber security managers and staff. DLP tools such as McAfee Security, as powerful as they may be, require careful and organized deployment, otherwise reported incidents may be of little value.

[04] In response to the OMB M-07-16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information, and NIST SP 800-122, at 2.1, the NOAA Governance and Portfolio Division is leading the DLP initiative to promote secure practices in electronic communications (e-mails and Internet access) on the NOAA network to protect Controlled Unclassified Information (CUI) data. Taking a phased approach, the DLP initiative may include plans to implement specific solutions, for example, McAfee’s Data Loss Prevention (DLP) commercial off-the-shelf software solution that is capable of identifying and tracking a number of NOAA’s defined PII datasets. The NOAA DLP solution(s) will be designed to give NOAA an enterprise view into where it's most sensitive data are stored, who has access to the data, and where and by whom the data are sent outside the NOAA network. By using this information, NOAA can spot broken business processes and reduce the overall risk of exposure. The DLP solution(s) will take a data-centric approach to security, in which policies can be developed

around the content that should be protected and then deployed across multiple data states or functionalities, such as identifying, monitoring, and preventing.

DLP Development Steps

[01] A multi-layered approach will be applied to prevent data leakage for all routes and states. Data is classified under one of several schemes like data in motion, data in use, and at rest; or by data in-store, in-use and in-transit.

- Data in motion: Data that needs to be protected when in transit including HTTP/S, S/FTP/S, IM, P2P, SMTP.
- Data in use: Data that resides on end user workstation and needs to be protected from being leaked through removable media devices like USB, DVD, CD's.
- Data at rest: Data that resides on local storage media or server storage.

[02] Each of these layered types of data will be considered during deployment to maximize the prevention of data leakage. A multi-step approach to deployment, shown below, will be used as well. These steps are discussed in detail below.

1. Define policies
2. Identify sensitive data
3. Determine information flows
4. Identify data owners
5. Identify deployment scenarios
6. Plan DLP operations
7. Deploy DLP product(s)

Define Policies

[01] NOAA will build policies to protect the sensitive data. Every policy will consist of some rules, such as to protect credit card numbers, PII, and social security numbers, if such policies are not already in place. If there is a requirement for NOAA to protect sensitive information and a DLP product such as McAfee DLP does not support it out of the box, then NOAA will create rules using regular expressions (regex). It should be noted that DLP policies at this stage will be defined and not applied.

[02] Those policies will reflect the internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our objective: Commerce Directives; and OMB, White House, and National Institute for Standards and Technology (NIST) guidelines. Each of these sources provide a framework for implementing an automatic tool to monitor transfers of PII and for developing, or implementing, a commercial off-the-shelf product. We are evaluating these controls against an enterprise life cycle approach, and by reviewing enterprise life cycle commercial off-the-shelf artifacts and documents supporting the procurement, budget, and expenses for the DLP solution.

[03] Policies will take into consideration existing guidelines and recommendations as well as other factors, such as impact and dependency for other systems, also needed to be considered when implementing a DLP solution. The National Institute for Standards and Technology Special Publication 800-122, Guide to Protecting the Confidentiality of Personally Identifiable Information³[1], recommends that agencies implement automated tools, such as a network data leakage prevention tool, to monitor transfers of PII and to monitor inbound and outbound communications for unauthorized activities. In addition, the Government Accountability Office's Standards for Internal Control in the Federal Government⁴[2] provides that application controls should be designed to help ensure completeness, accuracy, authorization, and validity of all transactions during application processing. Controls should be installed as an application interfaces with other systems to ensure that all inputs are received and are valid and that outputs are correct and properly distributed.

Identify Sensitive Data

[01] NOAA will identify all the confidential, restricted, and highly restricted data across the whole organization and across the three categories, i.e. for data in-transit, in-store and in-use. In identifying the sensitive data, NOAA will define the scope within which the DLP Solution will function. Each data set analyzed will be considered as to whether or not leveraging the DLP product would be an efficient use of resources, whether the data is non-sensitive, or whether the DLP would be an effective tool in further securing the data. DLP products work with signatures to identify any restricted data when it is crossing boundaries. To identify the critical data and develop its signatures, there is a term in DLP products known as fingerprinting. Data is stored in various forms at various locations in an organization and it requires identifying and fingerprinting. Various products come with a discovery engine which crawl all searchable data in a given data store, index it and make it accessible through an intuitive interface which allows quick searching on data to find its sensitivity and ownership details.

Determine Information Flows

[01] It is very important for an organization to identify their information flow. NOAA OCIO will prepare a questionnaire to identify and extract all the useful information. A sample questionnaire would address, at a minimum, the following three issues:

- What is a standard data flow, and what should be the source and destination of the identified data?
- What are all the egress points present in the network?
- What processes are in place to govern the informational flow?

³ National Institute of Standards and Technology, NIST SP 800-122, Guide to Protecting the Confidentiality of Personally Identifiable Information (PII) (April 2010).

⁴ Government Accountability Office (formerly known as the General Accounting Office), GAO/AIMD-00-21.3.1, Internal Control: Standards for Internal Control in the Federal Government (Nov. 1999).

Identify Data Owners

[01] Identification of the NOAA staff and line office owners of data is also an important step in the planning strategy of DLP, so a list will be prepared by OCIO of whom to send the notifications to in case any sensitive data is lost. NOAA OCIO will distribute an assessment to identify the owners of each of the different sensitive data elements across the organization. The data owners also will be responsible for classifying the information types⁵. Many types of data will have multiple owners, governed by separate line and staff office policies for the collection and use of that data, depending on mission needs. The assessment will attempt to identify each offices ownership, collection, storage, and transmission of sensitive data so that when an incident occurs, the incident is properly triaged, escalated where necessary, reported⁶, and the DLP processes and application are modified and tuned as necessary.

Identify Deployment Scenarios

[01] The following questions arise in identifying potential Deployment Scenarios. Each of these must be addressed prior to agency-wide deployment of a mature DLP solution.

1. Will the Initial Deployment be applied to all of the traffic of data in use, or in motion, or at rest?
2. Alternatively, should NOAA deploy the DLP appliance by copying the network traffic and analyzing it at a different port before deploying it directly to the data states of the network traffic?
3. Should the deployment occur in high availability mode or should we configure in bypass mode?
4. How will the setup of endpoints with the DLP manager occur?
5. How do we maintaining integrity between communication ports and firewalls?
6. How do we ensure proper configuration of a crawling agent?

[02] As discussed above, sensitive data falls under three categories, i.e. data in motion, data at rest and data in use. After identifying the sensitive data and defining policies, NOAA will prepare for the deployment of DLP product(s). DLP deployment scenario of all three categories include :

- Data in motion: Data that needs to be protected when in transit, i.e. data on the wire. This includes channels like HTTP/S, S/FTP/S, IM, P2P, SMTP etc. NOAA will install the DLP protector appliance or software so it is not directly inline with the traffic. This is prudent to start with a minimally invasive method by not putting the appliances inline, to prevent a huge number of false positives or a network outage if the inline device fails. The NOAA approach will be to deploy DLP appliances or software in a span port first,

⁵ See, NIST SP 800-60.

⁶ Reporting here is referring to both internal reporting to the Office that owns the information, the Bureau Chief Privacy Officer, and N-CIRT as necessary, as well as external notifications (such as Privacy Incident reporting to DOC) and external reporting to OMB. Organizations report annually on specific privacy and security activities in their annual FISMA reports to OMB. The most recent memorandum is OMB M-10-15, FY 2010 Reporting Instructions for the Federal Information Security Management Act and Agency Privacy Management, available at http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-15.pdf

and then after the DLP strategy is mature, then put into inline mode. In order to mitigate the second risk, NOAA may deploy two options: first, deploy DLP in High Availability mode, and second, configure the inline DLP product in bypass mode, which will enable the traffic to bypass the inline DLP product in case the DLP product is down.

- **Data in Use:** Data that resides on the end user workstation and needs to be protected from being leaked through removable media devices like USB, DVD, CDs, etc. will fall under this category. In Data in Use, an agent may be installed in every NOAA endpoint device like laptop, desktop, etc. which is loaded with policies and is managed by a centralized DLP management server. Agents would be distributed on the endpoints via pushing strategies like SMS, GPO, etc.
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Plan DLP Operations

[01] NOAA will need to split the DLP operations into three phases: a triaging phase, a reporting and escalation phase, and a tuning phase. The security operation's team will monitor the alerts fired or triggered by the policies set up in the DLP product. N-CIRT will fine tune the policies as a result of some mis-configurations earlier or due to eventual policy or guidance changes and apply the changes to the DLP product. NOAA will need to identify the staffing, budget, training, and other resource demands that each phase of the DLP Operations will require, and determine the capabilities in effectively carrying out each phase with the available resources.

Deploy DLP Product(s)

[01] Deployment of security components is of no use if they cannot be monitored, and a DLP product is no exception. Below is an overview of what a DLP operation of an organization can be. First of all, the DLP product needs to be created with the right set of policies on the identified data among data at rest, in motion or in transit categories. The DLP operations can be separated into three phases, namely: the triaging phase, the reporting and escalation phase, and the tuning phase. These will need to be modified depending on the nature of the incident identified in the triaging phase for referral to N-CIRT and for DOC notification, as necessary. The triaging phase, incident reporting and escalation, as well as the any parameter modifications and tuning will be carried out in accordance with existing PII/BII Breach Response and Notification Plan.

Conclusion

[01] NOAA will employ a Defense in Depth approach to DLP. NOAA's DLP solution(s) need to minimize deployment and operating costs. As an off-the-shelf product, the McAfee Total Protection, or a similar product solution would potentially be an additional tool within the DID approach to effectively protect PII and BII data wherever it may be.

[02] NOAA has maintained a high awareness of data security, and is vigilant in protecting the sensitive information located within its systems. These Data Loss Prevention measures will

enhance the security of NOAA information systems and maintain the highest level of compliance with all regulatory and guidance documents that govern Data Loss Prevention at the agency⁷.

Definitions

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Personally Identifiable Information (PII) Information that can be used to distinguish or trace an individual's identity, such as name, Social Security number (SSN), biometric records, etc., alone, or when combined with other personal or identifying information, which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc. [OMB M-07-16].

Sensitive Personally Identifiable Information (Sensitive PII) Sensitive PII is defined as PII which, when disclosed, could result in harm to the individual whose name or identity is linked to the information. Further, in determining what PII is sensitive, the context in which the PII is used must be considered. For example, a list of people subscribing to a government newsletter is not sensitive PII; a list of people receiving treatment for substance abuse is sensitive PII. As well as context, the association of two or more non-sensitive PII elements may result in sensitive PII. For instance, the name of an individual would be sensitive when grouped with place and date of birth and/or mother's maiden name, but each of these elements would not be sensitive independent of one another. For the purpose of determining which PII may be electronically transmitted, the following types of PII are considered sensitive when they are associated with an individual. Secure methods must be employed in transmitting this data when associated with an individual:

- Place of birth
- Date of birth
- Mother's maiden name
- Biometric information
- Medical information, except brief references to absences from work
- Personal financial information
- Credit card or purchase card account numbers
- Passport numbers

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- Potentially sensitive employment information, e.g., personnel ratings, disciplinary actions, and result of background investigations
- Criminal history
- Any information that may stigmatize or adversely affect an individual.

This list is not exhaustive, and other data may be sensitive depending on specific circumstances. Social Security Numbers (SSNs), including truncated SSNs that include only the last four digits, are sensitive regardless of whether they are associated with an individual. If it is determined that such transmission is required, then secure methods must be employed. [DOC Electronic Transmission of PII Policy].

Controlled Unclassified Information (CUI) Information that requires safeguarding or dissemination controls pursuant to and consistent with applicable law, regulations, and government-wide policies but is not classified under Executive Order 13526 or the Atomic Energy Act, as amended.

Signed this ____ day of _____, 2016.

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ou OTHER, cn GOLDSTEIN.ZACHARY.G.1228698985
Date: 2016.08.30 15:28:33 -04'00'

Zachary Goldstein, NOAA CIO

Email Message Temporarily Quarantined: beneficiaries and benefits 03/08/16

PC

pco.dlp.review@census.gov

Reply all |

Tue 3/8/2016 1:20 PM

A scan by the Census Bureau Data Loss Prevention (DLP) system has detected that your email with the subject: "beneficiaries and benefits" dated "08 Mar 2016 13:20:03 -0500" may contain sensitive information that by policy is prohibited from being sent in an unencrypted electronic transmission. As a result, your email has been quarantined.

Email Information:

Sender: john_doe@census.gov

Recipient: jane_doe@gmail.com

Subject: beneficiaries and benefits

Timestamp: 08 Mar 2016 13:20:03 -0500

DLP Violation: US Social Security Numbers

System: hq-mail2.tco.census.gov

Sending unencrypted sensitive information, including sensitive information about yourself, from Census Bureau email systems is a violation of the Department of Commerce's "Electronic Transmission of Personally Identifiable Information" policy (<http://go.usa.gov/E6xF>).

WHAT YOU MUST DO: 1) Please recheck your email message and remove the sensitive PII or financial information (credit card or bank account numbers) before resending, or 2) place the sensitive information in an attachment and resend as an encrypted file using approved encryption software, Accellion (<http://go.usa.gov/E6rH>) or Secret Agent (<http://go.usa.gov/cwBXA>).

Urgent messages can be sent as an encrypted file without the sensitive information in question OR forwarded by some other means (e.g., faxing). If sending your file by fax, you must alert the intended recipient who in turn must acknowledge receipt of the file. IMPORTANT NOTE: sending financial information such as credit card or bank account numbers by fax is prohibited by departmental policy. See the Commerce Acquisition Manual, Section 2.9 "Card and Account Security" for further information.

If, after your review, you think your email message has been quarantined in error, please contact the Privacy Compliance Branch (301-763-6440) for further review of the quarantined message.

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NOAA Data Loss Prevention Plan

**Office of the Chief Information Officer
Governance and Portfolio Division
August 2016**



Background

[01] The protection of sensitive and personal information is more important than ever with electronic communications becoming increasingly prevalent. Safeguarding Personally Identifiable Information (PII) in the possession of the Federal Government and preventing its breach are essential to retaining the trust of the American public¹. This responsibility is shared by officials accountable for administering operational, privacy, and security programs. PII is any information that, by itself or in combination with other information, may be used to uniquely identify an individual. Within NOAA systems, this primarily can consist of Social Security Numbers (SSN), names, addresses, dates and places of birth, bank account numbers, e-mail addresses, telephone numbers, and passport numbers. The Office of Management and Budget (OMB) and the Department of Commerce (Commerce) released several memoranda to address the issue of safeguarding PII².

[02] This plan is intended as a framework for future action that will address user and system specific restrictions, controls, use cases, parameters, and other actions implemented based on the needs of individual systems and mission goals. This plan is intended to satisfy the implementation plan obligations to meet the minimum Privacy DLP Standards within 1 year as outlined in the April 15, 2016 Memorandum entitled “Departmental Privacy Standards for Commerce Data Loss Prevention (DLP) Security Tools”, as well as the corresponding May 3, 2016 data call issued by Commerce.

NOAA Data Overview

[01] NOAA provides the data, science, and information that allow the economy to function effectively and grow sustainably. NOAA helps to ensure a competitive economy by monitoring and predicting changes in the Earth's environment, protecting lives and property, and conserving and managing the nation's coastal and marine resources. NOAA's data portfolio mirrors the diversity and complexity of its mission ... and NOAA is very complex! Our mission and data diversity includes:

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- 122 Weather Forecast Offices
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² See, e.g., Memorandum from David A. Sampson, RE: Safeguarding Personally Identifiable Information, November 6, 2006.

- 94 Federal Information System Management Act Systems
- 33 Exhibit 300 IT Investments

NOAA DLP Strategy Overview

[01] NOAA uses, and will further deploy, a “Defense in Depth” approach to DLP. NOAA will use existing operational controls and privacy enhancing technologies. These include PII identifying solutions, encryption, firewalls, authorized use system access controls, and system audit logs. To further reduce the risk of compromise of sensitive PII in agency communications, NOAA will implement a Data Loss Prevention (DLP) solution set that monitors network communications and prevents sensitive PII from leaving the network, in addition to other sensitive data, as determined when the scope and capability of the solution is determined. Other sensitive data may include law enforcement sensitive data, business identifiable data, or other data sets for which the DLP solution can feasibly be leveraged. Each of these data sets may have one or more data owners, who will classify the information type, as described in the fourth development step below. In addition to these technical controls, NOAA utilizes administrative policies and procedures, as well as privacy training, to further safeguard information privacy and control access to information systems and information assets.

[02] NOAA conducts Privacy Threshold Analyses, (PTA’s), and, where applicable, Privacy Impact Assessments (PIAs) on all information systems to ensure privacy implications are addressed when planning, developing, implementing, and operating information technology (IT) systems that maintain information on individuals. NOAA utilizes a PIA template and guidance on conducting PIAs. The NOAA Bureau Chief Privacy Officer (BCPO) collaborates with system owners and IT security professionals to assess existing, new, or proposed programs, systems or applications for privacy risks, and recommends methods to protect individual privacy.

[03] The NOAA DLP solution(s) will be designed to monitor and prevent data from being leaked. NOAA’s DLP strategy, however, is to make sure the DLP solution(s) are as efficient and effective as possible. DLP needs to be rationally deployed in order to ensure that false positives do not overwhelm the system and the capacity of NOAA privacy and cyber security managers and staff. DLP tools such as McAfee Security, as powerful as they may be, require careful and organized deployment, otherwise reported incidents may be of little value.

[04] In response to the OMB M-07-16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information, and NIST SP 800-122, at 2.1, the NOAA Governance and Portfolio Division is leading the DLP initiative to promote secure practices in electronic communications (e-mails and Internet access) on the NOAA network to protect Controlled Unclassified Information (CUI) data. Taking a phased approach, the DLP initiative may include plans to implement specific solutions, for example, McAfee’s Data Loss Prevention (DLP) commercial off-the-shelf software solution that is capable of identifying and tracking a number of NOAA’s defined PII datasets. The NOAA DLP solution(s) will be designed to give NOAA an enterprise view into where it's most sensitive data are stored, who has access to the data, and where and by whom the data are sent outside the NOAA network. By using this information, NOAA can spot broken business processes and reduce the overall risk of exposure. The DLP solution(s) will take a data-centric approach to security, in which policies can be developed

around the content that should be protected and then deployed across multiple data states or functionalities, such as identifying, monitoring, and preventing.

DLP Development Steps

[01] A multi-layered approach will be applied to prevent data leakage for all routes and states. Data is classified under one of several schemes like data in motion, data in use, and at rest; or by data in-store, in-use and in-transit.

- Data in motion: Data that needs to be protected when in transit including HTTP/S, S/FTP/S, IM, P2P, SMTP.
- Data in use: Data that resides on end user workstation and needs to be protected from being leaked through removable media devices like USB, DVD, CD's.
- Data at rest: Data that resides on local storage media or server storage.

[02] Each of these layered types of data will be considered during deployment to maximize the prevention of data leakage. A multi-step approach to deployment, shown below, will be used as well. These steps are discussed in detail below.

1. Define policies
2. Identify sensitive data
3. Determine information flows
4. Identify data owners
5. Identify deployment scenarios
6. Plan DLP operations
7. Deploy DLP product(s)

Define Policies

[01] NOAA will build policies to protect the sensitive data. Every policy will consist of some rules, such as to protect credit card numbers, PII, and social security numbers, if such policies are not already in place. If there is a requirement for NOAA to protect sensitive information and a DLP product such as McAfee DLP does not support it out of the box, then NOAA will create rules using regular expressions (regex). It should be noted that DLP policies at this stage will be defined and not applied.

[02] Those policies will reflect the internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our objective: Commerce Directives; and OMB, White House, and National Institute for Standards and Technology (NIST) guidelines. Each of these sources provide a framework for implementing an automatic tool to monitor transfers of PII and for developing, or implementing, a commercial off-the-shelf product. We are evaluating these controls against an enterprise life cycle approach, and by reviewing enterprise life cycle commercial off-the-shelf artifacts and documents supporting the procurement, budget, and expenses for the DLP solution.

[03] Policies will take into consideration existing guidelines and recommendations as well as other factors, such as impact and dependency for other systems, also needed to be considered when implementing a DLP solution. The National Institute for Standards and Technology Special Publication 800-122, Guide to Protecting the Confidentiality of Personally Identifiable Information³[1], recommends that agencies implement automated tools, such as a network data leakage prevention tool, to monitor transfers of PII and to monitor inbound and outbound communications for unauthorized activities. In addition, the Government Accountability Office's Standards for Internal Control in the Federal Government⁴[2] provides that application controls should be designed to help ensure completeness, accuracy, authorization, and validity of all transactions during application processing. Controls should be installed as an application interfaces with other systems to ensure that all inputs are received and are valid and that outputs are correct and properly distributed.

Identify Sensitive Data

[01] NOAA will identify all the confidential, restricted, and highly restricted data across the whole organization and across the three categories, i.e. for data in-transit, in-store and in-use. In identifying the sensitive data, NOAA will define the scope within which the DLP Solution will function. Each data set analyzed will be considered as to whether or not leveraging the DLP product would be an efficient use of resources, whether the data is non-sensitive, or whether the DLP would be an effective tool in further securing the data. DLP products work with signatures to identify any restricted data when it is crossing boundaries. To identify the critical data and develop its signatures, there is a term in DLP products known as fingerprinting. Data is stored in various forms at various locations in an organization and it requires identifying and fingerprinting. Various products come with a discovery engine which crawl all searchable data in a given data store, index it and make it accessible through an intuitive interface which allows quick searching on data to find its sensitivity and ownership details.

Determine Information Flows

[01] It is very important for an organization to identify their information flow. NOAA OCIO will prepare a questionnaire to identify and extract all the useful information. A sample questionnaire would address, at a minimum, the following three issues:

- What is a standard data flow, and what should be the source and destination of the identified data?
- What are all the egress points present in the network?
- What processes are in place to govern the informational flow?

³ National Institute of Standards and Technology, NIST SP 800-122, Guide to Protecting the Confidentiality of Personally Identifiable Information (PII) (April 2010).

⁴ Government Accountability Office (formerly known as the General Accounting Office), GAO/AIMD-00-21.3.1, Internal Control: Standards for Internal Control in the Federal Government (Nov. 1999).

Identify Data Owners

[01] Identification of the NOAA staff and line office owners of data is also an important step in the planning strategy of DLP, so a list will be prepared by OCIO of whom to send the notifications to in case any sensitive data is lost. NOAA OCIO will distribute an assessment to identify the owners of each of the different sensitive data elements across the organization. The data owners also will be responsible for classifying the information types⁵. Many types of data will have multiple owners, governed by separate line and staff office policies for the collection and use of that data, depending on mission needs. The assessment will attempt to identify each offices ownership, collection, storage, and transmission of sensitive data so that when an incident occurs, the incident is properly triaged, escalated where necessary, reported⁶, and the DLP processes and application are modified and tuned as necessary.

Identify Deployment Scenarios

[01] The following questions arise in identifying potential Deployment Scenarios. Each of these must be addressed prior to agency-wide deployment of a mature DLP solution.

1. Will the Initial Deployment be applied to all of the traffic of data in use, or in motion, or at rest?
2. Alternatively, should NOAA deploy the DLP appliance by copying the network traffic and analyzing it at a different port before deploying it directly to the data states of the network traffic?
3. Should the deployment occur in high availability mode or should we configure in bypass mode?
4. How will the setup of endpoints with the DLP manager occur?
5. How do we maintaining integrity between communication ports and firewalls?
6. How do we ensure proper configuration of a crawling agent?

[02] As discussed above, sensitive data falls under three categories, i.e. data in motion, data at rest and data in use. After identifying the sensitive data and defining policies, NOAA will prepare for the deployment of DLP product(s). DLP deployment scenario of all three categories include :

- Data in motion: Data that needs to be protected when in transit, i.e. data on the wire. This includes channels like HTTP/S, S/FTP/S, IM, P2P, SMTP etc. NOAA will install the DLP protector appliance or software so it is not directly inline with the traffic. This is prudent to start with a minimally invasive method by not putting the appliances inline, to prevent a huge number of false positives or a network outage if the inline device fails. The NOAA approach will be to deploy DLP appliances or software in a span port first,

⁵ See, NIST SP 800-60.

⁶ Reporting here is referring to both internal reporting to the Office that owns the information, the Bureau Chief Privacy Officer, and N-CIRT as necessary, as well as external notifications (such as Privacy Incident reporting to DOC) and external reporting to OMB. Organizations report annually on specific privacy and security activities in their annual FISMA reports to OMB. The most recent memorandum is OMB M-10-15, FY 2010 Reporting Instructions for the Federal Information Security Management Act and Agency Privacy Management, available at http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-15.pdf

and then after the DLP strategy is mature, then put into inline mode. In order to mitigate the second risk, NOAA may deploy two options: first, deploy DLP in High Availability mode, and second, configure the inline DLP product in bypass mode, which will enable the traffic to bypass the inline DLP product in case the DLP product is down.

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Signed this ____ day of _____, 2016.

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ou OTHER, cn GOLDSTEIN.ZACHARY.G.1228698985
Date: 2016.08.30 15:28:33 -04'00'

Zachary Goldstein, NOAA CIO

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, November 30, 2016 3:50 PM
To: John McLemore - NOAA Federal
Cc: Robert Swisher - NOAA Federal; Tom Taylor; Eric Williams - NOAA Affiliate
Subject: Fwd: DLP Meeting Takeaways
Attachments: DLP Plan Final signed.pdf; DLP-Memo(Signed-EHerbst and CPurvis (4-15-16).pdf

Hello John,

As I'd mentioned at the beginning of the month, (b)(5)

[REDACTED]

[REDACTED]

(b)(5)

[REDACTED]

Thanks in advance for any next-steps you'd suggest as to Union obligations.

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) (C)

----- Forwarded message -----

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Date: Wed, Nov 30, 2016 at 3:13 PM
Subject: DLP Meeting Takeaways
To: David Bedell - NOAA Federal <David.Bedell@noaa.gov>, Robert Swisher - NOAA Federal <robert.swisher@noaa.gov>, Robert Hembrook - NOAA Federal <robert.hembrook@noaa.gov>, Jerry McNamara <Jerome.McNamara@noaa.gov>
Cc: Tonya Banks - NOAA Federal <Tonya.B.Banks@noaa.gov>, Stefan Leeb - NOAA Federal

<stefan.leebe@noaa.gov>, Sarah Brabson - NOAA Federal <sarah.brabson@noaa.gov>, Douglas Perry - NOAA Federal <Douglas.A.Perry@noaa.gov>, Tom Taylor <tom.taylor@noaa.gov>

Hi Everyone--

As discussed, here are the takeaways from the meeting.

(b)(5) [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

- [Redacted]

- [Redacted]

(b)(5) [Redacted]
[Redacted]
[Redacted]
■ [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
■ [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

Thanks--and let me know if I've missed anything. Talk to you all soon,

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) [Redacted] (C)

NOAA Data Loss Prevention Plan

**Office of the Chief Information Officer
Governance and Portfolio Division
August 2016**



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- 33 Exhibit 300 IT Investments

NOAA DLP Strategy Overview

[01] NOAA uses, and will further deploy, a “Defense in Depth” approach to DLP. NOAA will use existing operational controls and privacy enhancing technologies. These include PII identifying solutions, encryption, firewalls, authorized use system access controls, and system audit logs. To further reduce the risk of compromise of sensitive PII in agency communications, NOAA will implement a Data Loss Prevention (DLP) solution set that monitors network communications and prevents sensitive PII from leaving the network, in addition to other sensitive data, as determined when the scope and capability of the solution is determined. Other sensitive data may include law enforcement sensitive data, business identifiable data, or other data sets for which the DLP solution can feasibly be leveraged. Each of these data sets may have one or more data owners, who will classify the information type, as described in the fourth development step below. In addition to these technical controls, NOAA utilizes administrative policies and procedures, as well as privacy training, to further safeguard information privacy and control access to information systems and information assets.

[02] NOAA conducts Privacy Threshold Analyses, (PTA’s), and, where applicable, Privacy Impact Assessments (PIAs) on all information systems to ensure privacy implications are addressed when planning, developing, implementing, and operating information technology (IT) systems that maintain information on individuals. NOAA utilizes a PIA template and guidance on conducting PIAs. The NOAA Bureau Chief Privacy Officer (BCPO) collaborates with system owners and IT security professionals to assess existing, new, or proposed programs, systems or applications for privacy risks, and recommends methods to protect individual privacy.

[03] The NOAA DLP solution(s) will be designed to monitor and prevent data from being leaked. NOAA’s DLP strategy, however, is to make sure the DLP solution(s) are as efficient and effective as possible. DLP needs to be rationally deployed in order to ensure that false positives do not overwhelm the system and the capacity of NOAA privacy and cyber security managers and staff. DLP tools such as McAfee Security, as powerful as they may be, require careful and organized deployment, otherwise reported incidents may be of little value.

[04] In response to the OMB M-07-16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information, and NIST SP 800-122, at 2.1, the NOAA Governance and Portfolio Division is leading the DLP initiative to promote secure practices in electronic communications (e-mails and Internet access) on the NOAA network to protect Controlled Unclassified Information (CUI) data. Taking a phased approach, the DLP initiative may include plans to implement specific solutions, for example, McAfee’s Data Loss Prevention (DLP) commercial off-the-shelf software solution that is capable of identifying and tracking a number of NOAA’s defined PII datasets. The NOAA DLP solution(s) will be designed to give NOAA an enterprise view into where it's most sensitive data are stored, who has access to the data, and where and by whom the data are sent outside the NOAA network. By using this information, NOAA can spot broken business processes and reduce the overall risk of exposure. The DLP solution(s) will take a data-centric approach to security, in which policies can be developed

around the content that should be protected and then deployed across multiple data states or functionalities, such as identifying, monitoring, and preventing.

DLP Development Steps

[01] A multi-layered approach will be applied to prevent data leakage for all routes and states. Data is classified under one of several schemes like data in motion, data in use, and at rest; or by data in-store, in-use and in-transit.

- Data in motion: Data that needs to be protected when in transit including HTTP/S, S/FTP/S, IM, P2P, SMTP.
- Data in use: Data that resides on end user workstation and needs to be protected from being leaked through removable media devices like USB, DVD, CD's.
- Data at rest: Data that resides on local storage media or server storage.

[02] Each of these layered types of data will be considered during deployment to maximize the prevention of data leakage. A multi-step approach to deployment, shown below, will be used as well. These steps are discussed in detail below.

1. Define policies
2. Identify sensitive data
3. Determine information flows
4. Identify data owners
5. Identify deployment scenarios
6. Plan DLP operations
7. Deploy DLP product(s)

Define Policies

[01] NOAA will build policies to protect the sensitive data. Every policy will consist of some rules, such as to protect credit card numbers, PII, and social security numbers, if such policies are not already in place. If there is a requirement for NOAA to protect sensitive information and a DLP product such as McAfee DLP does not support it out of the box, then NOAA will create rules using regular expressions (regex). It should be noted that DLP policies at this stage will be defined and not applied.

[02] Those policies will reflect the internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our objective: Commerce Directives; and OMB, White House, and National Institute for Standards and Technology (NIST) guidelines. Each of these sources provide a framework for implementing an automatic tool to monitor transfers of PII and for developing, or implementing, a commercial off-the-shelf product. We are evaluating these controls against an enterprise life cycle approach, and by reviewing enterprise life cycle commercial off-the-shelf artifacts and documents supporting the procurement, budget, and expenses for the DLP solution.

[03] Policies will take into consideration existing guidelines and recommendations as well as other factors, such as impact and dependency for other systems, also needed to be considered when implementing a DLP solution. The National Institute for Standards and Technology Special Publication 800-122, Guide to Protecting the Confidentiality of Personally Identifiable Information³[1], recommends that agencies implement automated tools, such as a network data leakage prevention tool, to monitor transfers of PII and to monitor inbound and outbound communications for unauthorized activities. In addition, the Government Accountability Office's Standards for Internal Control in the Federal Government⁴[2] provides that application controls should be designed to help ensure completeness, accuracy, authorization, and validity of all transactions during application processing. Controls should be installed as an application interfaces with other systems to ensure that all inputs are received and are valid and that outputs are correct and properly distributed.

Identify Sensitive Data

[01] NOAA will identify all the confidential, restricted, and highly restricted data across the whole organization and across the three categories, i.e. for data in-transit, in-store and in-use. In identifying the sensitive data, NOAA will define the scope within which the DLP Solution will function. Each data set analyzed will be considered as to whether or not leveraging the DLP product would be an efficient use of resources, whether the data is non-sensitive, or whether the DLP would be an effective tool in further securing the data. DLP products work with signatures to identify any restricted data when it is crossing boundaries. To identify the critical data and develop its signatures, there is a term in DLP products known as fingerprinting. Data is stored in various forms at various locations in an organization and it requires identifying and fingerprinting. Various products come with a discovery engine which crawl all searchable data in a given data store, index it and make it accessible through an intuitive interface which allows quick searching on data to find its sensitivity and ownership details.

Determine Information Flows

[01] It is very important for an organization to identify their information flow. NOAA OCIO will prepare a questionnaire to identify and extract all the useful information. A sample questionnaire would address, at a minimum, the following three issues:

- What is a standard data flow, and what should be the source and destination of the identified data?
- What are all the egress points present in the network?
- What processes are in place to govern the informational flow?

³ National Institute of Standards and Technology, NIST SP 800-122, Guide to Protecting the Confidentiality of Personally Identifiable Information (PII) (April 2010).

⁴ Government Accountability Office (formerly known as the General Accounting Office), GAO/AIMD-00-21.3.1, Internal Control: Standards for Internal Control in the Federal Government (Nov. 1999).

Identify Data Owners

[01] Identification of the NOAA staff and line office owners of data is also an important step in the planning strategy of DLP, so a list will be prepared by OCIO of whom to send the notifications to in case any sensitive data is lost. NOAA OCIO will distribute an assessment to identify the owners of each of the different sensitive data elements across the organization. The data owners also will be responsible for classifying the information types⁵. Many types of data will have multiple owners, governed by separate line and staff office policies for the collection and use of that data, depending on mission needs. The assessment will attempt to identify each offices ownership, collection, storage, and transmission of sensitive data so that when an incident occurs, the incident is properly triaged, escalated where necessary, reported⁶, and the DLP processes and application are modified and tuned as necessary.

Identify Deployment Scenarios

[01] The following questions arise in identifying potential Deployment Scenarios. Each of these must be addressed prior to agency-wide deployment of a mature DLP solution.

1. Will the Initial Deployment be applied to all of the traffic of data in use, or in motion, or at rest?
2. Alternatively, should NOAA deploy the DLP appliance by copying the network traffic and analyzing it at a different port before deploying it directly to the data states of the network traffic?
3. Should the deployment occur in high availability mode or should we configure in bypass mode?
4. How will the setup of endpoints with the DLP manager occur?
5. How do we maintaining integrity between communication ports and firewalls?
6. How do we ensure proper configuration of a crawling agent?

[02] As discussed above, sensitive data falls under three categories, i.e. data in motion, data at rest and data in use. After identifying the sensitive data and defining policies, NOAA will prepare for the deployment of DLP product(s). DLP deployment scenario of all three categories include :

- Data in motion: Data that needs to be protected when in transit, i.e. data on the wire. This includes channels like HTTP/S, S/FTP/S, IM, P2P, SMTP etc. NOAA will install the DLP protector appliance or software so it is not directly inline with the traffic. This is prudent to start with a minimally invasive method by not putting the appliances inline, to prevent a huge number of false positives or a network outage if the inline device fails. The NOAA approach will be to deploy DLP appliances or software in a span port first,

⁵ See, NIST SP 800-60.

⁶ Reporting here is referring to both internal reporting to the Office that owns the information, the Bureau Chief Privacy Officer, and N-CIRT as necessary, as well as external notifications (such as Privacy Incident reporting to DOC) and external reporting to OMB. Organizations report annually on specific privacy and security activities in their annual FISMA reports to OMB. The most recent memorandum is OMB M-10-15, FY 2010 Reporting Instructions for the Federal Information Security Management Act and Agency Privacy Management, available at http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-15.pdf

and then after the DLP strategy is mature, then put into inline mode. In order to mitigate the second risk, NOAA may deploy two options: first, deploy DLP in High Availability mode, and second, configure the inline DLP product in bypass mode, which will enable the traffic to bypass the inline DLP product in case the DLP product is down.

- **Data in Use:** Data that resides on the end user workstation and needs to be protected from being leaked through removable media devices like USB, DVD, CDs, etc. will fall under this category. In Data in Use, an agent may be installed in every NOAA endpoint device like laptop, desktop, etc. which is loaded with policies and is managed by a centralized DLP management server. Agents would be distributed on the endpoints via pushing strategies like SMS, GPO, etc.
- **Data in Store:** Data that resides on file servers and DBs and needs to be monitored from being getting leaked will fall under this category. All NOAA data that resides in storage servers or devices would be crawled using a DLP crawling agent. After crawling, data is fingerprinted to see if any unstructured data is present or not.

Plan DLP Operations

[01] NOAA will need to split the DLP operations into three phases: a triaging phase, a reporting and escalation phase, and a tuning phase. The security operation's team will monitor the alerts fired or triggered by the policies set up in the DLP product. N-CIRT will fine tune the policies as a result of some mis-configurations earlier or due to eventual policy or guidance changes and apply the changes to the DLP product. NOAA will need to identify the staffing, budget, training, and other resource demands that each phase of the DLP Operations will require, and determine the capabilities in effectively carrying out each phase with the available resources.

Deploy DLP Product(s)

[01] Deployment of security components is of no use if they cannot be monitored, and a DLP product is no exception. Below is an overview of what a DLP operation of an organization can be. First of all, the DLP product needs to be created with the right set of policies on the identified data among data at rest, in motion or in transit categories. The DLP operations can be separated into three phases, namely: the triaging phase, the reporting and escalation phase, and the tuning phase. These will need to be modified depending on the nature of the incident identified in the triaging phase for referral to N-CIRT and for DOC notification, as necessary. The triaging phase, incident reporting and escalation, as well as the any parameter modifications and tuning will be carried out in accordance with existing PII/BII Breach Response and Notification Plan.

Conclusion

[01] NOAA will employ a Defense in Depth approach to DLP. NOAA's DLP solution(s) need to minimize deployment and operating costs. As an off-the-shelf product, the McAfee Total Protection, or a similar product solution would potentially be an additional tool within the DID approach to effectively protect PII and BII data wherever it may be.

[02] NOAA has maintained a high awareness of data security, and is vigilant in protecting the sensitive information located within its systems. These Data Loss Prevention measures will

enhance the security of NOAA information systems and maintain the highest level of compliance with all regulatory and guidance documents that govern Data Loss Prevention at the agency⁷.

Definitions

Business Identifiable Information (BII) Information that is defined in the Freedom of Information Act (FOIA) as "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Commercial or financial information is considered confidential if disclosure is likely to cause substantial harm to the competitive position of the person from whom the information was obtained.

Personally Identifiable Information (PII) Information that can be used to distinguish or trace an individual's identity, such as name, Social Security number (SSN), biometric records, etc., alone, or when combined with other personal or identifying information, which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc. [OMB M-07-16].

Sensitive Personally Identifiable Information (Sensitive PII) Sensitive PII is defined as PII which, when disclosed, could result in harm to the individual whose name or identity is linked to the information. Further, in determining what PII is sensitive, the context in which the PII is used must be considered. For example, a list of people subscribing to a government newsletter is not sensitive PII; a list of people receiving treatment for substance abuse is sensitive PII. As well as context, the association of two or more non-sensitive PII elements may result in sensitive PII. For instance, the name of an individual would be sensitive when grouped with place and date of birth and/or mother's maiden name, but each of these elements would not be sensitive independent of one another. For the purpose of determining which PII may be electronically transmitted, the following types of PII are considered sensitive when they are associated with an individual. Secure methods must be employed in transmitting this data when associated with an individual:

- Place of birth
- Date of birth
- Mother's maiden name
- Biometric information
- Medical information, except brief references to absences from work
- Personal financial information
- Credit card or purchase card account numbers
- Passport numbers

⁷ NIST SP 800-53A, Recommended Security Controls for Federal Information Systems, establishes common criteria for assessing the effectiveness of security controls in federal information systems. Organizations use the recommended assessment procedures from NIST SP 800-53A to develop their own assessment procedures.

- Potentially sensitive employment information, e.g., personnel ratings, disciplinary actions, and result of background investigations
- Criminal history
- Any information that may stigmatize or adversely affect an individual.

This list is not exhaustive, and other data may be sensitive depending on specific circumstances. Social Security Numbers (SSNs), including truncated SSNs that include only the last four digits, are sensitive regardless of whether they are associated with an individual. If it is determined that such transmission is required, then secure methods must be employed. [DOC Electronic Transmission of PII Policy].

Controlled Unclassified Information (CUI) Information that requires safeguarding or dissemination controls pursuant to and consistent with applicable law, regulations, and government-wide policies but is not classified under Executive Order 13526 or the Atomic Energy Act, as amended.

Signed this ____ day of _____, 2016.

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Zachary Goldstein, NOAA CIO




APR 15 2016

MEMORANDUM FOR: Heads of Operating Units and Secretarial Officers

FROM:

Catrina D. Purvis 
Senior Agency Official for Privacy (SAOP) &
Chief Privacy Officer

Ellen Herbst 
Chief Financial Officer &
Assistant Secretary for Administration

SUBJECT: Departmental Privacy Standards for Commerce Data Loss
Prevention (DLP) Security Tools

The purpose of this memorandum is to establish a requirement for all bureaus/operating units (BOUs) to configure their Data Loss Prevention (DLP) security tools to implement privacy control capabilities that meet Departmental privacy DLP standards. This requirement will enhance privacy protections and reduce personally identifiable information (PII) breaches within Commerce.

BACKGROUND

DLP is a term that refers to both the policy and information security tools used to identify, restrict, monitor, and protect sensitive data in use, in motion, and at rest. DLP security tools detect and prevent unauthorized attempts to copy or send sensitive data, intentionally or unintentionally, without authorization. On July 7, 2010, Departmental guidance announcing the implementation of a DLP program was issued in a document titled "Immediate Enablement of a DLP Security Tool."

On December 17, 2014, the Commerce Privacy Council's DLP Working Group (commissioned by the then-General Counsel) produced a *Privacy DLP Working Group Recommendations Report*. In furtherance of the 2010 guidance, the report recommended requiring all BOUs to implement DLP-based privacy control capabilities and provided minimum privacy DLP standards for electronic transmissions of sensitive PII (incoming and outgoing email messages or internet postings). Implementation of these standards results in all unsecured electronic transmission of sensitive PII attempts on any Commerce system to be blocked and redirects senders to use an approved secured

transmission method. Many BOUs have implemented the recommended privacy DLP standards across all of their systems and others have made significant progress toward that end. This memorandum formally requires all BOUs to implement privacy DLP capabilities that satisfy the existing minimum standards set forth in the working group's attached report.

REQUIRED ACTIONS

Accordingly, the following actions are required and must be submitted to the Commerce Senior Agency Official for Privacy at CPO@doc.gov within 120 days from the date of this memorandum:

- BOUs with existing DLP security tool capabilities – Provide a confirmation email that the minimum privacy DLP control standards identified in the DLP Working Group Report have been implemented.
- BOUs with no existing DLP security tool capabilities – Provide an implementation plan to meet the minimum Privacy DLP Standards within one (1) year. (The implementation plan may propose an alternative method/process to achieve the standards).

Please direct any questions regarding this memorandum to Lisa Martin, Deputy Director of Departmental Privacy Operations, who can be reached at (202) 482-2459 and lmartin1@doc.gov.

cc: BOU Chief Privacy Officers
Chief Information Officers
Chief Financial Officers

Attachment:

DOC Privacy DLP Working Group Recommendations

United States Department of Commerce

Privacy Data Loss Prevention (DLP)
Working Group
Recommendations

December 17, 2014



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**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

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**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

SUMMARY

This document contains recommendations from the Department of Commerce (DOC) inter-agency network based Privacy Data Loss Prevention (DLP) Working Group for implementing a DOC wide DLP privacy program. Information in this recommendation will change as we gain greater experience using DLP email scan, new technologies are introduced, and new OMB requirements are implemented. As a result, it is the recommendation of the Privacy DOC Privacy DLP Working Group that these recommendations be reviewed annually and updated as appropriate.

The DOC inter-agency Privacy DLP Working Group was commissioned to research, investigate, and propose recommendations for implementing a department wide DLP privacy program. The group's primary objective was to provide high-level recommendations for a department wide DLP privacy program that will minimize the number of sensitive personally identifiable information (PII) email incidents while considering the level of technical, human, and financial resources needed to implement a DLP privacy program. DLP accomplishes these tasks using automated tools that implement policies and processes to identify where sensitive information is stored throughout the department's network, restrict access to that sensitive information, and monitor transmission of sensitive data in and out of the network boundary.

The Privacy DLP working group consisted of a small group of privacy advocates from the Department of Commerce, the Bureau of Industry and Security (BIS), the Bureau of Economic Analysis (BEA), the U.S. Census Bureau, the National Oceanic and Atmospheric Administration (NOAA), the National Institute of Standards and Technology (NIST), and the U.S. Patent and Trademark Office (USPTO). Byron Crenshaw, Privacy Compliance Chief of the U.S. Census Bureau, chaired this group.

This document describes the following recommendations from the Privacy DLP Working Group:

1. Security/Sensitivity Classification of DLP Personnel
2. Department-wide Privacy DLP Standard Process
3. DLP Minimum Scanning (filtering) Configuration – Incoming & Outgoing Mail
4. Filtering Criteria
5. Internet Postings
6. Handling of False Positives
7. Email Message Alerts to the Email Sender
8. Implementation Plan & Deadline
9. Reporting Requirements

**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

SCOPE

The recommendations of this document are for all unencrypted HTTP entities and messaging traffic (incoming or outgoing email messages or internet postings) that are leaving or entering a DOC network.

RECOMMENDATIONS

1. Security/Sensitivity Classification of DLP Personnel

Standard DLP operating procedures may allow DLP personnel access to confidential and/or sensitive information pertaining to persons, government or private entities. The DOC Privacy DLP Working Group recommends that DLP personnel sign a non-disclosure form prior to working with DLP technologies, acknowledging the requirements and responsibilities for information that is handled and made available. In addition, agencies may consider conducting additional security/suitability clearances for personnel involved with DLP.

2. Department-Wide DLP Standards

It is the recommendation of the DOC Privacy DLP Working Group that the DOC adopt the following practice as standard DLP privacy operating procedures:

- all unencrypted electronic messages (email messages or internet postings) that are leaving or entering a DOC network be filtered through the DLP solution (minimum scanning configuration is described in Section 3);
- suspected sensitive PII detected by the DLP shall be quarantined for a specified number of days as determined by the department or the OU;
- for each day an email is stored in quarantined, the email sender shall be sent an auto-generated email message from the DLP stating that his/her email will be deleted on [specified date] unless action is taken;
- if no action is taken on email messages quarantined by the DLP within the pre-determined number of days, the email message shall be deleted and the sender shall be notified;
- to resolve a suspected false positive, the email sender can either:
 - retransmit the email message with proper encryption,
 - redact the message of all sensitive information and retransmit, or,
 - contact the privacy staff to resolve suspected false positive (described in Section 6 – Handling of False Positives).

3. DLP Minimum Scanning Configuration

A successful department wide DLP privacy program must begin with a standard set of personally identifiable information (PII) items that each operating unit must consistently treat with special handling procedures during electronic transmission. The identification of sensitive PII is often based on the context of how the information is used. Since there are limitations on contextual understanding by DLP software, the list of sensitive PII identified by the DOC inter-agency Privacy DLP Working Group will consist primarily of single (standalone) sensitive PII items, with some basic grouping or combination of other PII or commonly associated text. Examples of these items are listed in Table 1.

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A. Egress Scanning

It is the recommendation of the DOC Privacy DLP Working Group that all outgoing email messages sent from a DOC network be subject to DLP filtering for sensitive PII based on the minimum filtering criteria as outlined in this document.

Note on Agencies' Rights: DOC operating units must reserve the right to add additional PII to their DLP filter as necessary. However, minimum DLP items identified by the DOC DLP Team cannot be detracted.

B. Ingress Scanning

Historical research by DOC operating units that are currently using a DLP software has revealed that incoming email messages will sometime contain sensitive PII which can go undetected by the operating unit. It is not until the operating unit attempts to reply or forward the message outside of the DOC network that the sensitive PII in the e-mail message is detected. It was also revealed that sometimes the incoming e-mail message will be copied and filed in an unsecure environment because the sensitive PII within the e-mail message remained undetected.

To address this problem, it is the recommendation of the DOC Privacy DLP Working Group that all e-mail messages coming into DOC networks be subject to the same DLP filtering criteria as outgoing email messages. Incoming e-mail messages containing sensitive PII as identified by the DLP filtering scan shall be blocked by the DLP from entering the DOC network. It is recommended that electronic notification be sent to the sender describing the policy prohibition, with instructions for using DOC approved encryption software (i.e., Accellion). In addition, it is also recommended that the intended recipient of the blocked email message be electronically notified that an incoming e-mail message has been blocked from receipt into the DOC network because of a possible DLP policy prohibition. Recommended suggestions for the wording of these notification messages are included in Appendix A.

4. Filtering Standard

The DOC Privacy DLP Working Group has identified a minimum standard for DLP privacy implementation. This filtering standard includes sensitive PII, and non-sensitive PII combined with other information, such as financial and/or medical information, which when combined, becomes sensitive PII.

DOC operating units must include these items in the standard filters of their DLP filtering items, additional filtering items can be added by DOC operating units as necessary.

If a quarantined message matches for more than one DLP filter item, the DLP scanning rules should terminate examination and trigger countermeasures on the first matching item.

It is the recommendation of the DOC Privacy DLP Working Group that the DLP filtering hierarchy be in this order.

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1. Social security number
2. Passport number
3. Driver's license/state identification number
4. Bank account/credit card number
5. Medical/HIPAA Information
6. Date of birth
7. Mother's maiden name

This order means if there is an email message that has content that recognize the SNN and HIPPA Patient Identification Number, the DLP would recognize the SSN as the violation and not continue processing for the HIPAA Patient Identifier.

4.1 U.S. Social Security Number Filters

The U.S. Social Security Number classifier requires a properly formatted number as well as other supporting data, such as a date of birth, name, or the text string "SSN".

U.S. SSN Examples:

- 123-45-6789 (No match because of no supporting information)
- 123-45-6789 July 4 (Match because a partial date is linked to 9-digit string number)
- 123-45-6789 7/4/1980 (Match because a possible date is linked to 9-digit string number)
- 123-45-6789 7/4 (No match)
- 123-45-6789 987-65-4321 (Match because of more than one 9-digit string number increases risk, threat, and harm)
- SSN: 123-45-6789 (Match)
- Joe Smith 123-45-6789 (Match because name linked to 9-digit number)
- 123-45-6789 CA 94066 (Match because state and zip code associated with 9-digit number)

4.2 Passport Number

The Passport Number filter requires inspection for the word "Passport," in English and Spanish, followed by a string of digits.

4.3 Driver's License/State Identification Number

Driver's license or other state identification number must be filtered by the words "Driver's License" or "State Identification," followed by a string of numeric or alphanumeric values.

String of numeric data including punctuation (dashes, periods, etc.).

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4.4 Financial Account/Credit Card Number

The words "routing," "accounting," "credit card," or "cc," followed by a string of numbers with or without dashes.

4.5 Medical and Health Insurance Portability and Accountability (HIPAA) Filters

It is the recommendation of the DOC Privacy DLP Working Group that medical and other HIPAA considerations be included in the DLP data dictionary. The Medical/HIPAA DLP scan shall require a match on the medical classifier AND a match on a personal information identifier such as full name, U.S. Social Security Number, U.S. National Provider Identifier, or custom patient identification number, to be considered a Medical/HIPAA DLP violation.

Medical Information Examples:

personal identifier such as, full name, SSN, national provider identifier, or custom patient identification number -

- ADHD
- AIDS
- Arthritis
- Asthma
- Autism
- Cancer
- Chlamydia
- Diabetes
- Epilepsy
- Flu (Influenza)
- Herpes
- Giardiasis
- Gonorrhea
- Heart Disease
- Hepatitis
- HIV
- HPV (Human papillomavirus)
- Influenza
- Meningitis
- MRSA (Methicillin Resistant Staphylococcus aureus)
- Obesity
- Salmonella
- Scabies

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- Sexually Transmitted Diseases
- Stroke
- Trichomonas
- Trichomoniasis
- Tuberculosis (TB)

4.6 Date of Birth

Date of birth filter must include a combination of numeric or alphanumeric dates associated with the words “date of birth”, “DOB”, or “birth date,” and must be linked with a unique personal identifiable such as name or social security number.

5. Internet Postings

Sensitive PII posted for consumption via private or public websites can present a much greater risk of harm than sensitive PII transmitted through email because of the potential for a wider audience and exposure. It is the recommendation of this group that Internet traffic be scanned for DLP filtering items. This includes posts from DOC controlled networks going out to official DOC social media websites and pages, and posts inbound to DOC controlled and monitored websites and pages, i.e., Web forums. Attempted postings containing information prohibited by DLP filter criteria shall be blocked from release on the DOC controlled websites and pages, to the Internet.

6. Handling of False Positives

For the purpose of this recommendation, a “false positive” is defined as an electronic message that was falsely quarantined by the DLP solution.

If a sender suspects that his/her email message has been falsely quarantined by the DLP, it is the recommendation of the DOC Privacy DLP Working Group that the following actions be taken:

- the sender shall notify the privacy staff of the suspected false positive;
- a privacy professional will review the email to determine if the quarantined email message is a DLP false positive;
- upon confirmation by privacy professional that the email message was falsely quarantined by the DLP, the email message will be released by the privacy professional to the addressee(s);
- the sender shall be notified that the message has been reviewed by a privacy staff member and released to the intended recipient(s).

If the privacy professional determines that the email message is not a false positive, i.e., contains PII that is prohibited from unencrypted electronic transmission, it is the recommendation of this group that the following actions be taken:

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- the email message will be manually deleted by the privacy staff;
- the sender will be notified that the message has been reviewed by a privacy staff member and found to contain information that is prohibited by policy from unencrypted email transmission.

If no action is taken by the sender for a message that has been quarantined by the DLP after a specified number of days (as defined by either the department or the OU), it is the recommendation of this group that the following actions be taken:

- the email message be automatically deleted by the DLP solution;
- the sender shall receive an auto-generated email message from the DLP solution stating that the email message [email subject and date] has been deleted by the DLP.

7. Email Messages

It is the recommendation of the DOC Privacy DLP Working Group that when an email message is quarantined by the DLP email scan, the sender shall receive an auto-generated email message describing the possible violation, the quarantine of the email message, and the steps to take to release the email message to the intended recipients. If the employee suspects the DLP quarantined the email in error (false positive) and contacts the privacy office for assistance, another email message will be sent stating the results of the privacy review. An example of each of these letters is included under the Email Messages section of the Appendix A.

8. Implementation Plan & Deadline

It is the recommendation of the DOC Privacy DLP Working Group that a department-wide policy be written based on these recommendations. All DOC operating units shall be given one year from date of issue to comply with the policy.

9. Reporting Requirements

Incidents captured by the DLP are not released from a DOC controlled environment. Since they remain within the control of the DOC, the DOC Privacy DLP Working Group recommends that DLP incidents be considered an attempted violation of policy and not an actual breach. Therefore, DLP incidents shall not be required for CIRT reporting.

To monitor the effectiveness of the DLP program, it is the recommendation of the DOC Privacy DLP Working Group that all operating units maintain record of the number of incidents captured by the DLP, the number of false positives, the number of avoid breaches, and the number of attempted self disclosed sensitive information.

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**Table 1
Examples of Specific Sensitive Items**

Name		X
Address		X
Telephone (cell/land)		X
Date of Birth		X
Mother's maiden name		X
Social Security Number	X	
Bio-metric (fingerprint, palm print, hand geometry, iris recognition, retina, etc.)		X
Medical information, except brief references to absences from work		X
Passport Number		X
Bank Account/Credit Card Number or Account	X	
Driver's license/state identification number		X
Potentially sensitive employment information, e.g., personnel ratings, disciplinary actions, and results of background investigations		X
Criminal history		X
Any information that may stigmatize or adversely affect an individual		X

This list is not exhaustive, and other data may be sensitive depending on specific circumstances. Social Security Numbers, including truncated SSNs that include only the last four digits, are sensitive regardless of whether they are associated with an individual.

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Table 2

DLP Solutions by DOC Operating Unit

	None	RSA	Iron Port	ScanMail	Secure Zip (Google cloud solution)	Trend Micro	Websense	Axways
BEA						X		
Census			X					
NIST	X							
PTO				X				X¹

¹ Used for email messages coming and going to the internet.

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Appendix A

Related Laws, Regulations, Policies, and Documents

- Privacy Act of 1974
- U.S. Department of Commerce Office of the Chief Information Officer, Electronic Transmission of Personally Identifiable Information
- U.S. Department of Commerce Office of the Chief Information Officer, IT Privacy Policy
- Office of Management and Budget Memorandum M-07-16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information
- Office of Management and Budget Memorandum M-06-19, Reporting Incidents Involving PII
- Office of Management and Budget Memorandum M-06-16, Protection of Sensitive Agency Information
- Office of Management and Budget Memorandum M-06-15, Safeguarding PII
- Commerce CIO's Memorandum on Safeguarding PII

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Appendix B

Email Messages

Employees can potentially receive two of the three DLP email messages:

1. **Message #1 - alerts the user that his/her message, and if appropriate any attachments, have been quarantined by the DLP. This message is to be sent each day until the quarantined email is either released by the privacy office or deleted.**

EXAMPLE

Subject: Email Message Temporarily Quarantined: [original email subject with date]

A scan by the [insert name of agency] Data Loss Prevention (DLP) system has detected that your email with the subject: [subject], dated [date email was sent] may contain sensitive information that by policy is prohibited from email transmission without proper encryption. As a result, your email has been placed in quarantine for [specified] days. Please take one of the following actions to resolve this issue:

1. *Re-transmit your message using approved email encryption; or,*
2. *Contact the privacy staff on (777) 777-7777, if you think your email was quarantined by the DLP email scan in error.*

Sending unencrypted email messages containing sensitive PII, including personal messages sent from a Department of Commerce email systems, is a violation of the Department of Commerce's "Electronic Transmission of Personally Identifiable Information" policy. Additional information regarding acceptable use of government IT systems is contained in the [insert the name of agency's IT Acceptable Use Policy]. A copy of this policy can be found on [insert http address].

In the future, to avoid delays in email transmissions, please ensure that emails containing sensitive personally identifiable information or sensitive financial information are transmitted using approved encryption software, such as Accellion – Secure File Sharing software, or other approved secure transmission [insert link to other encryption software approved by the agency].

Please direct any questions to the [insert privacy office's name and telephone number].

2. **Message #2 – is sent to the email sender who requested review by a privacy professional because a false positive is suspected, and after review, the message is released to the intended recipients.**

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EXAMPLE

Subject: Email Message Temporarily Quarantined: [original email subject with date]

YOUR EMAIL MESSAGE HAS BEEN SENT

The below email has been reviewed by the [name of agency's privacy office] and released to the intended receiver(s) on [date original message released].

If you have any questions please contact the [insert privacy office's name and telephone number].

- 3. Message #3 - alerts the user that his/her email message, and any attachments, has been deleted and not sent. This message is to be sent after a quarantined message has not been acted upon after the pre-determined period of time.**

EXAMPLE

Subject: Email Message Temporarily Quarantined: [original email subject with date]

The detention period of your quarantined email message has expired and your message has been deleted. Your message was not sent to the intended recipient.

Sending unencrypted email messages containing sensitive PII, including personal messages sent from a Department of Commerce email systems, is a violation of the Department of Commerce's "Electronic Transmission of Personally Identifiable Information" policy. Additional information regarding acceptable use of government IT systems is contained in the [insert the name of agency's IT Acceptable Use Policy]. A copy of this policy can be found on [insert http address].

In the future, to avoid delays in email transmissions, please ensure that emails containing sensitive personally identifiable information or sensitive financial information are transmitted using approved encryption software, such as Accellion – Secure File Sharing software, or other approved secure transmission [insert link to other encryption software approved by the agency].

Please direct any questions to the [insert privacy office's name and telephone number].

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Appendix C

DEFINITIONS

Business Identifiable Information (BI): consists of (a) information that is defined in the Freedom of Information Act (FOIA) as “trade secrets, and commercial or financial information obtained from a person [that is] privileged or confidential.” (5 U.S.C.552(b)(4)). This information is exempt from automatic release under the (b)(4) FOIA exemption. “Commercial” is not confined to records that reveal “basic commercial operations” but includes any records [or information] in which the submitter has a “commercial interest” and can include information submitted by a nonprofit entity. Or (b) commercial or other information that, although it may not be exempt from release under FOIA, is exempt from disclosure by law (e.g., 13 U.S.C. 9).

False Positive: messages quarantined by the DLP that were later determined to not have contained any information that is prohibited from electronic transmission.

Personally Identifiable Information (PII): OMB Memorandum M-07-16 states that PII “refers to information which can be used to distinguish or trace an individual’s identity, such as name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name, etc.”

Sensitive But Unclassified (SBU): is a designation of information in the United States federal government that, though unclassified, often requires strict controls over its distribution. SBU is a broad category of information that includes material covered by such designations as For Official Use Only (FOUO), Law Enforcement Sensitive (LES), Sensitive Homeland Security Information, Security Sensitive Information (SSI), Critical Infrastructure Information (CII), etc. It also includes Internal Revenue Service materials like individual tax records, systems information, and enforcement procedures. Some categories of SBU information have authority in statute or regulation (e.g. SSI, CII) while others, including FOUO, do not.

Sensitive Personally Identifiable Information (SPII): Department of Commerce’s policy on Electronic Transmission of PII states that “sensitive PII is defined as PII which, when disclosed, could result in harm to the individual whose name or identity is linked to the information. Further, in determining what PII is sensitive, the context in which the PII is used must be considered. For example, a list of people subscribing to a government newsletter is not sensitive PII; a list of people receiving treatment for substance abuse is sensitive PII. As well as context, the association of two or more non-sensitive PII elements may result in sensitive PII. For instance, the name of an individual would be sensitive when grouped with place and date of birth and/or mother’s maiden name, but each of these elements would not be sensitive independent of one another.”

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Sensitive Security Information (SSI): is a category of sensitive but unclassified information under the United States government's information sharing and control rules, often used by TSA and CBP. SSI is information obtained in the conduct of security activities whose public disclosure would, in the judgment of specified government agencies, harm transportation security, be an unwarranted invasion of privacy, or reveal trade secrets or privileged or confidential information.

UNCLASSIFIED/FOUO: is used for documents or products that contain material that is exempt from release under the Freedom of Information Act. It is treated as confidential, which means it cannot be discarded in the open trash, made available to the general public, or posted on an uncontrolled website. It can, however, be shared with individuals with a need to know the content, while still under the control of the individual possessing the document or product.

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UNRESOLVED ISSUES

Issue 1: Identify BII DLP requirements.

Resolution: Pending

Issue 2: How to resolve false positives of incoming email messages?

Resolution: Pending

RESOLVED ISSUES

Issue 1: Definition of a DLP breach:

Resolution: The official OMB definition of a breach is *“The loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to situations where persons other than authorized users and for an other than authorized purpose have access or potential access to personally identifiable information, whether physical or electronic.”*

The lost of PII email incidents captured by the DLP shall not be considered breaches since the email containing the PII has never left our control.

Issue 2: Treatment of truncated IDs (SSNs, Passports numbers, credit card numbers, etc.)

Resolution: Page 2 of the Department of Commerce Policy on the Electronic Transmission of Personally Identifiable Information states the following:

“Social Security Numbers (SSNs), including truncated SSNs that include only the last four digits, are sensitive regardless of whether they are associated with an individual. If it is determined that such transmission is required, then secure methods must be employed.”

The treatment of truncated SSNs will be handled in accordance with the official DOC policy until such time when this requirement is rescinded by the department.

Other truncated numbers, i.e., passport numbers, credit card numbers, shall not be considered sensitive unless it is accompanied by other identifying information. (this adds to the DOC policy, since the policy does not address the use of truncated numbers other than SSN.

Issue 3: How to handle DLP incidents flagged after hours.

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Resolution: The automated email alert will immediately notify the sender that his/her email message has been quarantined. The message shall provide instructions for the sender to re-transmit the email using approved encryption software or through Accellion to successfully transmit the email. Secure FTP.

Issue 4: Treatment of incoming messages containing sensitive PII.

Resolution: The Privacy DLP Working Group recommends incoming messages be subject to DLP filtering, however, the decision to flag and quarantine incoming email messages containing sensitive PII shall be at the discretion of each operating unit.

Issue 5: Treatment of messages posted on agency's social media site

Resolution: traffic to the internet should be considered.

Issue 6: Shall we consider one DLP solution for all DOC OUs?

Resolution: No. Each operating unit must be able to employ a DLP solution that is compatible with existing technical capabilities and policies.

From: Stefan Leeb - NOAA Federal <stefan.leeb@noaa.gov>
Sent: Monday, December 5, 2016 10:36 AM
To: David Bedell
Cc: Mark Graff - NOAA Federal
Subject: Fwd: DLP Meeting Takeaways
Attachments: NOAA DLP Plan Final signed.pdf

Hi Dave,

You will need to let me know how many hours a week and for how many weeks are needed to implement the solution.

Please also let me know how many labor hours will be required to maintain it (on the UMS side), not the CSD side.

From that, I can work the \$.

Thanks.

Stefan

Stefan Leeb, MBA, PMP, CISSP
Chief, Enterprise Services Branch
Service Delivery Division
NOAA Office of the Chief Information Officer
U.S. Department of Commerce
301 628 5709 ofc
240-429-0619 cell
stefan.leeb@noaa.gov

----- Forwarded message -----

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Date: Wed, Nov 30, 2016 at 3:13 PM
Subject: DLP Meeting Takeaways
To: David Bedell - NOAA Federal <David.Bedell@noaa.gov>, Robert Swisher - NOAA Federal <robert.swisher@noaa.gov>, Robert Hembrook - NOAA Federal <robert.hembrook@noaa.gov>, Jerry McNamara <Jerome.McNamara@noaa.gov>
Cc: Tonya Banks - NOAA Federal <Tonya.B.Banks@noaa.gov>, Stefan Leeb - NOAA Federal <stefan.leeb@noaa.gov>, Sarah Brabson - NOAA Federal <sarah.brabson@noaa.gov>, Douglas Perry - NOAA Federal <Douglas.A.Perry@noaa.gov>, Tom Taylor <tom.taylor@noaa.gov>

Hi Everyone--

As discussed, here are the takeaways from the meeting.

(b)(5)

:

(b)(5) [Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

- [Redacted list item]

- [Redacted list item]

- [Redacted list item]

- [Redacted list item]

(b)(5)

Thanks--and let me know if I've missed anything. Talk to you all soon,

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration

[\(301\) 628-5658](tel:3016285658) (O)

(b)(6) (C)

NOAA Data Loss Prevention Plan

**Office of the Chief Information Officer
Governance and Portfolio Division
August 2016**



Background

[01] The protection of sensitive and personal information is more important than ever with electronic communications becoming increasingly prevalent. Safeguarding Personally Identifiable Information (PII) in the possession of the Federal Government and preventing its breach are essential to retaining the trust of the American public¹. This responsibility is shared by officials accountable for administering operational, privacy, and security programs. PII is any information that, by itself or in combination with other information, may be used to uniquely identify an individual. Within NOAA systems, this primarily can consist of Social Security Numbers (SSN), names, addresses, dates and places of birth, bank account numbers, e-mail addresses, telephone numbers, and passport numbers. The Office of Management and Budget (OMB) and the Department of Commerce (Commerce) released several memoranda to address the issue of safeguarding PII².

[02] This plan is intended as a framework for future action that will address user and system specific restrictions, controls, use cases, parameters, and other actions implemented based on the needs of individual systems and mission goals. This plan is intended to satisfy the implementation plan obligations to meet the minimum Privacy DLP Standards within 1 year as outlined in the April 15, 2016 Memorandum entitled “Departmental Privacy Standards for Commerce Data Loss Prevention (DLP) Security Tools”, as well as the corresponding May 3, 2016 data call issued by Commerce.

NOAA Data Overview

[01] NOAA provides the data, science, and information that allow the economy to function effectively and grow sustainably. NOAA helps to ensure a competitive economy by monitoring and predicting changes in the Earth's environment, protecting lives and property, and conserving and managing the nation's coastal and marine resources. NOAA's data portfolio mirrors the diversity and complexity of its mission ... and NOAA is very complex! Our mission and data diversity includes:

- 21,335 Staff (federal, contractor, associate)
- 435 Buildings
- 122 Weather Forecast Offices
- 13 River Forecast Centers
- 1,429 Real-Time Weather Stations
- 17 Satellites
- 8 Buoy Networks: 1042 Stations Deployed
- 13 National Marine Sanctuaries and 1 Marine National Monument
- 286 Data Centers

¹ The definition of PII can be found in the OMB Memorandum M-06-19, July 12, 2006.

² See, e.g., Memorandum from David A. Sampson, RE: Safeguarding Personally Identifiable Information, November 6, 2006.

- 94 Federal Information System Management Act Systems
- 33 Exhibit 300 IT Investments

NOAA DLP Strategy Overview

[01] NOAA uses, and will further deploy, a “Defense in Depth” approach to DLP. NOAA will use existing operational controls and privacy enhancing technologies. These include PII identifying solutions, encryption, firewalls, authorized use system access controls, and system audit logs. To further reduce the risk of compromise of sensitive PII in agency communications, NOAA will implement a Data Loss Prevention (DLP) solution set that monitors network communications and prevents sensitive PII from leaving the network, in addition to other sensitive data, as determined when the scope and capability of the solution is determined. Other sensitive data may include law enforcement sensitive data, business identifiable data, or other data sets for which the DLP solution can feasibly be leveraged. Each of these data sets may have one or more data owners, who will classify the information type, as described in the fourth development step below. In addition to these technical controls, NOAA utilizes administrative policies and procedures, as well as privacy training, to further safeguard information privacy and control access to information systems and information assets.

[02] NOAA conducts Privacy Threshold Analyses, (PTA’s), and, where applicable, Privacy Impact Assessments (PIAs) on all information systems to ensure privacy implications are addressed when planning, developing, implementing, and operating information technology (IT) systems that maintain information on individuals. NOAA utilizes a PIA template and guidance on conducting PIAs. The NOAA Bureau Chief Privacy Officer (BCPO) collaborates with system owners and IT security professionals to assess existing, new, or proposed programs, systems or applications for privacy risks, and recommends methods to protect individual privacy.

[03] The NOAA DLP solution(s) will be designed to monitor and prevent data from being leaked. NOAA’s DLP strategy, however, is to make sure the DLP solution(s) are as efficient and effective as possible. DLP needs to be rationally deployed in order to ensure that false positives do not overwhelm the system and the capacity of NOAA privacy and cyber security managers and staff. DLP tools such as McAfee Security, as powerful as they may be, require careful and organized deployment, otherwise reported incidents may be of little value.

[04] In response to the OMB M-07-16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information, and NIST SP 800-122, at 2.1, the NOAA Governance and Portfolio Division is leading the DLP initiative to promote secure practices in electronic communications (e-mails and Internet access) on the NOAA network to protect Controlled Unclassified Information (CUI) data. Taking a phased approach, the DLP initiative may include plans to implement specific solutions, for example, McAfee’s Data Loss Prevention (DLP) commercial off-the-shelf software solution that is capable of identifying and tracking a number of NOAA’s defined PII datasets. The NOAA DLP solution(s) will be designed to give NOAA an enterprise view into where it's most sensitive data are stored, who has access to the data, and where and by whom the data are sent outside the NOAA network. By using this information, NOAA can spot broken business processes and reduce the overall risk of exposure. The DLP solution(s) will take a data-centric approach to security, in which policies can be developed

around the content that should be protected and then deployed across multiple data states or functionalities, such as identifying, monitoring, and preventing.

DLP Development Steps

[01] A multi-layered approach will be applied to prevent data leakage for all routes and states. Data is classified under one of several schemes like data in motion, data in use, and at rest; or by data in-store, in-use and in-transit.

- Data in motion: Data that needs to be protected when in transit including HTTP/S, S/FTP/S, IM, P2P, SMTP.
- Data in use: Data that resides on end user workstation and needs to be protected from being leaked through removable media devices like USB, DVD, CD's.
- Data at rest: Data that resides on local storage media or server storage.

[02] Each of these layered types of data will be considered during deployment to maximize the prevention of data leakage. A multi-step approach to deployment, shown below, will be used as well. These steps are discussed in detail below.

1. Define policies
2. Identify sensitive data
3. Determine information flows
4. Identify data owners
5. Identify deployment scenarios
6. Plan DLP operations
7. Deploy DLP product(s)

Define Policies

[01] NOAA will build policies to protect the sensitive data. Every policy will consist of some rules, such as to protect credit card numbers, PII, and social security numbers, if such policies are not already in place. If there is a requirement for NOAA to protect sensitive information and a DLP product such as McAfee DLP does not support it out of the box, then NOAA will create rules using regular expressions (regex). It should be noted that DLP policies at this stage will be defined and not applied.

[02] Those policies will reflect the internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our objective: Commerce Directives; and OMB, White House, and National Institute for Standards and Technology (NIST) guidelines. Each of these sources provide a framework for implementing an automatic tool to monitor transfers of PII and for developing, or implementing, a commercial off-the-shelf product. We are evaluating these controls against an enterprise life cycle approach, and by reviewing enterprise life cycle commercial off-the-shelf artifacts and documents supporting the procurement, budget, and expenses for the DLP solution.

[03] Policies will take into consideration existing guidelines and recommendations as well as other factors, such as impact and dependency for other systems, also needed to be considered when implementing a DLP solution. The National Institute for Standards and Technology Special Publication 800-122, Guide to Protecting the Confidentiality of Personally Identifiable Information³[1], recommends that agencies implement automated tools, such as a network data leakage prevention tool, to monitor transfers of PII and to monitor inbound and outbound communications for unauthorized activities. In addition, the Government Accountability Office's Standards for Internal Control in the Federal Government⁴[2] provides that application controls should be designed to help ensure completeness, accuracy, authorization, and validity of all transactions during application processing. Controls should be installed as an application interfaces with other systems to ensure that all inputs are received and are valid and that outputs are correct and properly distributed.

Identify Sensitive Data

[01] NOAA will identify all the confidential, restricted, and highly restricted data across the whole organization and across the three categories, i.e. for data in-transit, in-store and in-use. In identifying the sensitive data, NOAA will define the scope within which the DLP Solution will function. Each data set analyzed will be considered as to whether or not leveraging the DLP product would be an efficient use of resources, whether the data is non-sensitive, or whether the DLP would be an effective tool in further securing the data. DLP products work with signatures to identify any restricted data when it is crossing boundaries. To identify the critical data and develop its signatures, there is a term in DLP products known as fingerprinting. Data is stored in various forms at various locations in an organization and it requires identifying and fingerprinting. Various products come with a discovery engine which crawl all searchable data in a given data store, index it and make it accessible through an intuitive interface which allows quick searching on data to find its sensitivity and ownership details.

Determine Information Flows

[01] It is very important for an organization to identify their information flow. NOAA OCIO will prepare a questionnaire to identify and extract all the useful information. A sample questionnaire would address, at a minimum, the following three issues:

- What is a standard data flow, and what should be the source and destination of the identified data?
- What are all the egress points present in the network?
- What processes are in place to govern the informational flow?

³ National Institute of Standards and Technology, NIST SP 800-122, Guide to Protecting the Confidentiality of Personally Identifiable Information (PII) (April 2010).

⁴ Government Accountability Office (formerly known as the General Accounting Office), GAO/AIMD-00-21.3.1, Internal Control: Standards for Internal Control in the Federal Government (Nov. 1999).

Identify Data Owners

[01] Identification of the NOAA staff and line office owners of data is also an important step in the planning strategy of DLP, so a list will be prepared by OCIO of whom to send the notifications to in case any sensitive data is lost. NOAA OCIO will distribute an assessment to identify the owners of each of the different sensitive data elements across the organization. The data owners also will be responsible for classifying the information types⁵. Many types of data will have multiple owners, governed by separate line and staff office policies for the collection and use of that data, depending on mission needs. The assessment will attempt to identify each offices ownership, collection, storage, and transmission of sensitive data so that when an incident occurs, the incident is properly triaged, escalated where necessary, reported⁶, and the DLP processes and application are modified and tuned as necessary.

Identify Deployment Scenarios

[01] The following questions arise in identifying potential Deployment Scenarios. Each of these must be addressed prior to agency-wide deployment of a mature DLP solution.

1. Will the Initial Deployment be applied to all of the traffic of data in use, or in motion, or at rest?
2. Alternatively, should NOAA deploy the DLP appliance by copying the network traffic and analyzing it at a different port before deploying it directly to the data states of the network traffic?
3. Should the deployment occur in high availability mode or should we configure in bypass mode?
4. How will the setup of endpoints with the DLP manager occur?
5. How do we maintaining integrity between communication ports and firewalls?
6. How do we ensure proper configuration of a crawling agent?

[02] As discussed above, sensitive data falls under three categories, i.e. data in motion, data at rest and data in use. After identifying the sensitive data and defining policies, NOAA will prepare for the deployment of DLP product(s). DLP deployment scenario of all three categories include :

- Data in motion: Data that needs to be protected when in transit, i.e. data on the wire. This includes channels like HTTP/S, S/FTP/S, IM, P2P, SMTP etc. NOAA will install the DLP protector appliance or software so it is not directly inline with the traffic. This is prudent to start with a minimally invasive method by not putting the appliances inline, to prevent a huge number of false positives or a network outage if the inline device fails. The NOAA approach will be to deploy DLP appliances or software in a span port first,

⁵ See, NIST SP 800-60.

⁶ Reporting here is referring to both internal reporting to the Office that owns the information, the Bureau Chief Privacy Officer, and N-CIRT as necessary, as well as external notifications (such as Privacy Incident reporting to DOC) and external reporting to OMB. Organizations report annually on specific privacy and security activities in their annual FISMA reports to OMB. The most recent memorandum is OMB M-10-15, FY 2010 Reporting Instructions for the Federal Information Security Management Act and Agency Privacy Management, available at http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-15.pdf

and then after the DLP strategy is mature, then put into inline mode. In order to mitigate the second risk, NOAA may deploy two options: first, deploy DLP in High Availability mode, and second, configure the inline DLP product in bypass mode, which will enable the traffic to bypass the inline DLP product in case the DLP product is down.

- **Data in Use:** Data that resides on the end user workstation and needs to be protected from being leaked through removable media devices like USB, DVD, CDs, etc. will fall under this category. In Data in Use, an agent may be installed in every NOAA endpoint device like laptop, desktop, etc. which is loaded with policies and is managed by a centralized DLP management server. Agents would be distributed on the endpoints via pushing strategies like SMS, GPO, etc.
- **Data in Store:** Data that resides on file servers and DBs and needs to be monitored from being getting leaked will fall under this category. All NOAA data that resides in storage servers or devices would be crawled using a DLP crawling agent. After crawling, data is fingerprinted to see if any unstructured data is present or not.

Plan DLP Operations

[01] NOAA will need to split the DLP operations into three phases: a triaging phase, a reporting and escalation phase, and a tuning phase. The security operation's team will monitor the alerts fired or triggered by the policies set up in the DLP product. N-CIRT will fine tune the policies as a result of some mis-configurations earlier or due to eventual policy or guidance changes and apply the changes to the DLP product. NOAA will need to identify the staffing, budget, training, and other resource demands that each phase of the DLP Operations will require, and determine the capabilities in effectively carrying out each phase with the available resources.

Deploy DLP Product(s)

[01] Deployment of security components is of no use if they cannot be monitored, and a DLP product is no exception. Below is an overview of what a DLP operation of an organization can be. First of all, the DLP product needs to be created with the right set of policies on the identified data among data at rest, in motion or in transit categories. The DLP operations can be separated into three phases, namely: the triaging phase, the reporting and escalation phase, and the tuning phase. These will need to be modified depending on the nature of the incident identified in the triaging phase for referral to N-CIRT and for DOC notification, as necessary. The triaging phase, incident reporting and escalation, as well as the any parameter modifications and tuning will be carried out in accordance with existing PII/BII Breach Response and Notification Plan.

Conclusion

[01] NOAA will employ a Defense in Depth approach to DLP. NOAA's DLP solution(s) need to minimize deployment and operating costs. As an off-the-shelf product, the McAfee Total Protection, or a similar product solution would potentially be an additional tool within the DID approach to effectively protect PII and BII data wherever it may be.

[02] NOAA has maintained a high awareness of data security, and is vigilant in protecting the sensitive information located within its systems. These Data Loss Prevention measures will

enhance the security of NOAA information systems and maintain the highest level of compliance with all regulatory and guidance documents that govern Data Loss Prevention at the agency⁷.

Definitions

Business Identifiable Information (BII) Information that is defined in the Freedom of Information Act (FOIA) as "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Commercial or financial information is considered confidential if disclosure is likely to cause substantial harm to the competitive position of the person from whom the information was obtained.

Personally Identifiable Information (PII) Information that can be used to distinguish or trace an individual's identity, such as name, Social Security number (SSN), biometric records, etc., alone, or when combined with other personal or identifying information, which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc. [OMB M-07-16].

Sensitive Personally Identifiable Information (Sensitive PII) Sensitive PII is defined as PII which, when disclosed, could result in harm to the individual whose name or identity is linked to the information. Further, in determining what PII is sensitive, the context in which the PII is used must be considered. For example, a list of people subscribing to a government newsletter is not sensitive PII; a list of people receiving treatment for substance abuse is sensitive PII. As well as context, the association of two or more non-sensitive PII elements may result in sensitive PII. For instance, the name of an individual would be sensitive when grouped with place and date of birth and/or mother's maiden name, but each of these elements would not be sensitive independent of one another. For the purpose of determining which PII may be electronically transmitted, the following types of PII are considered sensitive when they are associated with an individual. Secure methods must be employed in transmitting this data when associated with an individual:

- Place of birth
- Date of birth
- Mother's maiden name
- Biometric information
- Medical information, except brief references to absences from work
- Personal financial information
- Credit card or purchase card account numbers
- Passport numbers

⁷ NIST SP 800-53A, Recommended Security Controls for Federal Information Systems, establishes common criteria for assessing the effectiveness of security controls in federal information systems. Organizations use the recommended assessment procedures from NIST SP 800-53A to develop their own assessment procedures.

- Potentially sensitive employment information, e.g., personnel ratings, disciplinary actions, and result of background investigations
- Criminal history
- Any information that may stigmatize or adversely affect an individual.

This list is not exhaustive, and other data may be sensitive depending on specific circumstances. Social Security Numbers (SSNs), including truncated SSNs that include only the last four digits, are sensitive regardless of whether they are associated with an individual. If it is determined that such transmission is required, then secure methods must be employed. [DOC Electronic Transmission of PII Policy].

Controlled Unclassified Information (CUI) Information that requires safeguarding or dissemination controls pursuant to and consistent with applicable law, regulations, and government-wide policies but is not classified under Executive Order 13526 or the Atomic Energy Act, as amended.

Signed this ____ day of _____, 2016.

GOLDSTEIN.ZACHARY.G.1228698985
Digitally signed by GOLDSTEIN.ZACHARY.G.1228698985
DN: c US, o U.S. Government, ou DoD, ou PKI,
ou OTHER, cn GOLDSTEIN.ZACHARY.G.1228698985
Date: 2016.08.30 15:28:33 -04'00'

Zachary Goldstein, NOAA CIO

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Thursday, December 1, 2016 5:27 PM
To: Stacey Davidson - NOAA Federal
Cc: Robert Swisher - NOAA Federal; Sarah Brabson - NOAA Federal; Tom Taylor; Dennis Morgan - NOAA Federal
Subject: Fwd: DLP Meeting Takeaways
Attachments: NOAA DLP Plan Final signed.pdf; DLP-Memo(Signed-EHerbst and CPurvis (4-15-16).pdf

Good Evening Stacey,

I wanted to reach out and discuss (b)(5) [REDACTED]

[REDACTED]

[REDACTED]

Is there a time next week we could discuss how to best loop WFMO into this process?

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) (C)

----- Forwarded message -----

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Date: Wed, Nov 30, 2016 at 3:13 PM
Subject: DLP Meeting Takeaways
To: David Bedell - NOAA Federal <David.Bedell@noaa.gov>, Robert Swisher - NOAA Federal <robert.swisher@noaa.gov>, Robert Hembrook - NOAA Federal <robert.hembrook@noaa.gov>, Jerry McNamara <Jerome.McNamara@noaa.gov>
Cc: Tonya Banks - NOAA Federal <Tonya.B.Banks@noaa.gov>, Stefan Leeb - NOAA Federal <stefan.leeb@noaa.gov>, Sarah Brabson - NOAA Federal <sarah.brabson@noaa.gov>, Douglas Perry - NOAA Federal <Douglas.A.Perry@noaa.gov>, Tom Taylor <tom.taylor@noaa.gov>

Hi Everyone--

As discussed, here are the takeaways from the meeting.

(b)(5) [REDACTED]:

(b)(5)

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

- [Redacted list item 1]
- [Redacted list item 2]
- [Redacted list item 3]
- [Redacted list item 4]

(b)(5)

Thanks--and let me know if I've missed anything. Talk to you all soon,

Mark H. Graff

FOIA Officer/Bureau Chief Privacy Officer (BCPO)

National Oceanic and Atmospheric Administration

[\(301\) 628-5658](tel:3016285658) (O)


(b)(6) (C)




APR 15 2016

MEMORANDUM FOR: Heads of Operating Units and Secretarial Officers

FROM:

Catrina D. Purvis 
Senior Agency Official for Privacy (SAOP) &
Chief Privacy Officer

Ellen Herbst 
Chief Financial Officer &
Assistant Secretary for Administration

SUBJECT: Departmental Privacy Standards for Commerce Data Loss
Prevention (DLP) Security Tools

The purpose of this memorandum is to establish a requirement for all bureaus/operating units (BOUs) to configure their Data Loss Prevention (DLP) security tools to implement privacy control capabilities that meet Departmental privacy DLP standards. This requirement will enhance privacy protections and reduce personally identifiable information (PII) breaches within Commerce.

BACKGROUND

DLP is a term that refers to both the policy and information security tools used to identify, restrict, monitor, and protect sensitive data in use, in motion, and at rest. DLP security tools detect and prevent unauthorized attempts to copy or send sensitive data, intentionally or unintentionally, without authorization. On July 7, 2010, Departmental guidance announcing the implementation of a DLP program was issued in a document titled "Immediate Enablement of a DLP Security Tool."

On December 17, 2014, the Commerce Privacy Council's DLP Working Group (commissioned by the then-General Counsel) produced a *Privacy DLP Working Group Recommendations Report*. In furtherance of the 2010 guidance, the report recommended requiring all BOUs to implement DLP-based privacy control capabilities and provided minimum privacy DLP standards for electronic transmissions of sensitive PII (incoming and outgoing email messages or internet postings). Implementation of these standards results in all unsecured electronic transmission of sensitive PII attempts on any Commerce system to be blocked and redirects senders to use an approved secured

transmission method. Many BOUs have implemented the recommended privacy DLP standards across all of their systems and others have made significant progress toward that end. This memorandum formally requires all BOUs to implement privacy DLP capabilities that satisfy the existing minimum standards set forth in the working group's attached report.

REQUIRED ACTIONS

Accordingly, the following actions are required and must be submitted to the Commerce Senior Agency Official for Privacy at CPO@doc.gov within 120 days from the date of this memorandum:

- BOUs with existing DLP security tool capabilities – Provide a confirmation email that the minimum privacy DLP control standards identified in the DLP Working Group Report have been implemented.
- BOUs with no existing DLP security tool capabilities – Provide an implementation plan to meet the minimum Privacy DLP Standards within one (1) year. (The implementation plan may propose an alternative method/process to achieve the standards).

Please direct any questions regarding this memorandum to Lisa Martin, Deputy Director of Departmental Privacy Operations, who can be reached at (202) 482-2459 and lmartin1@doc.gov.

cc: BOU Chief Privacy Officers
Chief Information Officers
Chief Financial Officers

Attachment:

DOC Privacy DLP Working Group Recommendations

United States Department of Commerce

Privacy Data Loss Prevention (DLP)
Working Group
Recommendations
December 17, 2014



Working Group Members:
Byron Crisp
Stephen Lee
Jun Kim, EOP
Ida Mix, BLS
Carolyn Solanki
Solanki Sharma
Eric Williams

**Commerce Interagency
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SUMMARY

This document contains recommendations from the Department of Commerce (DOC) inter-agency network based Privacy Data Loss Prevention (DLP) Working Group for implementing a DOC wide DLP privacy program. Information in this recommendation will change as we gain greater experience using DLP email scan, new technologies are introduced, and new OMB requirements are implemented. As a result, it is the recommendation of the Privacy DOC Privacy DLP Working Group that these recommendations be reviewed annually and updated as appropriate.

The DOC inter-agency Privacy DLP Working Group was commissioned to research, investigate, and propose recommendations for implementing a department wide DLP privacy program. The group's primary objective was to provide high-level recommendations for a department wide DLP privacy program that will minimize the number of sensitive personally identifiable information (PII) email incidents while considering the level of technical, human, and financial resources needed to implement a DLP privacy program. DLP accomplishes these tasks using automated tools that implement policies and processes to identify where sensitive information is stored throughout the department's network, restrict access to that sensitive information, and monitor transmission of sensitive data in and out of the network boundary.

The Privacy DLP working group consisted of a small group of privacy advocates from the Department of Commerce, the Bureau of Industry and Security (BIS), the Bureau of Economic Analysis (BEA), the U.S. Census Bureau, the National Oceanic and Atmospheric Administration (NOAA), the National Institute of Standards and Technology (NIST), and the U.S. Patent and Trademark Office (USPTO). Byron Crenshaw, Privacy Compliance Chief of the U.S. Census Bureau, chaired this group.

This document describes the following recommendations from the Privacy DLP Working Group:

1. Security/Sensitivity Classification of DLP Personnel
2. Department-wide Privacy DLP Standard Process
3. DLP Minimum Scanning (filtering) Configuration – Incoming & Outgoing Mail
4. Filtering Criteria
5. Internet Postings
6. Handling of False Positives
7. Email Message Alerts to the Email Sender
8. Implementation Plan & Deadline
9. Reporting Requirements

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SCOPE

The recommendations of this document are for all unencrypted HTTP entities and messaging traffic (incoming or outgoing email messages or internet postings) that are leaving or entering a DOC network.

RECOMMENDATIONS

1. Security/Sensitivity Classification of DLP Personnel

Standard DLP operating procedures may allow DLP personnel access to confidential and/or sensitive information pertaining to persons, government or private entities. The DOC Privacy DLP Working Group recommends that DLP personnel sign a non-disclosure form prior to working with DLP technologies, acknowledging the requirements and responsibilities for information that is handled and made available. In addition, agencies may consider conducting additional security/suitability clearances for personnel involved with DLP.

2. Department-Wide DLP Standards

It is the recommendation of the DOC Privacy DLP Working Group that the DOC adopt the following practice as standard DLP privacy operating procedures:

- all unencrypted electronic messages (email messages or internet postings) that are leaving or entering a DOC network be filtered through the DLP solution (minimum scanning configuration is described in Section 3);
- suspected sensitive PII detected by the DLP shall be quarantined for a specified number of days as determined by the department or the OU;
- for each day an email is stored in quarantined, the email sender shall be sent an auto-generated email message from the DLP stating that his/her email will be deleted on [specified date] unless action is taken;
- if no action is taken on email messages quarantined by the DLP within the pre-determined number of days, the email message shall be deleted and the sender shall be notified;
- to resolve a suspected false positive, the email sender can either:
 - retransmit the email message with proper encryption,
 - redact the message of all sensitive information and retransmit, or,
 - contact the privacy staff to resolve suspected false positive (described in Section 6 – Handling of False Positives).

3. DLP Minimum Scanning Configuration

A successful department wide DLP privacy program must begin with a standard set of personally identifiable information (PII) items that each operating unit must consistently treat with special handling procedures during electronic transmission. The identification of sensitive PII is often based on the context of how the information is used. Since there are limitations on contextual understanding by DLP software, the list of sensitive PII identified by the DOC inter-agency Privacy DLP Working Group will consist primarily of single (standalone) sensitive PII items, with some basic grouping or combination of other PII or commonly associated text. Examples of these items are listed in Table 1.

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A. Egress Scanning

It is the recommendation of the DOC Privacy DLP Working Group that all outgoing email messages sent from a DOC network be subject to DLP filtering for sensitive PII based on the minimum filtering criteria as outlined in this document.

Note on Agencies' Rights: DOC operating units must reserve the right to add additional PII to their DLP filter as necessary. However, minimum DLP items identified by the DOC DLP Team cannot be detracted.

B. Ingress Scanning

Historical research by DOC operating units that are currently using a DLP software has revealed that incoming email messages will sometime contain sensitive PII which can go undetected by the operating unit. It is not until the operating unit attempts to reply or forward the message outside of the DOC network that the sensitive PII in the e-mail message is detected. It was also revealed that sometimes the incoming e-mail message will be copied and filed in an unsecure environment because the sensitive PII within the e-mail message remained undetected.

To address this problem, it is the recommendation of the DOC Privacy DLP Working Group that all e-mail messages coming into DOC networks be subject to the same DLP filtering criteria as outgoing email messages. Incoming e-mail messages containing sensitive PII as identified by the DLP filtering scan shall be blocked by the DLP from entering the DOC network. It is recommended that electronic notification be sent to the sender describing the policy prohibition, with instructions for using DOC approved encryption software (i.e., Accellion). In addition, it is also recommended that the intended recipient of the blocked email message be electronically notified that an incoming e-mail message has been blocked from receipt into the DOC network because of a possible DLP policy prohibition. Recommended suggestions for the wording of these notification messages are included in Appendix A.

4. Filtering Standard

The DOC Privacy DLP Working Group has identified a minimum standard for DLP privacy implementation. This filtering standard includes sensitive PII, and non-sensitive PII combined with other information, such as financial and/or medical information, which when combined, becomes sensitive PII.

DOC operating units must include these items in the standard filters of their DLP filtering items, additional filtering items can be added by DOC operating units as necessary.

If a quarantined message matches for more than one DLP filter item, the DLP scanning rules should terminate examination and trigger countermeasures on the first matching item.

It is the recommendation of the DOC Privacy DLP Working Group that the DLP filtering hierarchy be in this order.

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1. Social security number
2. Passport number
3. Driver's license/state identification number
4. Bank account/credit card number
5. Medical/HIPAA Information
6. Date of birth
7. Mother's maiden name

This order means if there is an email message that has content that recognize the SNN and HIPPA Patient Identification Number, the DLP would recognize the SSN as the violation and not continue processing for the HIPAA Patient Identifier.

4.1 U.S. Social Security Number Filters

The U.S. Social Security Number classifier requires a properly formatted number as well as other supporting data, such as a date of birth, name, or the text string "SSN".

U.S. SSN Examples:

- 123-45-6789 (No match because of no supporting information)
- 123-45-6789 July 4 (Match because a partial date is linked to 9-digit string number)
- 123-45-6789 7/4/1980 (Match because a possible date is linked to 9-digit string number)
- 123-45-6789 7/4 (No match)
- 123-45-6789 987-65-4321 (Match because of more than one 9-digit string number increases risk, threat, and harm)
- SSN: 123-45-6789 (Match)
- Joe Smith 123-45-6789 (Match because name linked to 9-digit number)
- 123-45-6789 CA 94066 (Match because state and zip code associated with 9-digit number)

4.2 Passport Number

The Passport Number filter requires inspection for the word "Passport," in English and Spanish, followed by a string of digits.

4.3 Driver's License/State Identification Number

Driver's license or other state identification number must be filtered by the words "Driver's License" or "State Identification," followed by a string of numeric or alphanumeric values.

String of numeric data including punctuation (dashes, periods, etc.).

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4.4 Financial Account/Credit Card Number

The words "routing," "accounting," "credit card," or "cc," followed by a string of numbers with or without dashes.

4.5 Medical and Health Insurance Portability and Accountability (HIPAA) Filters

It is the recommendation of the DOC Privacy DLP Working Group that medical and other HIPAA considerations be included in the DLP data dictionary. The Medical/HIPAA DLP scan shall require a match on the medical classifier AND a match on a personal information identifier such as full name, U.S. Social Security Number, U.S. National Provider Identifier, or custom patient identification number, to be considered a Medical/HIPAA DLP violation.

Medical Information Examples:

personal identifier such as, full name, SSN, national provider identifier, or custom patient identification number -

- ADHD
- AIDS
- Arthritis
- Asthma
- Autism
- Cancer
- Chlamydia
- Diabetes
- Epilepsy
- Flu (Influenza)
- Herpes
- Giardiasis
- Gonorrhea
- Heart Disease
- Hepatitis
- HIV
- HPV (Human papillomavirus)
- Influenza
- Meningitis
- MRSA (Methicillin Resistant Staphylococcus aureus)
- Obesity
- Salmonella
- Scabies

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- Sexually Transmitted Diseases
- Stroke
- Trichomonas
- Trichomoniasis
- Tuberculosis (TB)

4.6 Date of Birth

Date of birth filter must include a combination of numeric or alphanumeric dates associated with the words “date of birth”, “DOB”, or “birth date,” and must be linked with a unique personal identifiable such as name or social security number.

5. Internet Postings

Sensitive PII posted for consumption via private or public websites can present a much greater risk of harm than sensitive PII transmitted through email because of the potential for a wider audience and exposure. It is the recommendation of this group that Internet traffic be scanned for DLP filtering items. This includes posts from DOC controlled networks going out to official DOC social media websites and pages, and posts inbound to DOC controlled and monitored websites and pages, i.e., Web forums. Attempted postings containing information prohibited by DLP filter criteria shall be blocked from release on the DOC controlled websites and pages, to the Internet.

6. Handling of False Positives

For the purpose of this recommendation, a “false positive” is defined as an electronic message that was falsely quarantined by the DLP solution.

If a sender suspects that his/her email message has been falsely quarantined by the DLP, it is the recommendation of the DOC Privacy DLP Working Group that the following actions be taken:

- the sender shall notify the privacy staff of the suspected false positive;
- a privacy professional will review the email to determine if the quarantined email message is a DLP false positive;
- upon confirmation by privacy professional that the email message was falsely quarantined by the DLP, the email message will be released by the privacy professional to the addressee(s);
- the sender shall be notified that the message has been reviewed by a privacy staff member and released to the intended recipient(s).

If the privacy professional determines that the email message is not a false positive, i.e., contains PII that is prohibited from unencrypted electronic transmission, it is the recommendation of this group that the following actions be taken:

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- the email message will be manually deleted by the privacy staff;
- the sender will be notified that the message has been reviewed by a privacy staff member and found to contain information that is prohibited by policy from unencrypted email transmission.

If no action is taken by the sender for a message that has been quarantined by the DLP after a specified number of days (as defined by either the department or the OU), it is the recommendation of this group that the following actions be taken:

- the email message be automatically deleted by the DLP solution;
- the sender shall receive an auto-generated email message from the DLP solution stating that the email message [email subject and date] has been deleted by the DLP.

7. Email Messages

It is the recommendation of the DOC Privacy DLP Working Group that when an email message is quarantined by the DLP email scan, the sender shall receive an auto-generated email message describing the possible violation, the quarantine of the email message, and the steps to take to release the email message to the intended recipients. If the employee suspects the DLP quarantined the email in error (false positive) and contacts the privacy office for assistance, another email message will be sent stating the results of the privacy review. An example of each of these letters is included under the Email Messages section of the Appendix A.

8. Implementation Plan & Deadline

It is the recommendation of the DOC Privacy DLP Working Group that a department-wide policy be written based on these recommendations. All DOC operating units shall be given one year from date of issue to comply with the policy.

9. Reporting Requirements

Incidents captured by the DLP are not released from a DOC controlled environment. Since they remain within the control of the DOC, the DOC Privacy DLP Working Group recommends that DLP incidents be considered an attempted violation of policy and not an actual breach. Therefore, DLP incidents shall not be required for CIRT reporting.

To monitor the effectiveness of the DLP program, it is the recommendation of the DOC Privacy DLP Working Group that all operating units maintain record of the number of incidents captured by the DLP, the number of false positives, the number of avoid breaches, and the number of attempted self disclosed sensitive information.

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**Table 1
Examples of Specific Sensitive Items**

Name		X
Address		X
Telephone (cell/land)		X
Date of Birth		X
Mother's maiden name		X
Social Security Number	X	
Bio-metric (fingerprint, palm print, hand geometry, iris recognition, retina, etc.)		X
Medical information, except brief references to absences from work		X
Passport Number		X
Bank Account/Credit Card Number or Account	X	
Driver's license/state identification number		X
Potentially sensitive employment information, e.g., personnel ratings, disciplinary actions, and results of background investigations		X
Criminal history		X
Any information that may stigmatize or adversely affect an individual		X

This list is not exhaustive, and other data may be sensitive depending on specific circumstances. Social Security Numbers, including truncated SSNs that include only the last four digits, are sensitive regardless of whether they are associated with an individual.

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Table 2

DLP Solutions by DOC Operating Unit

	None	RSA	Iron Port	ScanMail	Secure Zip (Google cloud solution)	Trend Micro	Websense	Axways
BEA						X		
Census			X					
NIST	X							
PTO				X				X¹

¹ Used for email messages coming and going to the internet.

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Appendix A

Related Laws, Regulations, Policies, and Documents

- Privacy Act of 1974
- U.S. Department of Commerce Office of the Chief Information Officer, Electronic Transmission of Personally Identifiable Information
- U.S. Department of Commerce Office of the Chief Information Officer, IT Privacy Policy
- Office of Management and Budget Memorandum M-07-16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information
- Office of Management and Budget Memorandum M-06-19, Reporting Incidents Involving PII
- Office of Management and Budget Memorandum M-06-16, Protection of Sensitive Agency Information
- Office of Management and Budget Memorandum M-06-15, Safeguarding PII
- Commerce CIO's Memorandum on Safeguarding PII

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Appendix B

Email Messages

Employees can potentially receive two of the three DLP email messages:

1. **Message #1 - alerts the user that his/her message, and if appropriate any attachments, have been quarantined by the DLP. This message is to be sent each day until the quarantined email is either released by the privacy office or deleted.**

EXAMPLE

Subject: Email Message Temporarily Quarantined: [original email subject with date]

A scan by the [insert name of agency] Data Loss Prevention (DLP) system has detected that your email with the subject: [subject], dated [date email was sent] may contain sensitive information that by policy is prohibited from email transmission without proper encryption. As a result, your email has been placed in quarantine for [specified] days. Please take one of the following actions to resolve this issue:

1. *Re-transmit your message using approved email encryption; or,*
2. *Contact the privacy staff on (777) 777-7777, if you think your email was quarantined by the DLP email scan in error.*

Sending unencrypted email messages containing sensitive PII, including personal messages sent from a Department of Commerce email systems, is a violation of the Department of Commerce's "Electronic Transmission of Personally Identifiable Information" policy. Additional information regarding acceptable use of government IT systems is contained in the [insert the name of agency's IT Acceptable Use Policy]. A copy of this policy can be found on [insert http address].

In the future, to avoid delays in email transmissions, please ensure that emails containing sensitive personally identifiable information or sensitive financial information are transmitted using approved encryption software, such as Accellion – Secure File Sharing software, or other approved secure transmission [insert link to other encryption software approved by the agency].

Please direct any questions to the [insert privacy office's name and telephone number].

2. **Message #2 – is sent to the email sender who requested review by a privacy professional because a false positive is suspected, and after review, the message is released to the intended recipients.**

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EXAMPLE

Subject: Email Message Temporarily Quarantined: [original email subject with date]

YOUR EMAIL MESSAGE HAS BEEN SENT

The below email has been reviewed by the [name of agency's privacy office] and released to the intended receiver(s) on [date original message released].

If you have any questions please contact the [insert privacy office's name and telephone number].

- 3. Message #3 - alerts the user that his/her email message, and any attachments, has been deleted and not sent. This message is to be sent after a quarantined message has not been acted upon after the pre-determined period of time.**

EXAMPLE

Subject: Email Message Temporarily Quarantined: [original email subject with date]

The detention period of your quarantined email message has expired and your message has been deleted. Your message was not sent to the intended recipient.

Sending unencrypted email messages containing sensitive PII, including personal messages sent from a Department of Commerce email systems, is a violation of the Department of Commerce's "Electronic Transmission of Personally Identifiable Information" policy. Additional information regarding acceptable use of government IT systems is contained in the [insert the name of agency's IT Acceptable Use Policy]. A copy of this policy can be found on [insert http address].

In the future, to avoid delays in email transmissions, please ensure that emails containing sensitive personally identifiable information or sensitive financial information are transmitted using approved encryption software, such as Accellion – Secure File Sharing software, or other approved secure transmission [insert link to other encryption software approved by the agency].

Please direct any questions to the [insert privacy office's name and telephone number].

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Appendix C

DEFINITIONS

Business Identifiable Information (BI): consists of (a) information that is defined in the Freedom of Information Act (FOIA) as “trade secrets, and commercial or financial information obtained from a person [that is] privileged or confidential.” (5 U.S.C.552(b)(4)). This information is exempt from automatic release under the (b)(4) FOIA exemption. “Commercial” is not confined to records that reveal “basic commercial operations” but includes any records [or information] in which the submitter has a “commercial interest” and can include information submitted by a nonprofit entity. Or (b) commercial or other information that, although it may not be exempt from release under FOIA, is exempt from disclosure by law (e.g., 13 U.S.C. 9).

False Positive: messages quarantined by the DLP that were later determined to not have contained any information that is prohibited from electronic transmission.

Personally Identifiable Information (PII): OMB Memorandum M-07-16 states that PII “refers to information which can be used to distinguish or trace an individual’s identity, such as name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name, etc.”

Sensitive But Unclassified (SBU): is a designation of information in the United States federal government that, though unclassified, often requires strict controls over its distribution. SBU is a broad category of information that includes material covered by such designations as For Official Use Only (FOUO), Law Enforcement Sensitive (LES), Sensitive Homeland Security Information, Security Sensitive Information (SSI), Critical Infrastructure Information (CII), etc. It also includes Internal Revenue Service materials like individual tax records, systems information, and enforcement procedures. Some categories of SBU information have authority in statute or regulation (e.g. SSI, CII) while others, including FOUO, do not.

Sensitive Personally Identifiable Information (SPII): Department of Commerce’s policy on Electronic Transmission of PII states that “sensitive PII is defined as PII which, when disclosed, could result in harm to the individual whose name or identity is linked to the information. Further, in determining what PII is sensitive, the context in which the PII is used must be considered. For example, a list of people subscribing to a government newsletter is not sensitive PII; a list of people receiving treatment for substance abuse is sensitive PII. As well as context, the association of two or more non-sensitive PII elements may result in sensitive PII. For instance, the name of an individual would be sensitive when grouped with place and date of birth and/or mother’s maiden name, but each of these elements would not be sensitive independent of one another.”

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Privacy Data Loss Prevention Working Group
Recommendations**

Sensitive Security Information (SSI): is a category of sensitive but unclassified information under the United States government's information sharing and control rules, often used by TSA and CBP. SSI is information obtained in the conduct of security activities whose public disclosure would, in the judgment of specified government agencies, harm transportation security, be an unwarranted invasion of privacy, or reveal trade secrets or privileged or confidential information.

UNCLASSIFIED/FOUO: is used for documents or products that contain material that is exempt from release under the Freedom of Information Act. It is treated as confidential, which means it cannot be discarded in the open trash, made available to the general public, or posted on an uncontrolled website. It can, however, be shared with individuals with a need to know the content, while still under the control of the individual possessing the document or product.

**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

UNRESOLVED ISSUES

Issue 1: Identify BII DLP requirements.

Resolution: Pending

Issue 2: How to resolve false positives of incoming email messages?

Resolution: Pending

RESOLVED ISSUES

Issue 1: Definition of a DLP breach:

Resolution: The official OMB definition of a breach is *“The loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to situations where persons other than authorized users and for an other than authorized purpose have access or potential access to personally identifiable information, whether physical or electronic.”*

The lost of PII email incidents captured by the DLP shall not be considered breaches since the email containing the PII has never left our control.

Issue 2: Treatment of truncated IDs (SSNs, Passports numbers, credit card numbers, etc.)

Resolution: Page 2 of the Department of Commerce Policy on the Electronic Transmission of Personally Identifiable Information states the following:

“Social Security Numbers (SSNs), including truncated SSNs that include only the last four digits, are sensitive regardless of whether they are associated with an individual. If it is determined that such transmission is required, then secure methods must be employed.”

The treatment of truncated SSNs will be handled in accordance with the official DOC policy until such time when this requirement is rescinded by the department.

Other truncated numbers, i.e., passport numbers, credit card numbers, shall not be considered sensitive unless it is accompanied by other identifying information. (this adds to the DOC policy, since the policy does not address the use of truncated numbers other than SSN.

Issue 3: How to handle DLP incidents flagged after hours.

**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

Resolution: The automated email alert will immediately notify the sender that his/her email message has been quarantined. The message shall provide instructions for the sender to re-transmit the email using approved encryption software or through Accellion to successfully transmit the email. Secure FTP.

Issue 4: Treatment of incoming messages containing sensitive PII.

Resolution: The Privacy DLP Working Group recommends incoming messages be subject to DLP filtering, however, the decision to flag and quarantine incoming email messages containing sensitive PII shall be at the discretion of each operating unit.

Issue 5: Treatment of messages posted on agency's social media site

Resolution: traffic to the internet should be considered.

Issue 6: Shall we consider one DLP solution for all DOC OUs?

Resolution: No. Each operating unit must be able to employ a DLP solution that is compatible with existing technical capabilities and policies.

NOAA Data Loss Prevention Plan

**Office of the Chief Information Officer
Governance and Portfolio Division
August 2016**



Background

[01] The protection of sensitive and personal information is more important than ever with electronic communications becoming increasingly prevalent. Safeguarding Personally Identifiable Information (PII) in the possession of the Federal Government and preventing its breach are essential to retaining the trust of the American public¹. This responsibility is shared by officials accountable for administering operational, privacy, and security programs. PII is any information that, by itself or in combination with other information, may be used to uniquely identify an individual. Within NOAA systems, this primarily can consist of Social Security Numbers (SSN), names, addresses, dates and places of birth, bank account numbers, e-mail addresses, telephone numbers, and passport numbers. The Office of Management and Budget (OMB) and the Department of Commerce (Commerce) released several memoranda to address the issue of safeguarding PII².

[02] This plan is intended as a framework for future action that will address user and system specific restrictions, controls, use cases, parameters, and other actions implemented based on the needs of individual systems and mission goals. This plan is intended to satisfy the implementation plan obligations to meet the minimum Privacy DLP Standards within 1 year as outlined in the April 15, 2016 Memorandum entitled “Departmental Privacy Standards for Commerce Data Loss Prevention (DLP) Security Tools”, as well as the corresponding May 3, 2016 data call issued by Commerce.

NOAA Data Overview

[01] NOAA provides the data, science, and information that allow the economy to function effectively and grow sustainably. NOAA helps to ensure a competitive economy by monitoring and predicting changes in the Earth's environment, protecting lives and property, and conserving and managing the nation's coastal and marine resources. NOAA's data portfolio mirrors the diversity and complexity of its mission ... and NOAA is very complex! Our mission and data diversity includes:

- 21,335 Staff (federal, contractor, associate)
- 435 Buildings
- 122 Weather Forecast Offices
- 13 River Forecast Centers
- 1,429 Real-Time Weather Stations
- 17 Satellites
- 8 Buoy Networks: 1042 Stations Deployed
- 13 National Marine Sanctuaries and 1 Marine National Monument
- 286 Data Centers

¹ The definition of PII can be found in the OMB Memorandum M-06-19, July 12, 2006.

² See, e.g., Memorandum from David A. Sampson, RE: Safeguarding Personally Identifiable Information, November 6, 2006.

- 94 Federal Information System Management Act Systems
- 33 Exhibit 300 IT Investments

NOAA DLP Strategy Overview

[01] NOAA uses, and will further deploy, a “Defense in Depth” approach to DLP. NOAA will use existing operational controls and privacy enhancing technologies. These include PII identifying solutions, encryption, firewalls, authorized use system access controls, and system audit logs. To further reduce the risk of compromise of sensitive PII in agency communications, NOAA will implement a Data Loss Prevention (DLP) solution set that monitors network communications and prevents sensitive PII from leaving the network, in addition to other sensitive data, as determined when the scope and capability of the solution is determined. Other sensitive data may include law enforcement sensitive data, business identifiable data, or other data sets for which the DLP solution can feasibly be leveraged. Each of these data sets may have one or more data owners, who will classify the information type, as described in the fourth development step below. In addition to these technical controls, NOAA utilizes administrative policies and procedures, as well as privacy training, to further safeguard information privacy and control access to information systems and information assets.

[02] NOAA conducts Privacy Threshold Analyses, (PTA’s), and, where applicable, Privacy Impact Assessments (PIAs) on all information systems to ensure privacy implications are addressed when planning, developing, implementing, and operating information technology (IT) systems that maintain information on individuals. NOAA utilizes a PIA template and guidance on conducting PIAs. The NOAA Bureau Chief Privacy Officer (BCPO) collaborates with system owners and IT security professionals to assess existing, new, or proposed programs, systems or applications for privacy risks, and recommends methods to protect individual privacy.

[03] The NOAA DLP solution(s) will be designed to monitor and prevent data from being leaked. NOAA’s DLP strategy, however, is to make sure the DLP solution(s) are as efficient and effective as possible. DLP needs to be rationally deployed in order to ensure that false positives do not overwhelm the system and the capacity of NOAA privacy and cyber security managers and staff. DLP tools such as McAfee Security, as powerful as they may be, require careful and organized deployment, otherwise reported incidents may be of little value.

[04] In response to the OMB M-07-16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information, and NIST SP 800-122, at 2.1, the NOAA Governance and Portfolio Division is leading the DLP initiative to promote secure practices in electronic communications (e-mails and Internet access) on the NOAA network to protect Controlled Unclassified Information (CUI) data. Taking a phased approach, the DLP initiative may include plans to implement specific solutions, for example, McAfee’s Data Loss Prevention (DLP) commercial off-the-shelf software solution that is capable of identifying and tracking a number of NOAA’s defined PII datasets. The NOAA DLP solution(s) will be designed to give NOAA an enterprise view into where it's most sensitive data are stored, who has access to the data, and where and by whom the data are sent outside the NOAA network. By using this information, NOAA can spot broken business processes and reduce the overall risk of exposure. The DLP solution(s) will take a data-centric approach to security, in which policies can be developed

around the content that should be protected and then deployed across multiple data states or functionalities, such as identifying, monitoring, and preventing.

DLP Development Steps

[01] A multi-layered approach will be applied to prevent data leakage for all routes and states. Data is classified under one of several schemes like data in motion, data in use, and at rest; or by data in-store, in-use and in-transit.

- Data in motion: Data that needs to be protected when in transit including HTTP/S, S/FTP/S, IM, P2P, SMTP.
- Data in use: Data that resides on end user workstation and needs to be protected from being leaked through removable media devices like USB, DVD, CD's.
- Data at rest: Data that resides on local storage media or server storage.

[02] Each of these layered types of data will be considered during deployment to maximize the prevention of data leakage. A multi-step approach to deployment, shown below, will be used as well. These steps are discussed in detail below.

1. Define policies
2. Identify sensitive data
3. Determine information flows
4. Identify data owners
5. Identify deployment scenarios
6. Plan DLP operations
7. Deploy DLP product(s)

Define Policies

[01] NOAA will build policies to protect the sensitive data. Every policy will consist of some rules, such as to protect credit card numbers, PII, and social security numbers, if such policies are not already in place. If there is a requirement for NOAA to protect sensitive information and a DLP product such as McAfee DLP does not support it out of the box, then NOAA will create rules using regular expressions (regex). It should be noted that DLP policies at this stage will be defined and not applied.

[02] Those policies will reflect the internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our objective: Commerce Directives; and OMB, White House, and National Institute for Standards and Technology (NIST) guidelines. Each of these sources provide a framework for implementing an automatic tool to monitor transfers of PII and for developing, or implementing, a commercial off-the-shelf product. We are evaluating these controls against an enterprise life cycle approach, and by reviewing enterprise life cycle commercial off-the-shelf artifacts and documents supporting the procurement, budget, and expenses for the DLP solution.

[03] Policies will take into consideration existing guidelines and recommendations as well as other factors, such as impact and dependency for other systems, also needed to be considered when implementing a DLP solution. The National Institute for Standards and Technology Special Publication 800-122, Guide to Protecting the Confidentiality of Personally Identifiable Information³[1], recommends that agencies implement automated tools, such as a network data leakage prevention tool, to monitor transfers of PII and to monitor inbound and outbound communications for unauthorized activities. In addition, the Government Accountability Office's Standards for Internal Control in the Federal Government⁴[2] provides that application controls should be designed to help ensure completeness, accuracy, authorization, and validity of all transactions during application processing. Controls should be installed as an application interfaces with other systems to ensure that all inputs are received and are valid and that outputs are correct and properly distributed.

Identify Sensitive Data

[01] NOAA will identify all the confidential, restricted, and highly restricted data across the whole organization and across the three categories, i.e. for data in-transit, in-store and in-use. In identifying the sensitive data, NOAA will define the scope within which the DLP Solution will function. Each data set analyzed will be considered as to whether or not leveraging the DLP product would be an efficient use of resources, whether the data is non-sensitive, or whether the DLP would be an effective tool in further securing the data. DLP products work with signatures to identify any restricted data when it is crossing boundaries. To identify the critical data and develop its signatures, there is a term in DLP products known as fingerprinting. Data is stored in various forms at various locations in an organization and it requires identifying and fingerprinting. Various products come with a discovery engine which crawl all searchable data in a given data store, index it and make it accessible through an intuitive interface which allows quick searching on data to find its sensitivity and ownership details.

Determine Information Flows

[01] It is very important for an organization to identify their information flow. NOAA OCIO will prepare a questionnaire to identify and extract all the useful information. A sample questionnaire would address, at a minimum, the following three issues:

- What is a standard data flow, and what should be the source and destination of the identified data?
- What are all the egress points present in the network?
- What processes are in place to govern the informational flow?

³ National Institute of Standards and Technology, NIST SP 800-122, Guide to Protecting the Confidentiality of Personally Identifiable Information (PII) (April 2010).

⁴ Government Accountability Office (formerly known as the General Accounting Office), GAO/AIMD-00-21.3.1, Internal Control: Standards for Internal Control in the Federal Government (Nov. 1999).

Identify Data Owners

[01] Identification of the NOAA staff and line office owners of data is also an important step in the planning strategy of DLP, so a list will be prepared by OCIO of whom to send the notifications to in case any sensitive data is lost. NOAA OCIO will distribute an assessment to identify the owners of each of the different sensitive data elements across the organization. The data owners also will be responsible for classifying the information types⁵. Many types of data will have multiple owners, governed by separate line and staff office policies for the collection and use of that data, depending on mission needs. The assessment will attempt to identify each offices ownership, collection, storage, and transmission of sensitive data so that when an incident occurs, the incident is properly triaged, escalated where necessary, reported⁶, and the DLP processes and application are modified and tuned as necessary.

Identify Deployment Scenarios

[01] The following questions arise in identifying potential Deployment Scenarios. Each of these must be addressed prior to agency-wide deployment of a mature DLP solution.

1. Will the Initial Deployment be applied to all of the traffic of data in use, or in motion, or at rest?
2. Alternatively, should NOAA deploy the DLP appliance by copying the network traffic and analyzing it at a different port before deploying it directly to the data states of the network traffic?
3. Should the deployment occur in high availability mode or should we configure in bypass mode?
4. How will the setup of endpoints with the DLP manager occur?
5. How do we maintaining integrity between communication ports and firewalls?
6. How do we ensure proper configuration of a crawling agent?

[02] As discussed above, sensitive data falls under three categories, i.e. data in motion, data at rest and data in use. After identifying the sensitive data and defining policies, NOAA will prepare for the deployment of DLP product(s). DLP deployment scenario of all three categories include :

- Data in motion: Data that needs to be protected when in transit, i.e. data on the wire. This includes channels like HTTP/S, S/FTP/S, IM, P2P, SMTP etc. NOAA will install the DLP protector appliance or software so it is not directly inline with the traffic. This is prudent to start with a minimally invasive method by not putting the appliances inline, to prevent a huge number of false positives or a network outage if the inline device fails. The NOAA approach will be to deploy DLP appliances or software in a span port first,

⁵ See, NIST SP 800-60.

⁶ Reporting here is referring to both internal reporting to the Office that owns the information, the Bureau Chief Privacy Officer, and N-CIRT as necessary, as well as external notifications (such as Privacy Incident reporting to DOC) and external reporting to OMB. Organizations report annually on specific privacy and security activities in their annual FISMA reports to OMB. The most recent memorandum is OMB M-10-15, FY 2010 Reporting Instructions for the Federal Information Security Management Act and Agency Privacy Management, available at http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-15.pdf

and then after the DLP strategy is mature, then put into inline mode. In order to mitigate the second risk, NOAA may deploy two options: first, deploy DLP in High Availability mode, and second, configure the inline DLP product in bypass mode, which will enable the traffic to bypass the inline DLP product in case the DLP product is down.

- **Data in Use:** Data that resides on the end user workstation and needs to be protected from being leaked through removable media devices like USB, DVD, CDs, etc. will fall under this category. In Data in Use, an agent may be installed in every NOAA endpoint device like laptop, desktop, etc. which is loaded with policies and is managed by a centralized DLP management server. Agents would be distributed on the endpoints via pushing strategies like SMS, GPO, etc.
- **Data in Store:** Data that resides on file servers and DBs and needs to be monitored from being getting leaked will fall under this category. All NOAA data that resides in storage servers or devices would be crawled using a DLP crawling agent. After crawling, data is fingerprinted to see if any unstructured data is present or not.

Plan DLP Operations

[01] NOAA will need to split the DLP operations into three phases: a triaging phase, a reporting and escalation phase, and a tuning phase. The security operation's team will monitor the alerts fired or triggered by the policies set up in the DLP product. N-CIRT will fine tune the policies as a result of some mis-configurations earlier or due to eventual policy or guidance changes and apply the changes to the DLP product. NOAA will need to identify the staffing, budget, training, and other resource demands that each phase of the DLP Operations will require, and determine the capabilities in effectively carrying out each phase with the available resources.

Deploy DLP Product(s)

[01] Deployment of security components is of no use if they cannot be monitored, and a DLP product is no exception. Below is an overview of what a DLP operation of an organization can be. First of all, the DLP product needs to be created with the right set of policies on the identified data among data at rest, in motion or in transit categories. The DLP operations can be separated into three phases, namely: the triaging phase, the reporting and escalation phase, and the tuning phase. These will need to be modified depending on the nature of the incident identified in the triaging phase for referral to N-CIRT and for DOC notification, as necessary. The triaging phase, incident reporting and escalation, as well as the any parameter modifications and tuning will be carried out in accordance with existing PII/BII Breach Response and Notification Plan.

Conclusion

[01] NOAA will employ a Defense in Depth approach to DLP. NOAA's DLP solution(s) need to minimize deployment and operating costs. As an off-the-shelf product, the McAfee Total Protection, or a similar product solution would potentially be an additional tool within the DID approach to effectively protect PII and BII data wherever it may be.

[02] NOAA has maintained a high awareness of data security, and is vigilant in protecting the sensitive information located within its systems. These Data Loss Prevention measures will

enhance the security of NOAA information systems and maintain the highest level of compliance with all regulatory and guidance documents that govern Data Loss Prevention at the agency⁷.

Definitions

Business Identifiable Information (BII) Information that is defined in the Freedom of Information Act (FOIA) as "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Commercial or financial information is considered confidential if disclosure is likely to cause substantial harm to the competitive position of the person from whom the information was obtained.

Personally Identifiable Information (PII) Information that can be used to distinguish or trace an individual's identity, such as name, Social Security number (SSN), biometric records, etc., alone, or when combined with other personal or identifying information, which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc. [OMB M-07-16].

Sensitive Personally Identifiable Information (Sensitive PII) Sensitive PII is defined as PII which, when disclosed, could result in harm to the individual whose name or identity is linked to the information. Further, in determining what PII is sensitive, the context in which the PII is used must be considered. For example, a list of people subscribing to a government newsletter is not sensitive PII; a list of people receiving treatment for substance abuse is sensitive PII. As well as context, the association of two or more non-sensitive PII elements may result in sensitive PII. For instance, the name of an individual would be sensitive when grouped with place and date of birth and/or mother's maiden name, but each of these elements would not be sensitive independent of one another. For the purpose of determining which PII may be electronically transmitted, the following types of PII are considered sensitive when they are associated with an individual. Secure methods must be employed in transmitting this data when associated with an individual:

- Place of birth
- Date of birth
- Mother's maiden name
- Biometric information
- Medical information, except brief references to absences from work
- Personal financial information
- Credit card or purchase card account numbers
- Passport numbers

⁷ NIST SP 800-53A, Recommended Security Controls for Federal Information Systems, establishes common criteria for assessing the effectiveness of security controls in federal information systems. Organizations use the recommended assessment procedures from NIST SP 800-53A to develop their own assessment procedures.

- Potentially sensitive employment information, e.g., personnel ratings, disciplinary actions, and result of background investigations
- Criminal history
- Any information that may stigmatize or adversely affect an individual.

This list is not exhaustive, and other data may be sensitive depending on specific circumstances. Social Security Numbers (SSNs), including truncated SSNs that include only the last four digits, are sensitive regardless of whether they are associated with an individual. If it is determined that such transmission is required, then secure methods must be employed. [DOC Electronic Transmission of PII Policy].

Controlled Unclassified Information (CUI) Information that requires safeguarding or dissemination controls pursuant to and consistent with applicable law, regulations, and government-wide policies but is not classified under Executive Order 13526 or the Atomic Energy Act, as amended.

Signed this ____ day of _____, 2016.

GOLDSTEIN.ZACHARY.G.1228698985
ARY.G.1228698985

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ou OTHER, cn GOLDSTEIN.ZACHARY.G.1228698985
Date: 2016.08.30 15:28:33 -04'00'

Zachary Goldstein, NOAA CIO

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Monday, December 5, 2016 2:46 PM
To: Lola Stith - NOAA Affiliate; Velna Bullock - NOAA Federal
Subject: Fwd: Urgent - DOC-OS-2017-000137
Attachments: 2017-000137 Amended Request - Email from Requester 11-29-2016.pdf; 2017-000137 Dept Wide 2nd Fee Estimate - Educational.docx

This would need t (b)(5) . (Sorry, guys)--

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) (C)

----- Forwarded message -----

From: **Boyd, Harriette (Federal)** <hBoyd1@doc.gov>
Date: Mon, Dec 5, 2016 at 2:42 PM
Subject: Urgent - DOC-OS-2017-000137
To: "Arnold, Josephine (Federal)" <jarnold@mbda.gov>, "Brumby, Janet W." <janet.brumby@nist.gov>, "Cheney, Stacy" <SCheney@ntia.doc.gov>, "Davis, James (Contractor)" <jdavis@doc.gov>, "Fletcher, Catherine" <catherine.fletcher@nist.gov>, "Curry, Vernon E" <vernon.e.curry@census.gov>, "Graff, Mark (Federal)" <Mark.Graff@noaa.gov>, "Guz, Justin" <Justin.Guz@trade.gov>, "Heaton, John" <Ricou.Heaton@uspto.gov>, "Kennedy, Timothy (Contractor)" <tkennedy@doc.gov>, "Kong, Stephen (Federal)" <SKong@eda.gov>, "Kuo, Jennifer" <Jennifer.Kuo@bis.doc.gov>, "Moulder, Pamela (Federal)" <pmoulder@doc.gov>, "Oliphant, Tashima (Federal)" <TOLiphant@eda.gov>, "Parsons, Bobbie (Federal)" <bParsons@doc.gov>, "Santra, Raman" <RSantra@oig.doc.gov>, "Stith, Lola (Contractor)" <Lola.M.Stith@noaa.gov>, "Toland, Michael (Federal)" <MToland@doc.gov>, "Staunton, Dondi" <Dondi.Staunton@bea.gov>

The Department received clarification which resulted in amending the FOIA Request from Mr. John Ray. He has changed his request to : "...all e-mails sent to or received by the OIG's Legislative Affairs Officer in the past 365 days that include notification of oversight activities conducted by the Government Accountability Office." (this quote is from email to the requester from Raman Santra, OIG on Tuesday, November 15, 2016)

The emails to/from requester is attached.

Please see the Second Fee Est Request attached above and in the Case File/Correspondence/Other. I will close out the pending task on FOIAonline and replace a tasker with the one above.

(b)(5) [Redacted]

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[Redacted]

[Redacted]

[Redacted]

I apologize for any confusion. Harriette

Sincerely

Harriette Boyd

Freedom of Information Act Specialist

U.S. Department of Commerce

Office of Privacy and Open Government

Office: [\(202\) 482-1485](tel:(202)482-1485)

Email: hboydl@doc.gov

From: [JOHN RANDALL RAY](#)
To: [Boyd, Harriette \(Federal\)](#)
Subject: Re: FOIA Request to Department of Commerce DOC-OS-2017-000137
Date: Tuesday, November 29, 2016 12:24:20 PM

Hello Ms. Boyd,

Yes, that interpretation is correct. I intend to use this data only for research purposes, specifically person background edification on the subject, and have no plans to publicize any specifics of that data in any way. I am a graduate student in the political science department at UCLA and my dissertation includes some study of the GAO, which is at the basis of my request. I have no other intended purposes for this data. Please let me know if you need anything else, and thanks for reaching out.

Best,
John

On Fri, Nov 25, 2016 at 12:37 PM, Boyd, Harriette (Federal) <hBoyd1@doc.gov> wrote:

Dear Mr. Ray, I am the contact person assigned to your FOIA request to the Department of Commerce, tracking No. DOC-OS-2017-000137. This email is to confirm the understanding of the interpretation/amendment of your request per your communication with Raman Santra, FOIA Officer, Office of the Inspector General.

It is our understanding that you have amended your request to narrow the scope of search required under your original request. The original request we received is as follows:

· Subject, to/from, and body of electronic mail containing any of the following phrases: "Government Accountability Office" "@gao.gov" "@house.gov" "@senate.gov" sent to or from the Director of Legislative and Intergovernmental Affairs in the time period January 1, 2006 to November 1, 2016.

The amended request received by DOC/OIG's Office is as follows:

· "all e-mails sent to or received by the OIG's Legislative Affairs Officer in the past 365 days that include notification of oversight activities conducted by the Government Accountability Office."

(this quote is from email to you from Raman on Tuesday, November 15, 2016 2:48 PM)

Our understanding is that you want the Department to search (from all the Bureaus -- there are 14) from their Legislative Affairs Office (or equivalent office) for emails sent to or received by Legislative Affairs Office (or equivalent) in the past 365 days that include notification of oversight activities conducted by the Government Accountability Office.

Also, Please be advised that when we received this request (DOC-OS-2017-000137) November 3, 2016 (it was submitted by you on November 2, 2016), we tasked all the Bureaus to submit a fee estimate placing you in the "Educational Category." Under this category, " (ii) Educational and Non-commercial Scientific Institution chargeable fee are Duplication (excluding the cost of the first 100 pages). Pursuant to 15 CFR 4.11(b)(4) "A requester in this fee category must show that the request is authorized by, and is made under the auspices of, an educational institution and that the records are not sought for a commercial use, but rather are sought to further scholarly research." The following are examples of how this Sec. is interpreted:

· Example 1. A request from a professor of geology at a university for records relating to soil erosion, written on letterhead of the Department of Geology, would be presumed to be from an educational institution.

· Example 2. A request from the same professor of geology seeking drug information from the Food and Drug Administration in furtherance of a murder mystery he is writing would not be presumed to be an institutional request, regardless of whether it was written on institutional letterhead.

Mr. Ray I apologize for the misunderstanding and any inconvenience to you. We will appreciate your quick response so that we may proceed with this request.

Thank-You

Sincerely,

Harriette Boyd

Freedom of Information Act Specialist

U.S. Department of Commerce

Office of Privacy and Open Government

Office: [\(202\) 482-1485](tel:2024821485)

Email: hboyd1@doc.gov

--

John Ray
PhD candidate, department of political science
University of California-Los Angeles
johnray@ucla.edu
213-393-3683

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Image not available for this document, ID: 0.7.3707.13414

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(this quote is from email to you from Raman on Tuesday, November 15, 2016 2:48 PM)

Our understanding is that you want the Department to search (from all the Bureaus -- there are 14) from their Legislative Affairs Office (or equivalent office) for emails sent to or received by Legislative Affairs Office (or equivalent) in the past 365 days that include notification of oversight activities conducted by the Government Accountability Office.

Also, Please be advised that when we received this request (DOC-OS-2017-000137) November 3, 2016 (it was submitted by you on November 2, 2016), we tasked all the Bureaus to submit a fee estimate placing you in the "Educational Category." Under this category, " (ii) Educational and Non-commercial Scientific Institution chargeable fee are Duplication (excluding the cost of the first 100 pages). Pursuant to 15 CFR 4.11(b)(4) "A requester in this fee category must show that the request is authorized by, and is made under the auspices of, an educational institution and that the records are not sought for a commercial use, but rather are sought to further scholarly research." The following are examples of how this Sec. is interpreted:

· Example 1. A request from a professor of geology at a university for records relating to soil erosion, written on letterhead of the Department of Geology, would be presumed to be from an educational institution.

· Example 2. A request from the same professor of geology seeking drug information from the Food and Drug Administration in furtherance of a murder mystery he is writing would not be presumed to be an institutional request, regardless of whether it was written on institutional letterhead.

Mr. Ray I apologize for the misunderstanding and any inconvenience to you. We will appreciate your quick response so that we may proceed with this request.

Thank-You

Sincerely,

Harriette Boyd

Freedom of Information Act Specialist

U.S. Department of Commerce

Office of Privacy and Open Government

Office: [\(202\) 482-1485](tel:(202)482-1485)

Email: hboyd1@doc.gov

--

John Ray
PhD candidate, department of political science
University of California-Los Angeles
johnray@ucla.edu
213-393-3683

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Image not available for this document, ID: 0.7.3707.13415

Tracking Number	Type	Requester	Submitted	Assigned To
DOC-NOAA-2016-001760	Request	Thomas Knudson	09/14/2016	AGO
DOC-NOAA-2016-001241	Request	Shomari B. Wade	05/18/2016	AGO
DOC-NOAA-2015-001484	Request	Richard Knudsen	06/29/2015	AGO
DOC-NOAA-2015-001485	Request	Richard Knudsen	06/29/2015	AGO
DOC-NOAA-2015-001487	Request	Richard Knudsen	06/29/2015	AGO
DOC-NOAA-2016-000822	Referral	Alison Cooke	03/21/2016	NESDIS
DOC-NOAA-2016-000351	Request	Bill Marshall	10/30/2015	NESDIS
DOC-NOAA-2016-001824	Request	Lee Zurik	09/28/2016	NMFS
DOC-NOAA-2016-001759	Request	Thomas Knudson	09/14/2016	NMFS
DOC-NOAA-2016-001762	Request	Thomas Knudson	09/14/2016	NMFS
DOC-NOAA-2017-000050	Request	Marie A. Alailima	10/12/2016	NMFS
DOC-NOAA-2016-001833	Request	Margaret Townsend	09/29/2016	NMFS
DOC-NOAA-2016-001751	Request	Thomas Knudson	09/14/2016	NMFS
DOC-NOAA-2016-001763	Request	Thomas Knudson	09/14/2016	NMFS
DOC-NOAA-2016-001764	Request	Dwayne Meadows	09/15/2016	NMFS
DOC-NOAA-2016-001701	Request	Margaret Townsend	09/01/2016	NMFS
DOC-NOAA-2016-001665	Request	Eileen L. Morrison	08/24/2016	NMFS
DOC-NOAA-2016-001390	Request	Jennie Frost	07/05/2016	NMFS
DOC-NOAA-2016-001596	Request	Lee van der Voo	08/11/2016	NMFS
DOC-NOAA-2016-001560	Request	Marjorie F. Ziegler	08/03/2016	NMFS
DOC-NOAA-2016-001479	Request	Christopher Hudak	07/20/2016	NMFS
DOC-NOAA-2016-001537	Request	Emily Yehle	07/28/2016	NMFS
DOC-NOAA-2016-001453	Request	Stephen S. Schwartz	07/14/2016	NMFS
DOC-NOAA-2016-001533	Request	J W August	07/27/2016	NMFS
DOC-NOAA-2016-001270	Request	scott A. doyle	06/08/2016	NMFS
DOC-NOAA-2016-001245	Request	Thomas Knudson	06/03/2016	NMFS
DOC-NOAA-2016-001326	Request	Thomas Knudson	06/21/2016	NMFS
DOC-NOAA-2016-001214	Request	bruce weyhrauch	05/27/2016	NMFS
DOC-NOAA-2016-001215	Request	Cassie Burdyslaw	05/27/2016	NMFS
DOC-NOAA-2016-001299	Request	Thomas Knudson	06/15/2016	NMFS
DOC-NOAA-2016-001080	Request	Jeff Ruch	04/29/2016	NMFS
DOC-NOAA-2016-001186	Request	Patricia Weisselberg	05/20/2016	NMFS
DOC-NOAA-2016-001168	Request	Thomas Knudson	05/17/2016	NMFS
DOC-NOAA-2016-001053	Request	Thomas Knudson	04/26/2016	NMFS
DOC-NOAA-2016-000959	Request	Office Administrator	04/12/2016	NMFS
DOC-NOAA-2016-000423	Request	Ryan P. Mulvey	12/21/2015	NMFS
DOC-NOAA-2016-000807	Request	Basil Scott	03/16/2016	NMFS
DOC-NOAA-2015-001860	Request	Delcianna Winders	09/04/2015	NMFS
DOC-NOAA-2016-000775	Request	Jason Domark	03/08/2016	NMFS
DOC-NOAA-2016-000603	Request	Margaret Townsend	02/10/2016	NMFS
DOC-NOAA-2016-000604	Request	Margaret Townsend	02/10/2016	NMFS
DOC-NOAA-2015-001898	Request	Emily Posner	09/10/2015	NMFS
DOC-NOAA-2016-000439	Request	Alan Stein	01/10/2016	NMFS
DOC-NOAA-2016-000094	Request	Josh Schopf	10/14/2015	NMFS
DOC-NOAA-2015-000295	Request	Office Administrator	11/21/2014	NMFS
DOC-NOAA-2015-000190	Request	Miyo Sakashita	11/02/2014	NMFS
DOC-NOAA-2013-000567	Request	Doug Karpa	02/15/2013	NMFS
DOC-NOAA-2017-000033	Request	Sylvia Costelloe	10/07/2016	NOAA FOIA
DOC-NOAA-2016-001786	Request	Ana Gutierrez	09/20/2016	NOAA FOIA
DOC-NOAA-2016-001775	Request	Ehsan Naranji	09/19/2016	NOAA FOIA
DOC-NOAA-2016-001743	Request	John Greenewald	09/12/2016	NOAA FOIA

DOC-NOAA-2017-000063	Request Giovanni j. Galarza	10/13/2016	NOS
DOC-NOAA-2017-000111	Request Lara Kolinchak	10/13/2016	NOS
DOC-NOAA-2016-001795	Request Michael L. Brown	09/22/2016	NOS
DOC-NOAA-2016-001599	Request Machel R. Hall	08/12/2016	NOS
DOC-NOAA-2016-001675	Request Jeffrey T. Smith	08/26/2016	NOS
DOC-NOAA-2016-001531	Request Stacy Hernandez	07/27/2016	NOS
DOC-NOAA-2016-001319	Request Michelle Burt	06/20/2016	NOS
DOC-NOAA-2016-000192	Request John Ferro	11/03/2015	NOS
DOC-NOAA-2015-000706	Request Megan R. Wilson	02/18/2015	NOS
DOC-NOAA-2017-000062	Request Elizabeth Nowicki	10/13/2016	NWS
DOC-NOAA-2016-001808	Request Josh Boon	09/24/2016	NWS
DOC-NOAA-2016-001816	Request Ben Briscoe	09/20/2016	NWS
DOC-NOAA-2016-001403	Request Ivria Fried	07/07/2016	NWS
DOC-NOAA-2017-000058	Request Christopher T. Clack	10/13/2016	OAR
DOC-NOAA-2015-000905	Request Alan David	03/14/2015	OAR
DOC-NOAA-2016-001082	Request Cameron Cole	04/25/2016	OGC
DOC-NOAA-2017-000018	Request Steven McIntosh	10/05/2016	WFMO
DOC-NOAA-2016-001472	Request A. Marques Pitre	07/20/2016	WFMO
DOC-NOAA-2016-001346	Request Tammy Murphy	06/10/2016	WFMO
DOC-NOAA-2016-001240	Request David Novak	05/19/2016	WFMO
DOC-NOAA-2016-001094	Request Anthony Arguez	05/02/2016	WFMO
DOC-NOAA-2016-001043	Request Steven McIntosh	04/24/2016	WFMO
DOC-NOAA-2016-000444	Request Nelsie A. Ramos	01/12/2016	WFMO

Due	Days Backlogged
10/28/2016	22
06/30/2016	105
08/11/2015	328
08/11/2015	328
07/31/2015	335
10/31/2016	136
12/15/2015	242
12/08/2016	3
11/14/2016	12
11/10/2016	13
11/09/2016	14
11/08/2016	15
10/28/2016	22
10/27/2016	23
10/27/2016	23
10/03/2016	32
10/13/2016	33
10/14/2016	42
09/29/2016	42
09/26/2016	44
09/22/2016	47
09/13/2016	54
08/30/2016	63
08/29/2016	64
08/03/2016	82
08/02/2016	83
07/26/2016	88
11/30/2016	91
07/20/2016	92
07/20/2016	92
06/08/2016	102
08/12/2016	102
06/22/2016	111
06/10/2016	117
05/25/2016	123
02/04/2016	124
05/04/2016	132
10/23/2015	136
04/06/2016	140
03/15/2016	174
03/15/2016	176
10/27/2015	180
02/24/2016	183
02/18/2016	208
12/24/2014	478
12/05/2014	491
04/12/2013	901
11/09/2016	14
11/02/2016	19
11/01/2016	20
10/13/2016	33

11/28/2016	3
11/25/2016	4
11/04/2016	17
09/29/2016	18
10/11/2016	35
08/29/2016	64
07/20/2016	92
12/04/2015	249
10/13/2015	429
11/10/2016	13
11/08/2016	15
10/27/2016	23
08/12/2016	75
11/25/2016	1
04/17/2015	408
06/03/2016	123
11/09/2016	14
08/31/2016	62
07/25/2016	89
07/01/2016	104
06/15/2016	116
06/02/2016	124
02/17/2016	199

Tracking Number	Type	Requester	Requester Organization
DOC-NOAA-2017-000112	Request	Rose Santos	FOIA GROUP INC
DOC-NOAA-2016-001810	Request	Deborah E. Baker	Glacier Water District
DOC-NOAA-2016-001703	Request	Trevor T. Davis	Hydra Offshore Construction, Inc.
DOC-NOAA-2016-001656	Request	Kellea Landeene	
DOC-NOAA-2017-000055	Request	Nicholas Lewis	
DOC-NOAA-2016-000339	Request	George Hanna	
DOC-NOAA-2016-000226	Request	Jacob Bojesson	The Daily Caller News Foundation
DOC-NOAA-2017-000168	Request	MICHAEL PEPSON	Cause of Action
DOC-NOAA-2017-000057	Request	Darlene P. Bennett	Sustainable Fisheries
DOC-NOAA-2017-000023	Request	Nina Bell	Northwest Environmental Advocates
DOC-NOAA-2017-000006	Request	Lee van der Voo	InvestigateWest
DOC-NOAA-2016-001822	Request	Isabella Clegg	
DOC-NOAA-2016-001802	Request	Evan D. Johns	Appalachian Mountain Advocates
DOC-NOAA-2016-001793	Request	Sophie Cocke	Honolulu Star-Advertiser
DOC-NOAA-2016-001826	Request	Courtney S. Vail	Animal Welfare Institute
DOC-NOAA-2016-001716	Request	Alexis Thomas	
DOC-NOAA-2016-001603	Request	Jim Weber	Northwest Indian Fisheries Commission
DOC-NOAA-2016-001521	Request	Christine Haughney	Zero Point Zero Production
DOC-NOAA-2016-001419	Request	James J. Tutchton	Defenders of Wildlife
DOC-NOAA-2016-001321	Request	Brendan Borrell	Hakai Magazine
DOC-NOAA-2016-001194	Request	Elizabeth A. Mitchell	Association for Professional Observers
DOC-NOAA-2016-001182	Request	Patricia Weisselberg	Law Office of Patricia Weisselberg
DOC-NOAA-2016-001212	Request	Douglas A. Ruley	Davis & Whitlock, P.C.
DOC-NOAA-2016-000967	Request	Office Administrator	Friends of Animals
DOC-NOAA-2016-000605	Request	Margaret Townsend	
DOC-NOAA-2015-001376	Request	Marc R. Greenberg	Musick, Peeler & Garrett LLP
DOC-NOAA-2017-000156	Request	David I. Katzman	
DOC-NOAA-2017-000052	Request	Jane Reifert	Incredible Adventures / IA Worldwide, Inc.
DOC-NOAA-2016-001697	Request	Imre Berty	Leidos, Inc.
DOC-NOAA-2016-001230	Request	Sam Cohen	SANTA YNEZ BAND OF CHUMASH INDIA
DOC-NOAA-2016-000794	Request	David C. Weber	Riddell Williams P.S.
DOC-NOAA-2016-000789	Request	Jay Willis	Riddell Williams P.S.
DOC-NOAA-2017-000072	Request	Richard Hirn	National Weather Service Employees
DOC-NOAA-2016-001765	Request	Elizabeth A. Mitchell	Association for Professional Observers
DOC-NOAA-2016-001747	Request	Daniel Britton	
DOC-NOAA-2017-000096	Request	Elizabeth Groeller	

Submitted	Assigned To	Case File Assigned To	Perfected?	Due	Closed Date	Status
10/27/2016	AGO	Dalton Cummings	Yes	12/02/2016	11/23/2016	Closed
09/24/2016	AGO	Dalton Cummings	Yes	11/08/2016	11/03/2016	Closed
08/29/2016	AGO	Shem Yusuf	Yes	10/03/2016	11/03/2016	Closed
08/09/2016	CAO	Mary Ann Whitmeyer	Yes	10/06/2016	11/17/2016	Closed
10/12/2016	NESDIS	Maria S. Williams	Yes	11/28/2016	11/21/2016	Closed
12/11/2015	NESDIS	Maria S. Williams	Yes	01/15/2016	11/21/2016	Closed
11/12/2015	NESDIS	Maria S. Williams	Yes	12/16/2015	11/21/2016	Closed
11/09/2016	NMFS	Samuel B. Dixon	Yes	12/20/2016	11/29/2016	Closed
10/13/2016	NMFS	Samuel B. Dixon	Yes	11/28/2016	11/16/2016	Closed
10/06/2016	NMFS	Ana Liza Malabanan	Yes	12/02/2016	11/22/2016	Closed
10/03/2016	NMFS	Arlyn E. Penaranda	Yes	11/23/2016	11/28/2016	Closed
09/28/2016	NMFS	Jerenda Burroughs	Yes	11/08/2016	11/14/2016	Closed
09/22/2016	NMFS	Amanda J. Patterson	Yes	11/07/2016	11/08/2016	Closed
09/21/2016	NMFS	Kehaupuaokal Kamaka	Yes	11/03/2016	11/03/2016	Closed
09/20/2016	NMFS	Tawand Hodge Tonic	Yes	10/28/2016	11/03/2016	Closed
09/06/2016	NMFS	Lamar Turner	Yes	10/13/2016	11/15/2016	Closed
08/12/2016	NMFS	Laurie Mukai	Yes	11/04/2016	11/08/2016	Closed
07/26/2016	NMFS	Arlyn E. Penaranda	Yes	09/30/2016	11/15/2016	Closed
07/11/2016	NMFS	Tawand Hodge Tonic	Yes	08/12/2016	11/22/2016	Closed
05/26/2016	NMFS	Lorna D. Martin Gross	Yes	07/25/2016	11/17/2016	Closed
05/23/2016	NMFS	Jennifer Pralgo	Yes	06/24/2016	11/08/2016	Closed
05/19/2016	NMFS	Ana Liza Malabanan	Yes	11/10/2016	11/07/2016	Closed
05/19/2016	NMFS	Beverly J. Smith	Yes	06/24/2016	11/30/2016	Closed
04/13/2016	NMFS	Lamar Turner	Yes	05/16/2016	11/15/2016	Closed
02/10/2016	NMFS	Lamar Turner	Yes	03/15/2016	11/17/2016	Closed
06/08/2015	NMFS	Arlyn E. Penaranda	Yes	07/14/2015	11/23/2016	Closed
11/09/2016	NOAA FOIA	Lola Stith	Yes	12/20/2016	11/21/2016	Closed
10/12/2016	NOS	Nkolika Ndubisi	Yes	11/09/2016	11/08/2016	Closed
08/22/2016	NOS	Nkolika Ndubisi	Yes	09/30/2016	11/07/2016	Closed
05/16/2016	NOS	Nkolika Ndubisi	Yes	06/28/2016	11/03/2016	Closed
03/11/2016	NOS	Nkolika Ndubisi	Yes	04/12/2016	11/15/2016	Closed
03/02/2016	NOS	Nkolika Ndubisi	Yes	04/11/2016	11/15/2016	Closed
10/17/2016	NWS	Beverly Hernandez	Yes	11/15/2016	11/02/2016	Closed
09/15/2016	OGC	Susan S. Beresford	Yes	11/14/2016	11/21/2016	Closed
09/13/2016	OGC	Susan S. Beresford	Yes	10/13/2016	11/04/2016	Closed
10/24/2016	WFMO	Karen Robin	Yes	12/02/2016	11/03/2016	Closed

Dispositions

Full denial based on exemptions
Full grant
Partial grant/partial denial
Partial grant/partial denial
Full grant
Partial grant/partial denial
Partial grant/partial denial
Other - Aggregate cases
Partial grant/partial denial
Partial grant/partial denial
Partial grant/partial denial
Full grant
Request withdrawn
Full grant
Full grant
Other - Admin close - no response from requester
Request withdrawn
Partial grant/partial denial
Other - Publicly available information
Partial grant/partial denial
Partial grant/partial denial
Partial grant/partial denial
Partial grant/partial denial
Partial grant/partial denial
Partial grant/partial denial
Partial grant/partial denial
Partial grant/partial denial
Other - Publicly available information
Full grant
Partial grant/partial denial
Partial grant/partial denial
Partial grant/partial denial
Partial grant/partial denial
Full grant
Partial grant/partial denial
Full grant
Request withdrawn

Detail

[Reference FGI# 16- 50885] Relevant to DOCEA133E08CQ0020 we seek a copy of the proposal submitted by inci Copy of Award NA16NMF4380092 to Lummi Indian Business Council 7-13-2016. Seen on USASpending.gov Give I would like to respectfully request the following information under the FOIA. We are happy to cover any cost assoc Please send a copy of the current lease on the National Weather Service Forecast Office(WFO),5027 Miller Trunk To whom it may concern, My name is Nic, I'm an engineering student at Cal Poly San Luis Obispo. I'm currently w All communications by Thomas R. Karl related to the paper published under the title Possible artifacts of data bias Any and all emails containing the words "hiatus", "pause", "denier" and "sk We are seeking to better understand the process leading to the President's issuance of Proclamation 9496 of Sept Under the Freedom of Information Act, 5 U.S.C. § 552, I am requesting 1 copy of the Report of the inquiry/in Please provide all documents regarding ESA §7 consultation (including formal, informal, and national) between NM I would like a copy of the investigative case file and any enforcement proceedings associated with the case in which I would like the number of Bottlenose dolphins (*Tursiops truncatus*) held in public display facilities in North America Please provide the following documents: (1) any documents indicating the National Marine Fisheries Service's con Edited Description 10/5/16: Please provide me with a list of the Hawaii longline fishing permit transfers executed o I am writing to request the following information under, and pursuant to, the Freedom of Information Act (FOIA), an I am requesting all Marine Mammal Inventory reports for pinnipeds and cetaceans Sea Life Park Hawaii dating bac Please provide all documents, both electronic and paper, including notes of conversations, discussing input and/or See updated request (see below PDF of scope clarification) from requester. OLE no longer utilizes the OIR form a FOIA request for records relating to National Marine Fisheries Service's 12-Month Findings on Petitions to List the Pursuant to my rights under the Freedom of Information Act (5 U.S.C. 552), I ask to obtain either an electronic or h I am requesting copies of all communications (e-mails, faxes and their associated photographs and attachments) s 1. Any and all of "Your" internal "documents", and any and all "documents" You sent to or received from the "Corps' Biological Assessment Aguirre Offshore GasPort Projiect. In February 2016, Aguirre Offshore Gasport, LLC submit Please see the attached Freedom of Information Act request submitted by Friends of Animals.: MODIFIED AS FO Significant Portion of Range Policy 1. All records related to the Joint Policy on Interpretation of the Phrase "Signific 9/27/2016-Coordinator made a mistake with the date of Part #5 of the request. Date of correspondences need is fr Request for Certified Blue Ribbon Copies of Meteorological Records To Whom It May Concern: We request certifi I would like to go ahead and request a copy of the decision memo under the Freedom of Information Act. We've re Pursuant to the Freedom of Information Act, please provide me the list of email addresses to which this notice (Err 1. All documents as to any meetings between NOAA and the Tribe as to the CHNMS through any representatives (This request pertains to National Oceanic and Atmospheric Administration ("NOAA") records related to the Lower I This request pertains to National Oceanic and Atmospheric Administration ("NOAA") records related to the Lower I Request a copy of any document which reveals the amount of unobligated or "carry over" appropriated "I have a copy of the Environmental Protection Agency's Administrative Law Judge's Initial Decision and Order for This concerns a Bluefin Tuna fishing quota violation which occurred on August 15, 1982 out of Gloucester, Massac I request all documentation (agency forms, copies of emails, etc.) relating to my voluntary resignation/separation o

umbent DIVERSIFIED GLOBAL PARTNERS

n that NMF is shown in the award number, this may be National Marine Fisheries Service. I'd also like to
siated with this request. Please send copies of all Basic Ordering Agreements issued or denied under the

Highway, Duluth, MN 55811 phone 218-729-6697 showing the current rent that is being paid and what
orking with other engineering students on a theoretical design for a search and rescue satellite constella
as in the recent global surface warming hiatus.

epitic" sent from "thomas.r.karl@noaa.gov", to the following email accounts: "tren
ember 15, 2016, 81 Fed. Reg. 65,161 (Sept. 21, 2016), which established the Northeast Canyons and S
estigation conducted by Mr. Kirk Essmyer at the direction of Mr. Paul Doremus regarding reported alleg:
IFS and the EPA as they relate to the following amendments to California's water quality standards: 1. A
h the "Spanish company Albacora S.A., owner of the Albacora Uno, was charged June 2, 2010 with 67 c
t, taken from the Marine Mammal Inventory Report data.

urrence in, non-concurrence in, or otherwise response to the April 2016 Biological Assessment by the I
ver the past year, beginning September 1, 2015 to present - including the name of the person or compa
id all other laws entitling full public disclosure of the following information for the timeframes beginning J
k to their opening in 1964. I am requesting all necropsy reports for cetaceans and pinnipeds of Sea Life

recommendations provided by the Northwest Fisheries Science Center over the last 18 months to the fi
nd retention schedule for these are 7 years. Requester requested for similar documentation: data sheet
Common Thresher Shark and Bigeye Thresher Shark as Threatened or Endangered under the Endangi

ard copy of the following documents, which I understand to be held by the NOAA Office of General Cou
sent by Keith Davis, a US fisheries observer, to any US government employee and/or US government cc
, "CDFW", "SWRB", "YCWA", "DWR", "FWS", Congressional offices and/or any other third parties "rela

ted a Biological Assessment of the Gasport Project to the Federal Energy Regulatory Commission (&qu
LLOWS-- We would like everything from the date our petition was received (August 26, 2014) to the the

ant Portion of Its Range" in the Endangered Species Act's Definitions of "Endangered Species" and "Th
om January 2012- June 15, 2015. Request Clarification 5/3/2016- Item #5- Requester stated that he is

ed blue ribbon copies of all meteorological records, including surface weather observations, radiosound
quested an amendment that will significantly increase white shark education while reducing the potentia

ail - EPCRA/TierII data standard - development version) was sent. Please provide the list in a spreadsh
of either? 2. All documents as to any and all efforts by NOAA to consult with federally recognized tribes :

Juwamish Waterway and East and West Waterways of Harbor Island (collectively, the "Site") in Seattle,
Juwamish Waterway and East and West Waterways of Harbor Island (collectively, the "Site") in Seattle,
funds for the National Weather Service for fiscal year 2016, per PPA

NOAA Enforcement Case P11401544 involving the harassment of a fisheries observer during his assign
achusetts. The person violating the quota was James R. Britton, Sr. The matter went before an Administr

n September 22, 2016, including the dates of September 22 to the current date, 2016 and also include,

[REDACTED]

to obtain a list of all water and fish related grants for at least ten years.
Contract number EA-133-16-BR-0004 Please send copies of all Basic Ordering Agreements issued or derived
it covers as well as the term.
tion. I had the idea of possibly utilizing pre-existing infrastructure for system control and data recovery fr

bert@ucar.edu "Gavin.A.Schmidt@nasa.gov", "kathryn.sullivan@noaa.gov" and
Seamounts Marine National Monument. CoA Institute hereby requests access to the following records fo
ations that Mrs. Emily Menashes changed Federal Employee: Darlene Bennett's NRAP Detail SF-52 per
ment to the Water Quality Control Plan, Los Angeles Region for the coastal watersheds of Los Ang
counts of fishing inside the U.S. Exclusive Economic Zone (EEZ) in the western and central Pacific Oce

J.S. Nuclear Regulatory Commission regarding the North Anna Power Station Combined License Applic
ny who holds the original permit and the person or entity to which the permit was transferred/leased. Ple
uly 1, 2016 and ending September 20, 2016: 1). All documentation (electronic or otherwise) relating to th
Park dating back to their opening in 1964.

Following NMFS staff: Matthew Longenbaugh, Jeff Fisher, and Scott Anderson (in the Oregon Washingto
or EARs related to Carlos Rafael and/or his companies (provided list of companies and vessels). Reque
ered Species Act, 81 Fed. Reg. 18980 (April 1, 2016). Please provide all records in your possession or c
nsel and the Office of Law Enforcement and relate to the various vessels of Carlos Rafael from North D
Contractor, and their responses to him, from August 1, 2015 to September 10, 2015.

ited to" the Yuba Salmon Partnership Initiative ("YSPI"); 2. Any "documents" "related to" assessments dc
ot;FERC"; to the National Oceanic and Atmospheric Administration ("NOAA") and to the Fis
date the FOIA request was received (4/13/16). However, if there is additional information that predates
reatened Species." 79 Fed. Reg. 37,578 (July 1, 2014); 76 Fed. Reg. 76,987 (Dec. 9, 2011). 2. All recor
interested in documents that are critical of NOAA's efforts to seek forfeiture for its own benefit, i.e., that
e data, sequence reports, surface analysis charts, air surface charts, winds aloft and upper-air observati
l for shark disturbance. As a reminder, we have proposed using attractants just 7 total dates this season
eet or table format.

as to CHNMS pursuant to Presidential Executive Order 13175 Consultation and Coordination With India
Washington. On behalf of Longview Fibre Paper and Packaging, Inc., doing business as KapStone Cor
Washington. 1. All agency records related to the apparent conclusion by the Elliott Bay Trustee Council

ment on board the fishing vessel LADY LUCK from March 31, 2014 to May 11, 2014. What I am reques
ative Law Judge of the U. S. Dept. of Commerce on July 29, 1983. The Judge imposed a civil fine of \$1!
but not be limited to, forms, emails and other documentation generated by Cynthia Burley, Branch Chief

[REDACTED]

ied under contract number EA-133-16-BR-0005 In short above, we are looking for all Basic Ordering Ag
om our satellite system and after a bit of searching discovered that the COSPAS SARSAT system has 3

ot;, "Anthony.Arguez@noaa.gov";, "Boying.Huang@noaa.gov";, "jay.lawrimc
r the time period of January 1, 2012, to the present: 1. All records or communications (including emails
formed grade levels and uploaded a clean copy of fraudulent & CIO Violation file to the Recruitmer
jeles and Ventura Counties which updated the ammonia water quality objectives and implementation pr
an without a valid U.S permit over two years. The Notice of Violation and Assessment, known as a NOV

ation, NRC Docket No. 52-017; (2) any biological opinion issued in response to the April 2016 Biologica
ase include the name of the vessel and the date of transfer. (This request refers to Hawaii longline fishin
re notice of transfer of dolphins to Dolphinaris, a swim-with-the-dolphin interactive facility owned by Ven

n Coastal Office in Lacey, Washington, regarding the effects of shellfish aquaculture activities on eelgra
ester also provided specifics cases she would like to get documentation on: cases against vessels Dinal
ontrol that NMFS considered in making either, its initial positive 90-day findings on the Petitions (80 Fed
armouth, Massachusetts. List of 29 NOVAs issued to Carlos Rafael's various vessels between 1989 an

ne since February 29, 2012 of the feasibility of fishery habitat restoration and enhancement actions on t
sh and Wildlife Service ("FWS"). Dialogo requests allrecords within your possession or under your
our petition and was considered in the 90-day or 12-month findings for the common thresher shark or bi
ds related to, concerning, and/or generated by or in connection with the Significant Portion of Range Te
NOAA has a conflict in that it is obtaining forfeiture of funds that go directly toNOAA's own bottom line b
ons, Convective SIGMET 59C, Severe Weather Forecast Alert number 686, and any and all related info
1, 12 total dates next year and no more than 20 total dates the following year, insuring a less-than-signifi

n Tribal Governments? 3. All documents as to any and all efforts by NOA to consult with federally recog
itainer Corporation {"KapStone"}, we request copies of the following agency records: L. All agency recor
(the "Trustees") that J.A. Jack & Sons "may be a potentially liable party that has contributed to the

ting is: A copy of the hearing transcript; A copy of the Respondents' and the Agency's exhibits; and A co
50,000. "In the matter of James Britton No. 244-139, 244-149 (July 29, 1983). I would like a copy o
, Mission Support, and Paul Pegnato, Deputy Chief Administrative Officer, NESDIS, SMC Building 1 in S

agreements issued as a result of the attached solicitations. Please send copies of all Task Orders / Contr

31 MCC's that they utilize. I was wondering if you could provide a rough estimate of the data rates the C

re@noaa.gov" and "matthew.menne@noaa.gov" and "thomas.peterson@noaa.gov" (from governmental and nongovernmental accounts, text messages, and emails) referring or relating to the Rapid Analysis Database (RADs). I am a current FTE employee of the Department of Commerce/NOAA/National Procedures for inland surface waters, enclosed bays, and estuaries which are characteristic of freshwater systems. A, included a possible \$7.4 million civil penalty" which Albacora SA settled for \$5 million to go into the W

l Assessment by the Nuclear Regulatory Commission regarding the North Anna Power Station Combining permits issued and overseen by NOAA/NMFS.) Also, please provide me with a list of all companies currently operating near Scottsdale, Arizona at, or near the address of 9500 E. Via de Ventura on Salt R

ass and/or submerged aquatic vegetation in Puget Sound and along the Washington coast. If documents are available to Jane and the VillaNova de Corvo

l. Reg. 11379 (Common) and 80 Fed. Reg. 48061 (Bigeye)) or its subsequent negative 12-month finding issued in 2006. Copies of any NOVAs and Settlement Agreements issued to Carlos Rafael's various vessels be

the Yuba River; 3. Any "documents" "related to" assessments done by or for NMFS or provided to NMFS for control that concern or relate to this Biological Assessment and consultation regarding that Biological Assessment regarding the geyre thresher shark, we would also like a copy of that information. Please let me know if you have any contact information consisting of representatives from the U.S. Fish and Wildlife Service and NOAA Fisheries.

udget. Request Clarification 4/18/16 - Item #5 -After further clarification with the requester on what information and documents, for the date of 4/4/16 pertaining to Pigeon Forge TN. significant impact on sharks, while increasing the potential for educational sightings.

nized tribes as to CHNMS pursuant to that Nov. 5, 2009, Presidential Memorandum reaffirming EO 13176. This includes the apparent conclusion by the Elliott Bay Trustee Council (the "Trustees") that KapStone "release of hazardous substances that have injured natural resources" at the Site (the "Trustees' Conclu

py of Respondents' and Agency's post-hearing briefs and related reply briefs." I am interested in your comments on the decision and any satisfaction of judgement or current status of the case. I am currently located at 1000 Silver Spring, MD 29010 and their Branch and Division employees as assigned.

acts awarded or issued to Contractor "Fishing Vessel North Wind" who DUNS # is 188936959 issued by

DSPAS SARSAT system's LEOLUTs and GEOLUTs typically can handle? Also, do your MCC's have ca

ot;, "russell.vose@noaa.gov", and "huai-min.zhang@noaa.gov"

use of the Antiquities Act to create a national monument in the Atlantic Ocean.

tional Marine Fisheries Service/Office of Sustainable Fisheries employee. The dates of the investigation and support aquatic life, adopted by the Los Angeles Regional Water Quality Control Board on April 25, Western Pacific Sustainable Fisheries Fund.

ed License Application, NRC Docket No. 52-017; and (3) any other documents arising from formal or info; and individuals that hold Hawaii longline fishing permits administered by NOAA/NMFS. I'm seeking the river Pima Maricopa Community Land at the loop 101 and Via de Ventura juncture, including any docum

s, including scientific studies, were provided by the NW Fisheries Science Center to the above-mentione

js (81 Fed. Reg. 18980). This request includes any documents, writings, materials, correspondence, em between 2006 and the present. Offense investigation report related to potential criminal violations by Carl

; of the extent of introgression of spring Chinook on the Yuba River with hatchery stock salmon [note: ple sassessment and the Aguirre Offshore Gasport plll'SWlllt to the Endangered Species Act ("ESA")r. I other questions.

rmation he is requesting for exactly, he stated that he is interested in any correspondence from member

75? 4. All documents as to any and all efforts by NOA to consult with federally recognized tribes as to Cl may be a potentially liable party that has contributed to the release of hazardous substances that have ir sion"). See NOAA Letter to Sharon Jack (January 29, 2016), attached as Attachment A. This request in

NOAA in the past 16 months.

pability for system control such as satellite attitude adjustment?

start or completion are unknown. If there are any fees for searching or copying the records, please let n
2002 (Regional Board Resolution No. 2002-011), as corrected by the Regional Board Executive Officer

ormal consultation with the Nuclear Regulatory Commission and/or the Army Corps of Engineers concer
names and companies of the original holders of the permits - not the entities to whom these permit hold
entation regarding the review, permitting, or licensing of said facility.

d staff, please provide those as well.

ails, files, photos, maps or reports generated, received, relied upon, related to or discussing these agen
s Rafael that occurred between 1996 and 1999.

ase consider this request to only ask for documents generated after February 29, 2012]; 4. Any "docum
ailogo specifically requests any and all correspondence, e-mails, memoranda, notes or other records th

s of Congress or other branches of government related to "All documents and correspondence that con

-NMS pursuant to NOAA Procedures for Government-to-Government Consultation With Federally Recc
jured natural resources" at the Site (the "Trustees' Conclusion". See NOAA Letter to Roger Stone (Janu
cludes all agency records containing the facts, considerations, reasons, reasoning, and conclusions that

[REDACTED]

to know before you fill my request. [Or, please supply the records without informing me of the cost if the records are in a memorandum dated February 4, 2003. 2. Amendment to the Water Quality Control Plan, Los Angeles

regarding the North Anna Power Station Combined License Application, NRC Docket No. 52-017. Please include the date that NOAA/NMFS issued each original permit that the permit holders may have leased their permits to.

any such actions. In your response please provide any records substantiating any personal communications received by you.

assessments "related to" assessments done by or for NMFS or provided to NMFS of the impacts of the proposed project on the Pacific herring that concern or related to this Biological Assessment and related consultation pursuant to the ESA.

concern or relate to criticism of NOAA, in particular with respect to seizures and forfeitures by NOAA and the Department of Justice.

Recognized Indian Tribes and Alaska Native Corporations? 5. Copies of all Native American consultation reports received by NOAA on or after January 29, 2016, attached as Attachment A. This request includes all agency records containing the facts, information, and analyses that were considered in making and/or that support the Trustees' Conclusion; records that refer to or relate to the

[redacted]

fees do not exceed \$20.00, which I agree to pay.] If you deny all or any part of this request, please cite the 3rd Region for the coastal watersheds of Los Angeles and Ventura Counties which updates ammonia wa


permit and the name of the fishing vessel, if available. Please provide me with a list of all Hawaii longline f

referred in the 12-month finding or status review including, but not limited to, those of "Clarke, 2015" (re

oint Dam on spring Chinook, steelhead or green sturgeon in the Yuba River, including but not limited to

ow NOAA spends forfeited funds" from 2013-present. All records relating to administrative forfeitures l

olicies for NOAA? 6. Copies of all meetings between NOAA and the Northern Chumash Tribal Council inc
considerations, reasons, reasoning, and conclusions that were considered in making and/or that support
in any way to the Trustees' Conclusion; and records that refer to or relate to NOAA's consideration of al



each specific exemption you think justifies your withholding of information. Notify me of applicable water quality objectives and implementation procedures applicable to inland surface waters not characterized by

angling permits that have been sold, including the name of the original permit

referred to at 81 Fed. Reg. 18991, 19006). In addition, in your response please provide

impeding fish migration and promoting predation [note: please consider this request to only a

by NOAA from 2011 to 2015 of good or funds valued at over \$10,

including the name of each member of such Council, the date and location? 7. Copies of all meetings between the Trustees' Conclusion; records that refer to or relate in any way to the Trustees' Conclusions or alternatives to the Trustees' Conclusion. 2. All agency records reflecting or related

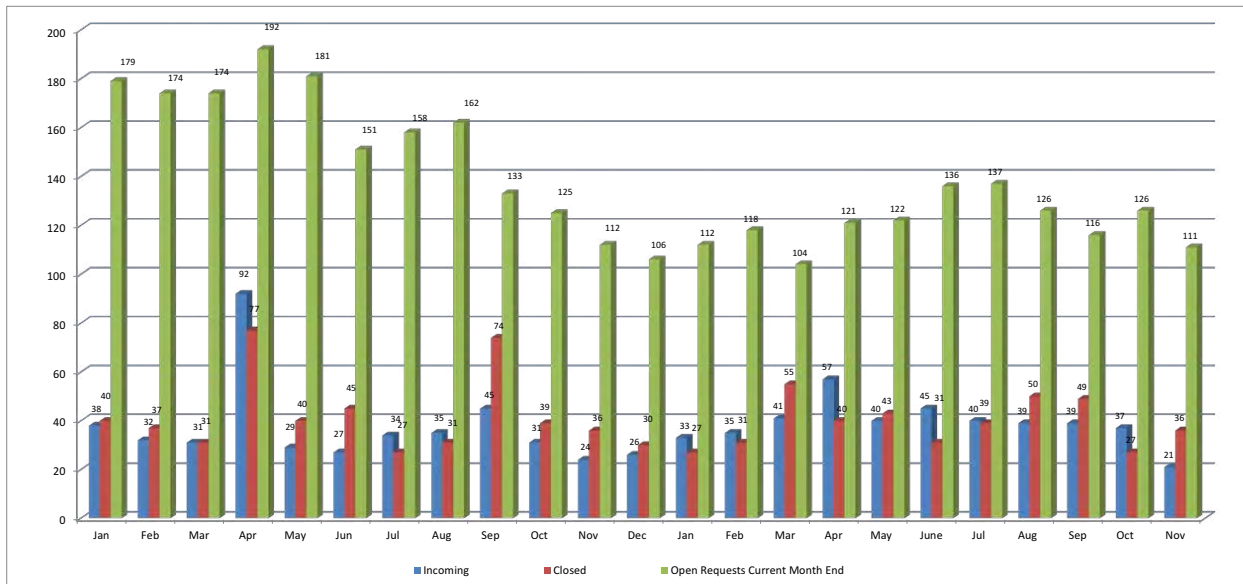


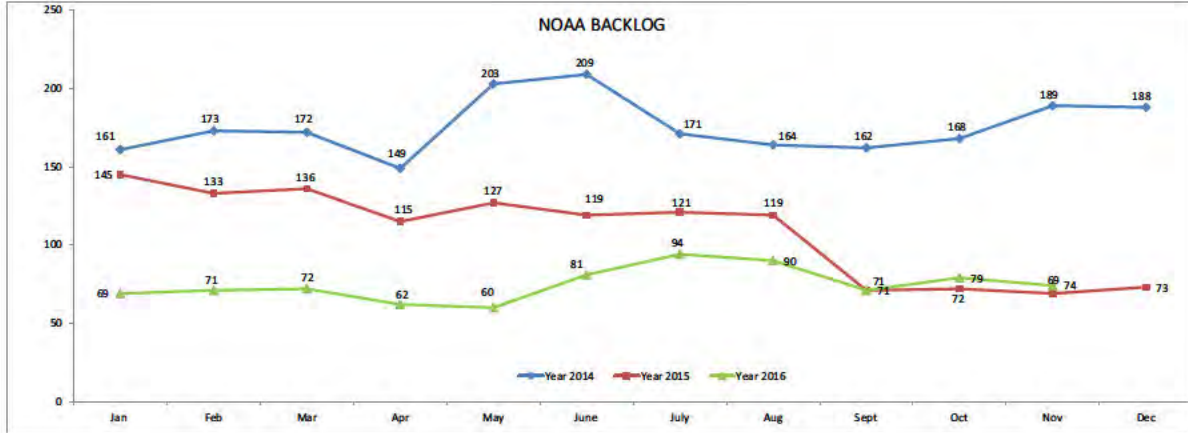
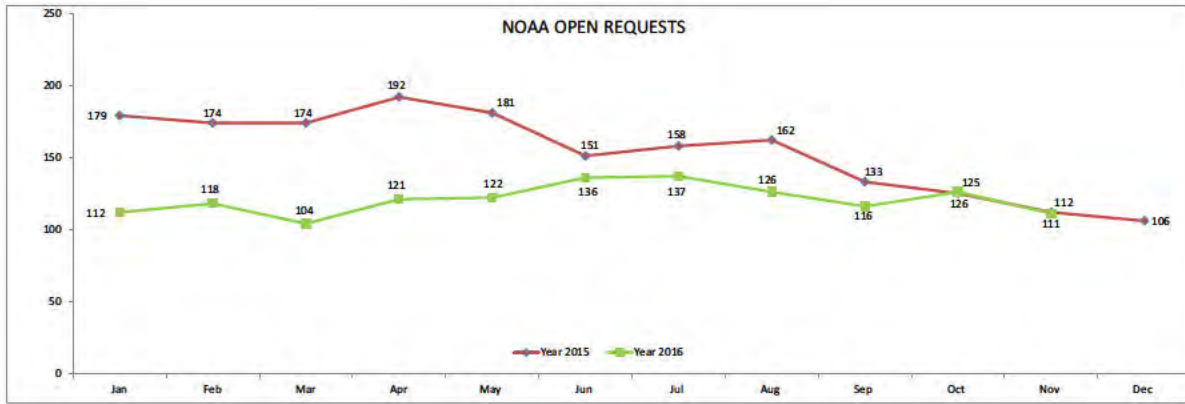
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veen NOAA an

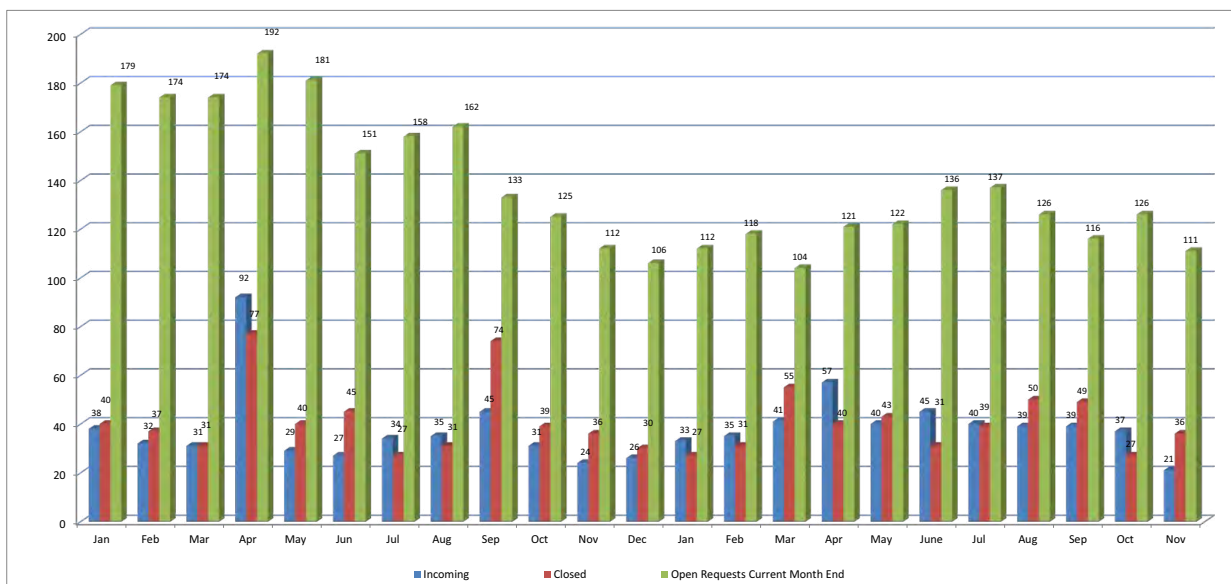
FOIA Monthly Status Report 11 30 2016

Organization	Open Requests Previous Month End	Incoming Requests	Closed Requests	Open Requests Current Month End	Backlog 21-120 days	Backlog 121-364 days	Backlog 365 or more days	Total Backlog
AGO	5	0	3	2	2	3	0	5
CAO	1	0	1	0	0	0	0	0
CFO	0	0	0	0	0	0	0	0
CIO	1	0	0	1	0	0	0	0
CIO/FOIA	16	5	1	20	4	0	0	4
GC	4	0	2	2	0	1	0	1
IA	0	0	0	0	0	0	0	0
LA	0	1	0	1	0	0	0	0
NESDIS	4	0	3	1	0	2	0	2
NMFS	54	9	19	44	27	10	3	40
NOS	18	3	5	16	7	1	1	9
NWS	10	2	1	11	4	0	0	4
OAR	4	0	0	4	1	0	1	2
OMAO	0	0	0	0	0	0	0	0
OC	0	0	0	0	0	0	0	0
PPI	0	0	0	0	0	0	0	0
USAO	1	0	0	1	0	0	0	0
WFMO	8	1	1	8	5	2	0	7
NOAA Totals	126	21	36	111	50	19	5	74

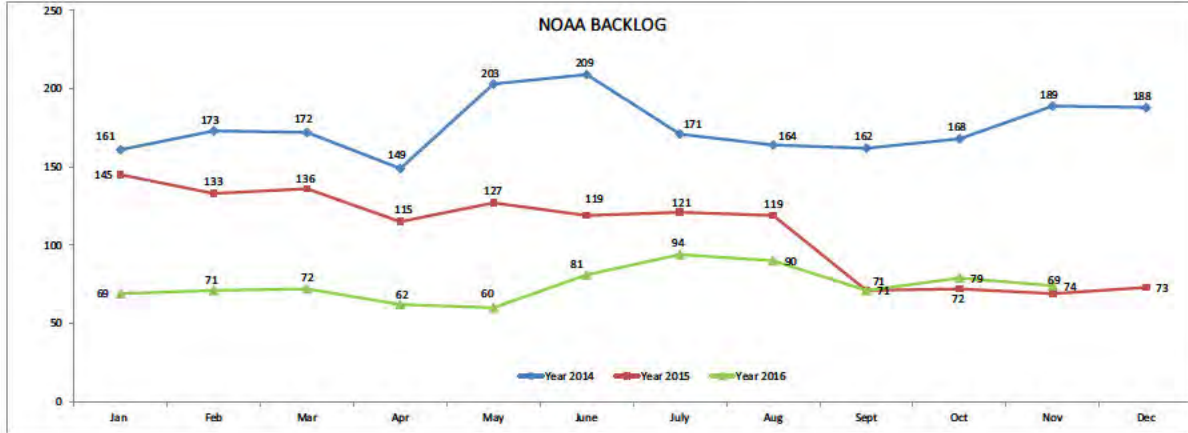
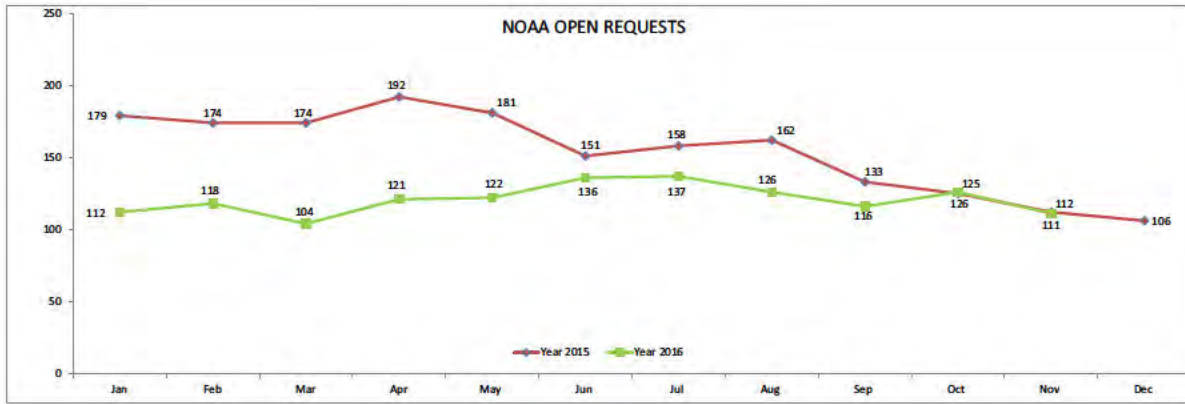




Organization	Open Requests Previous Month End	Incoming Requests	Closed Requests	Open Requests Current Month End	Backlog 21-120 days	Backlog 121-364 days	Backlog 365 or more days	Total Backlog
AGO	5	0	3	2	2	3	0	5
CAO	1	0	1	0	0	0	0	0
CFO	0	0	0	0	0	0	0	0
CIO	1	0	0	1	0	0	0	0
CIO/FOIA	16	5	1	20	4	0	0	4
GC	4	0	2	2	0	1	0	1
IA	0	0	0	0	0	0	0	0
LA	0	1	0	1	0	0	0	0
NESDIS	4	0	3	1	0	2	0	2
NMFS	54	9	19	44	27	10	3	40
NOS	18	3	5	16	7	1	1	9
NWS	10	2	1	11	4	0	0	4
OAR	4	0	0	4	1	0	1	2
OMAO	0	0	0	0	0	0	0	0
OC	0	0	0	0	0	0	0	0
PPI	0	0	0	0	0	0	0	0
USAO	1	0	0	1	0	0	0	0
WFMO	8	1	1	8	5	2	0	7
NOAA Totals	126	21	36	111	50	19	5	74



4.xlsx



Tracking Number	Type	Requester	Requester Organization	Submitted
DOC-NOAA-2017-000169	Request	MICHAEL PEPSO	Cause of Action	11/09/2016
DOC-NOAA-2017-000204	Request	Belinda Brannon		11/21/2016
DOC-NOAA-2017-000203	Request	Robert Moore		11/21/2016
DOC-NOAA-2017-000201	Request	Amber R. Matej		11/18/2016
DOC-NOAA-2017-000195	Request	Thomas Knudson	Center for Investigative Reporting	11/17/2016
DOC-NOAA-2017-000175	Request	Emily Alvarenga	San Diego State University	11/10/2016
DOC-NOAA-2017-000168	Request	MICHAEL PEPSO	Cause of Action	11/09/2016
DOC-NOAA-2017-000170	Request	MICHAEL PEPSO	Cause of Action	11/09/2016
DOC-NOAA-2017-000141	Request	Russ Rector		11/03/2016
DOC-NOAA-2017-000136	Request	Cadi Fung		11/02/2016
DOC-NOAA-2017-000226	Request	Emma Hiolski		11/29/2016
DOC-NOAA-2017-000202	Request	Steven Shaw		11/19/2016
DOC-NOAA-2017-000196	Request	Thomas Knudson	Center for Investigative Reporting	11/17/2016
DOC-NOAA-2017-000156	Request	David I. Katzman		11/09/2016
DOC-NOAA-2017-000140	Request	Michael Ravnitzky	No Association	11/01/2016
DOC-NOAA-2017-000213	Request	Marshall Morales	Riddell Williams	11/22/2016
DOC-NOAA-2017-000190	Request	Evynn Overton	Beveridge & Diamond PC	11/17/2016
DOC-NOAA-2017-000171	Request	Cody Rosenfield	Consumer Watchdog	11/08/2016
DOC-NOAA-2017-000185	Request	Elizabeth Nowicki		11/16/2016
DOC-NOAA-2017-000186	Request	Elizabeth Nowicki		11/16/2016
DOC-NOAA-2017-000187	Request	Elizabeth Nowicki		11/16/2016

Assigned To	Perfected?	Due	Closed Date	Status
LA	Yes	12/20/2016	TBD	Assignment Determination
NMFS	No	TBD	TBD	Assignment Determination
NMFS	No	TBD	TBD	Initial Evaluation
NMFS	No	TBD	TBD	Assignment Determination
NMFS	No	TBD	TBD	Submitted
NMFS	Yes	12/29/2016	TBD	Assignment Determination
NMFS	Yes	12/20/2016	11/29/2016	Closed
NMFS	Yes	01/05/2017	TBD	Assignment Determination
NMFS	Yes	12/19/2016	TBD	Assignment Determination
NMFS	Yes	12/16/2016	TBD	Assignment Determination
NOAA FOIA	No	TBD	TBD	Submitted
NOAA FOIA	No	TBD	TBD	Initial Evaluation
NOAA FOIA	No	TBD	TBD	Assignment Determination
NOAA FOIA	Yes	12/20/2016	11/21/2016	Closed
NOAA FOIA	Yes	12/13/2016	TBD	Assignment Determination
NOS	No	TBD	TBD	Initial Evaluation
NOS	Yes	12/29/2016	TBD	Assignment Determination
NOS	Yes	12/20/2016	TBD	Assignment Determination
NWS	Yes	12/15/2016	TBD	Assignment Determination
NWS	Yes	12/15/2016	TBD	Assignment Determination
WFMO	Yes	12/15/2016	TBD	Assignment Determination

Dispositions

Other - Aggregate cases

Other - Publicly available information

Detail

CoA Institute hereby requests access to the following records for the time period of January 1, 2014, to the present: Fishing Trawler Lady Julie Documentation No. : 1089342 Incident: Did this vessel sink?

My request is for information regarding the Western Pacific Sustainable Fisheries Fund. It is my understanding that to whom it may concern, I am requesting a copy of the Marine Mammal Inventory Report with all cetaceans, living and dead. All email correspondence sent and received by NOAA/NMFS employees on the steering committee for the 8th annual meeting. A record of each incident where either a sea lion or seal has been harmed or has harmed a human at a San Diego location. We are seeking to better understand the process leading to the President's issuance of Proclamation 9496 of September 2014. CoA Institute hereby requests access to the following records for the time period of January 1, 2014, to the present: Please send me the FULL AND COMPLETE MMIR on record at NMFS. Provide every field (shared/unshared) and I am requesting information from the National Marine Mammal Inventory database for all cetaceans held in captivity. I request access to and copies of any and all documents pertaining to California Governor Jerry Brown's request for any information on self.

A copy of the speech given by William Karp, NMFS Science and Research Director, NE Fisheries Science Center. Request for Certified Blue Ribbon Copies of Meteorological Records To Whom It May Concern: We request certification Pursuant to the provisions of the Freedom of Information Act, I hereby request a copy of the following records: Each 1. The index for the administrative record for the Portland Harbor natural resource damage assessment. 2. For all records I hereby request any and all correspondence pertaining to NOAA and/or Elliott Bay Trustee Council injury assessment. I'm requesting information regarding the testing of Tar Balls from California's coast in June of 2015 conducted by NMFS. Please accept this FOIA request as my request for all e-mails that you sent or received that informed your estimate of the damage. Please accept this e-mail as my request pursuant to FOIA for all e-mails or other documents created by or received by NMFS. Please accept this e-mail as my request pursuant to FOIA for all e-mails, text-messages, or "pings" (e.g.

[REDACTED]

t: 1. All records or communications produced to the U.S. House of Representatives Committee on Natur

t this Fund receives funds paid as a part of the tuna fishing quota-sharing program involving the longline and deceased, from all facilities you have MMIR's for. Thank You, ~Amber Matej
ual International Fisheries Observer and Monitoring Conference in San Diego pertaining to any aspect c
beach in 2015. By harmed I mean that either the human or the animal has been physically injured. I wo
ember 15, 2016, 81 Fed. Reg. 65,161 (Sept. 21, 2016), which established the Northeast Canyons and S
t:4 1. All records or communications (including emails, text messages, and voicemails) referring or relati
everything on record. Specifically, I would like every field of information available of the MMIR to the p
y in US facilities, both currently alive and those who are deceased, and from all sources (wild caught, ca
February 09, 2016 letter to Secretary of Commerce Penny Pritzker) that a federal fishery disaster be dec

at the 8th International Fisheries Observer and Monitoring Conference in San Diego this year, along with
ed blue ribbon copies of all meteorological records, including surface weather observations, radiosounde
h weekly or monthly FOIA program internal status report for the National Oceanic and Atmospheric Adm
documents or records as described below that were created, received, or obtained on or after January 1
ents for the Lower Duwamish Waterway in Seattle, Washington..
NOAA. Multiple articles stated that NOAA would be conducting testing. As part of the request, I would liki
e of fifty hours. I would like the e-mail or text or form or whatever it is that you sent your FOIA contact ad
d John "Brent" Wachter pertaining to that 50 (FIFTY!) hour estimate. Meaning, if Brent e-mai
g. SMS) that you (Ms. Desrosiers) sent or received regarding me (Elizabeth Nowicki) or the concerns th

[REDACTED]
al Resources in response to the Committee's October 7, 2015, document request (attached as Exhibit 1

: fishing industry (largely in and around Hawaii) and U.S. possessions including, but limited to, the CNMI

of the conference for the time period Jan. 1, 2016 to present, including attachments.

uld also like a copy of each incident report along with the figures, and, if possible, I would like to receive
Seamounts Marine National Monument. CoA Institute hereby requests access to the following records fo
ng to a NOAA Town Hall meeting held on or about September 15, 2015, in Providence, Rhode Island, ar
resent. Also, I would like the record(s) in Excel format and correlate the information by date. Reference
ptive born, imported). The information will be used to calculate estimates of fish resources used to mair
lared following extended closure of West Coast Dungeness crab fisheries. This includes but is not limite

an audio recording of the speech.

e data, sequence reports, surface analysis charts, air surface charts, winds aloft and upper-air observati
nistration during calendar years 2015 and 2016. These may be either separate reports or they may be
l, 2000: (a) All agreements (including contracts, settlements, memoranda of understanding, memorande

e any test results that were received, and any information about the determination by your department a
vising of this fifty hour estimate. I would like all e-mails or other messages exchanged between you and
led Ms. Hernandez or his supervisor or someone else about the matter to estimate that it might take FIF
at I raised to you. Please only search for materials sent or received by you (Ms. Desroiers) between Nov

[REDACTED]

I to this FOIA request). 2. All records or communications referring or relating to the U.S. House of Representatives and the American Samoa. I am specifically requesting a) copies or access to any and all deposits into a

these records in electronic form.
for the time period of January 1, 2012, to the present: 1. All records or communications (including emails and publicized on NOAA's website on or about September 3, 2015 (attached as Exhibit 1 to this FOIA request) the MMIRs produced back in 1980s/1990s - in addition to everything else, include fields such as: Date of capture, maintain captive cetacean populations.
related to communications, reports and records about the fishery disaster, both within the Department of Commerce,

including Convective SIGMET 59C, Severe Weather Forecast Alert number 686, and any and all related information, a segment of another, more inclusive, internal administrative report. By the term internal status report, I mean a report of agreement, administrative orders on consent, consent decrees, and amendments thereto) involving

information as to the origin of the tar balls - or any other information garnered from the testing. As well as this testing, please advise others in order to come up with or regarding this FIFTY hour estimate. I would like all e-mails or other records related to FIFTY hours to find and compile the records that I was requesting, I want a copy of that e-mail. If Brent filled out a report on September 11, 2016, and November 16, 2016, and please only search your workplace computer and/or electronic files.

[REDACTED]
Representatives Committee on Natural Resources October 7, 2015, document request (attached as Exhibit 1

and payments from the Fund since the creation of the Fund; b) any and all records related to payments f

from governmental and nongovernmental accounts, text messages, and emails) referring or relating to (quest), including · but not limited to all written comments, as well as all communications with non of location Capture Date Capture Place Origination of the animals

commerce and between the DOC and external agencies.

information and documents, for the date of 4/4/16 pertaining to Pigeon Forge TN.

mean any periodic (i.e., weekly or monthly) internal report (or email) on the activities and/or accomplish the Portland Harbor Natural Resource Trustee Council or referring to the Portland Harbor natural resou

data - I'd like the results of any other tar ball tests conducting in California over the last 5 years.

messages that you exchanged regarding Brent Wachter complying with my pending FOIA request.

out a form, I want a copy of that form.

electronic device(s). Please spend no more than two hours searching for the responsive materials to this re

[REDACTED]
to this FOIA request). 3. All records or communications responsive to the U.S. House of Representative
from the Fund to the Western Pacific Regional Fisheries Council; c) any and all records of payments to i

use of the Antiquities Act to create a national monument in the Atlantic Ocean.
governmental organizations referring or relating to the September 15, 2015, NOAA Town Hall meeting.

ments of the NOAA FOIA program. I prefer to receive the records in electronic format if practicable. Ple
rce damage assessment. This request includes any funding agreements and cooperative assessment a

quest. Please keep careful track of the time that you search, and please provide as part of your respons

[REDACTED]
as Committee on Natural Resources October 7, 2015, document request (attached as Exhibit 1 to this F
individuals or organizations for travel purposes related to the quota-sharing compliance or activities.

2. All records or communications (including emails and voicemails) referring or relating to a "publi

ase release all segregable releasable records.
greements. (b) All agreements (including contracts, settlements, memoranda of understanding, memor:

e to this FOIA request any time sheet or other documentation that you use or complete to document ho

[REDACTED]
FOIA request). 4. All records or communications (including but not limited to emails and voicemails) rece

c event" held by the Conservation Law Foundation, Natural Resources Defense Council, National

anda of agreement, administrative orders on consent, consent decrees, and amendments thereto) with c

How much time you have spent searching for materials responsive to this FOIA request.

[REDACTED]
ived from or sent to any member of the United States Congress or his or her staff and/or a congressiona

Geographic Society, and Pew Charitable Trusts at the New England Aquarium on or about September 2

or involving the Confederated Tribes and Bands of the Yakama Nation (including abbreviated references

[REDACTED]
al Committee and/or its staff referring or relating to the Northeast Canyons and Seamounts Marine

, 2015, during which these groups purportedly "formally called for the creation of the At

s to the “Yakama Nation,” “Yakama Tribe,” or “Yakama”) where the agreement refers to Portland Harbor



; the Columbia

From: Deanna Harwood - NOAA Federal <deanna.harwood@noaa.gov>
Sent: Wednesday, December 7, 2016 2:58 PM
To: Mark Graff - NOAA Federal
Subject: Fwd: New FOIA Referral from FEMA Received
Attachments: 9-16-2016 FEMA Referral to NMFS.pdf; EA FOIA request to FEMA.pdf; 2016-FEFO-01357 NMFS referral.pdf

Deanna Harwood
Deputy Chief, Southwest Section
NOAA, Office of General Counsel
U.S. Department of Commerce
501 W. Ocean Blvd., Suite 4470
Long Beach, CA 90802
(562) 980-4068

----- Forwarded message -----

From: Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov>
Date: Wed, Dec 7, 2016 at 11:56 AM
Subject: Fwd: New FOIA Referral from FEMA Received
To: Deanna Harwood <deanna.harwood@noaa.gov>
Cc: Laurie Beale - NOAA Federal <laurie.beale@noaa.gov>, Shawn Martin <shawn.martin@noaa.gov>, Doug Chow <doug.chow@noaa.gov>

Here is the FEMA referral from September.

----- Forwarded message -----

From: Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov>
Date: Fri, Sep 23, 2016 at 7:50 AM
Subject: Fwd: New FOIA Referral from FEMA Received
To: Laurie Beale - NOAA Federal <laurie.beale@noaa.gov>, Lamar Turner <lamar.turner@noaa.gov>
Cc: Douglas Chow - NOAA Federal <doug.chow@noaa.gov>, Shawn Martin - NOAA Federal <shawn.martin@noaa.gov>, Tom Ahnemann - NOAA Federal <Thomas.Ahnemann@noaa.gov>, Joseph Dillon - NOAA Federal <joseph.j.dillon@noaa.gov>, Sandra Schoof - NOAA Affiliate <sandra.schoof@noaa.gov>, Cynthia Hohn - NOAA Affiliate <cynthia.hohn@noaa.gov>

FYI.

----- Forwarded message -----

From: Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov>
Date: Fri, Sep 23, 2016 at 7:47 AM
Subject: New FOIA Referral from FEMA Received
To: FOIA Office - NOAA Service Account <foia@noaa.gov>, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>
Cc: Samuel Dixon - NOAA Affiliate <samuel.dixon@noaa.gov>, Shawn Martin - NOAA Federal

<shawn.martin@noaa.gov>

See attached FOIA Referral received from FEMA via U.S. Certified Mail. A copy of FEMA's response letter was not in the transmittal envelope.

--

Ana Liza S. Malabanan
Freedom of Information Act (FOIA) Coordinator
Information Services and Management Branch
Operations, Management & Information Division
NOAA Fisheries West Coast Region
U.S. Department of Commerce
Office: [562-980-4008](tel:562-980-4008)



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ENVIRONMENTAL ADVOCATES
ATTORNEYS AT LAW

5135 ANZA STREET
SAN FRANCISCO, CA 94121
(415) 533-3376
Fax: (415) 358-5695
E-mail: csroul@enviroadvocates.com

April 8, 2016

Federal Emergency Management Agency FOIA Branch
Records Management/Disclosure Branch
500 C Street, SW
Washington, D.C. 20472-3172
E-mail: FEMA-FOIA@fema.dhs.gov and fema-foia@dhs.gov.

Re: Freedom of Information Act Request

Dear Freedom of Information Act Officer:

Pursuant to the Freedom of Information Act, 5 U.S.C § 552, and relevant Federal Emergency Management Agency ("FEMA") regulations set forth in 44 C.F.R. part 5, Ecological Rights Foundation ("EcoRights") (via counsel), hereby requests the following information:

Note: all requests set forth below are for documents generated on or after January 1, 2009 through the date that FEMA responds to this request, but excluding any documents already submitted by FEMA to EcoRights in response to EcoRights' two recent FOIA requests submitted to FEMA on June 8, 2015 (FEMA 2015-FEFO-00491 / 2015-FELI-00006), and December 8, 2015 (FEMA 2016-FEFO-00468):

1. Any reports, memoranda, correspondence, or other documents (including electronic mail messages) concerning any Endangered Species Act ("ESA") section 7 consultations (16 U.S.C. § 1536) that have been initiated or proposed, including Biological Opinions, Biological Assessments, or informal consultations, pertaining to the implementation of the National Flood Insurance Program ("NFIP") in California.
2. Any reports, memoranda, correspondence, or other documents (including electronic mail messages) concerning any ESA section 10 permits or habitat conservation plans (16 U.S.C. § 1539) that have been initiated or proposed, pertaining to the implementation of the NFIP in California.
3. Any reports, memoranda, correspondence, or other documents (including electronic mail messages) submitted to FEMA by the National Marine Fisheries Service ("NMFS"), U.S. Fish and Wildlife Service ("USFWS"), the California Department of Fish and Wildlife, or any other State or Federal agency or department pertaining to the ESA and the implementation of the NFIP in California.

4. Any reports, memoranda, correspondence to or from FEMA, or other documents (including electronic mail messages) concerning any Endangered Species Act ("ESA") section 7 consultations (16 U.S.C. § 1536) that have been initiated or proposed, including Biological Opinions, Biological Assessments, or informal consultations, pertaining to any national level draft or final rule(s) related to the National Flood Insurance Program, in what may be known by FEMA, National Marine Fisheries Service ("NMFS"), or U.S. Fish and Wildlife Service ("USFWS") personnel as "draft rule/rulemaking regarding updates to the National Flood Insurance Program to facilitate improved Endangered Species Act compliance," "new proposed minimum floodplain management criteria," "proposed ESA-related performance standard," or some related variation thereof.

EcoRights requests that FEMA's response to this request include clear response period dates.

44 C.F.R section 5.52(b) requires that FEMA notify EcoRights within 10 working days whether it has approved the request. 44 C.F.R section 5.54(b) requires that should FEMA deny any portion of this request that it notify EcoRights in writing within 10 working days and state which of the requested records will, and which will not, be released and the reason for any denial of any portion of this request. As provided by 44 C.F.R section 5.56, FEMA may extend this obligation by furnishing written notice to the requestor as soon as practicable stating the reasons for such extension and the date by which the office expects to be able to issue a determination. Pursuant to 44 C.F.R section 5.56 the period may be so extended for only one or more of the following unusual circumstances: (1) there is a need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; (2) there is a need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or (3) there is a need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of FEMA.

We request that to the extent that FEMA can do so, EcoRights be furnished with electronic copies of the above documents in lieu of paper copies (to minimize the expense and burden of copying). 5 U.S.C. § 552(a)(3)(B) ("an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format"). Pursuant to 5 U.S.C. section 552(a)(4)(A)(iii) and 44 C.F.R section 5.43, we hereby request a fee waiver for all copying costs, mailing costs, and other costs related to locating and tendering the documents, in accord with the attached fee waiver statement. Please produce documents responsive to this request on a rolling basis; at no point should the search for—or deliberation concerning—certain records delay the production of others that the agency has already retrieved and elected to produce.

We request that FEMA provide electronic copies of its determination of its response to this request to me and to Christopher Hudak at the following e-mail addresses (as well as any responsive documents that you can transmit to us via e-mail):

Christopher Sproul: csproul@enviroadvocates.com
Christopher Hudak: christopherwhudak@gmail.com

Freedom of Information Act Request

April 7, 2016

Page 3


Please send any documents that you need to transmit via mail to the following address:

Christopher Sproul
Environmental Advocates
5135 Anza St.
San Francisco, California, 94121

Your staff may contact Christopher Hudak at (510) 502-5742 or at christopherwhudak@gmail.com to further discuss FEMA's response to this request.

Thank you for your prompt attention to this matter.

Sincerely,



Christopher Sproul
Attorney for Ecological Rights Foundation

Encl.: *Attachment 1 (Fee Waiver Request)*

Attachment 1
Fee Waiver Request

FEE WAIVER REQUEST ATTACHMENT

FOIA requires the government to produce documents without any charge or at a reduced charge when the request is: (1) "likely to contribute significantly to public understanding of the operations or activities of the government" and (2) "is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). Because Ecological Rights Foundation's ("EcoRights") request satisfies both of these factors, EcoRights qualifies for a fee waiver under FOIA.

A. EcoRights' request will contribute significantly to public understanding of FEMA's operations.

EcoRights meets the requirements for fee waiver set forth in FEMA FOIA regulation 44 C.F.R. section 5.43 and satisfies the 4-part test for the public interest exception detailed in the Department of Justice Guide to the Freedom of Information Act ("DOJ FOIA Guide"), available at <http://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/fecs-feewaivers.pdf>. Case law suggests that the public interest exception should be viewed in an expansive manner. *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1315 (D.C. Cir. 2003). As shown below, EcoRights meets the requirements set forth in 44 C.F.R. section 5.43 and the DOJ FOIA Guide and should be granted a fee waiver.

- i. *Whether the subject of the requested records concerns "the operations or activities of the government."*

EcoRights' Response

First, Ecological Rights Foundation ("EcoRights") is requesting information from FEMA regarding any Endangered Species Act ("ESA") section 7 consultations or any ESA section 10 permitting/habitat conservation plans that relate to the National Flood Insurance Program ("NFIP") in California. This request includes documents generated by FEMA and materials submitted to FEMA by other agencies such as National Marine Fisheries Service ("NMFS") or U.S. Fish and Wildlife Service ("FWS") regarding FEMA's compliance with the ESA.

Second, EcoRights is also requesting information from FEMA regarding any ESA section 7 consultations at the national level regarding the NFIP.

The documents sought therefore relate to specific activities carried out by FEMA and are closely related to the subject matter of the request.

- ii. *Whether the disclosure is "likely to contribute" to an understanding of specific government operations or activities. Disclosure of the requested information must be meaningfully informative in relation to the subject matter of the request.*

EcoRights' Response

EcoRights is requesting information from FEMA regarding any Endangered Species Act ("ESA") section 7 consultations or any ESA section 10 permitting that relate to the National Flood Insurance Program ("NFIP") in California. This request includes documents generated by FEMA and materials submitted to FEMA by other agencies such as National Marine Fisheries Service

("NMFS"), U.S. Fish and Wildlife Service ("FWS"), or the California Department of Fish and Wildlife regarding FEMA's compliance with the ESA.

Since a number of federal courts have already held that FEMA must consult with NMFS/USFWS over the NFIP, EcoRights is concerned that FEMA has not fulfilled its requirements under the ESA in California. EcoRights' FOIA request is designed to gather information that will indicate to the public whether FEMA is complying with the ESA, whether FWS, NMFS, or the California Department of Fish and Wildlife have considered the effects of the NFIP on endangered/threatened species in California, and whether conservation measures that are or should be required by the ESA are being implemented or should be implemented by FEMA and to what effect on endangered/threatened species.

EcoRights is unaware of any public release of any documents by FEMA regarding any ESA section 7 consultations or section 10 consultations in California pertaining to the NFIP and thus none of it, if it exists, is in the public domain. These records are of vital importance to the public to understand how the NFIP, which has an enormous impact on development in floodplains and on wildlife habitat, is fulfilling its obligations under the ESA and thus are "likely to contribute" to public understanding. The documents requested should constitute the best evidence available of FEMA's actions to ensure that the NFIP does not impose adverse impacts on endangered/threatened species, and thus would provide "meaningful" information for the public on these governmental actions.

EcoRights is further requesting information from FEMA regarding any ESA section 7 consultations at the national level regarding the NFIP.

Since a number of federal courts have already held that FEMA must consult with NMFS/USFWS over the NFIP, EcoRights is concerned that FEMA may not fulfill its requirements under the ESA as it implements and/or amends the NFIP regulations, which would in turn greatly impact California. EcoRights's FOIA request is designed to gather information that will indicate to the public whether FEMA is complying with the ESA as it implements and/or amends the NFIP at the national level, whether FWS, NMFS, or other agencies have adequately considered the effects of implementing/amending the NFIP on endangered/threatened species nationally and/or in California, and whether conservation measures that are or should be required by the ESA are being implemented or should be implemented by FEMA and to what effect on endangered/threatened species.

EcoRights is unaware of any public release of any documents by FEMA regarding any national level ESA section 7 consultations on any draft NFIP regulations, and thus none of it, if it exists, is in the public domain. These records are of vital importance to the public to understand how the NFIP, which has an enormous impact on development in floodplains and on wildlife habitat, is fulfilling its obligations under the ESA and thus are "likely to contribute" to public understanding. The documents requested should constitute the best evidence available of FEMA's actions to ensure that the NFIP does not impose adverse impacts on endangered/threatened species, and thus would provide "meaningful" information for the public on these governmental actions.

iii. *Whether the disclosure will contribute to "public understanding" as opposed to the individual understanding of the requester or a narrow segment of interested persons.*

iv. *Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.*

EcoRights' Response

EcoRights is well positioned to both analyze and publicize the information requested to a broad audience. EcoRights is a community-based educational nonprofit corporation committed to the protection, preservation and restoration of floodplains and the endangered species that inhabit them in California. EcoRights seeks the requested information to work to insure that the endangered/threatened species in California's watersheds are protected as required by the ESA. EcoRights' attorneys have extensive expertise with the ESA, FOIA, and other environmental laws and can efficiently analyze the technical documents this request seeks. EcoRights was founded as a community movement organization and its members are extraordinarily active. In addition to their membership, EcoRights uses the tools of education and advocacy to inform a greater audience. EcoRights will use the requested information to inform the public of issues regarding any steps taken by FEMA to comply with the ESA and any FWS/NMFS/California Department of Fish and Wildlife considerations of the impacts of the NFIP on endangered/threatened species and recommendations concerning these impacts, via EcoRights' own publications, press releases, briefings in public meetings, correspondence to other public interest groups, and postings on their own or other groups' internet web sites.

In *Judicial Watch v. Rossotti*, the court explained that nothing in FOIA, agency regulations, or case law requires specificity beyond explaining that the requestor plans to disseminate the information. 326 F.3d at 1314. Furthermore, in *Carney v. US DOJ*, 19 F.3d 807 (2nd Cir. 1994), the court indicated that a fee waiver request need not demonstrate that the information will be shared with a large cross-section of the public. As long as the requested information is disseminated "to a reasonably broad audience of persons interested in the subject" the public dissemination test may be satisfied. *Id.* Thus, to meet the third factor, EcoRights need only explain how the information received will be disseminated to persons interested in the ecological health of Californian floodplains and the endangered species therein in detailed and non-conclusory terms.

EcoRights' present request meets the requirements of the public understanding factor as EcoRights will analyze the information it receives from FEMA and make its conclusions known to its members, other environmental groups, and the public at large. EcoRights' analyses will be disseminated via press releases as well as posted on EcoRights' web sites (<http://www.ecorights.org>) and likely the web sites of other environmental groups. EcoRights has a proven track record of obtaining press coverage of the environmental issues it publicizes. Generally, EcoRights obtains press coverage in the local and/or national media, including newspapers and radio stories. For example, EcoRights' recent filing of an ESA citizen suit concerning Stanford University's operations in the San Francisquito Creek watershed was covered by several San Francisco Bay Area newspapers and KQED radio. EcoRights regularly issues press releases and includes them on its website.

Given EcoRights' extensive media contacts, EcoRights' publication of the materials requested by this FOIA request will contribute to its members', other environmental groups', and the general public's understanding how FEMA is adhering to the requirements of the ESA as it implements the NFIP. Thus, EcoRights meets the public understanding requirement through its concrete plans to disseminate the requested information to a broad audience of persons interested in the health of California's floodplains and watersheds and the endangered/threatened species that use them for critical habitat.

- iv. Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.*

EcoRights' Response

Disclosure of the requested information will significantly contribute to public understanding of FEMA's compliance with the ESA in its implementation and or/amendment of the NFIP, and how this compliance is affecting protection of endangered/threatened species. The details of FEMA's compliance with the ESA in its implementation of the NFIP in California is not generally known by the public, nor is how FEMA intends to comply with the ESA as it makes any amendments at the national level to the NFIP. As discussed above, there has been no public release of any documents by FEMA regarding any ESA section 7 consultations or section 10 consultations in California pertaining to the NFIP. Nor has there been any public release of documents from FEMA regarding any section 7 consultations it is engaged in currently over the NFIP at the national level. This information is critical for the public to have in order to assess whether FEMA taking all required steps to protect endangered/threatened species. Thus, EcoRights's request and subsequent dissemination will significantly enhance public knowledge.

B. EcoRights' request is not primarily in the commercial interest of the requestor.

In addition to showing that the requested records will contribute significantly to the public understanding of government operations, EcoRights must show that the request is "not primarily in the commercial interest of the requestor." To do so, under the DOJ FOIA guidelines for fee waivers EcoRights must demonstrate (1) the existence and magnitude of a commercial interest, if there is one, and (2) the primary interest in disclosure, and whether that interest is primarily in the commercial interest of the requestor. As explained below, EcoRights does not seek the requested information for any commercial interest, and thus qualify for a fee waiver.

- i. Whether the requester has a commercial interest that would be furthered by the requested disclosure.*

EcoRights Response

EcoRights is a community-based educational nonprofit corporation committed to the protection, preservation and restoration of watersheds and floodplains in California as well as the threatened or endangered species that live therein. For over 15 years EcoRights has been devoted to furthering the rights of all people to a clean, healthful and biologically diverse environment. To further EcoRights' environmental advocacy goals, EcoRights actively seeks federal and state agency implementation of state and federal water quality and wildlife related laws, and as necessary, directly initiates enforcement actions on behalf of itself and its members. Accordingly, EcoRights has no commercial interest in the information requested. Rather, EcoRights is seeking the information solely: (1) to determine whether FEMA is complying with the requirements of the Endangered Species Act in its implementation of the NFIP in California; (2) to determine whether FEMA is complying with the requirements of the ESA in its implementation or amendment of the NFIP at the national level, which in turn greatly impacts California, (3) to educate the public regarding FEMA's compliance with the ESA as it implements the NFIP in California/nationally; and (4) to assist in EcoRights' efforts to advocate that the appropriate state, federal, or private entities take needed actions to protect California's floodplains and the species that live therein.

EcoRights has no financial interest in the information sought or any enforcement actions that may result from it. EcoRights' goal in urging enforcement of environmental laws is not for any private financial gain, but serves only to vindicate the larger public interest in compliance with environmental laws designed to protect ecosystems and the species that live therein.

ii. Whether, on balance, the requester's commercial interest or the identified public interest is "primary."

EcoRights' Response

EcoRights has no commercial interest in the requested information, as discussed above. Accordingly, the identified public interest in the disclosure of the requested information discussed above necessarily outweighs any commercial interest in this request.

For the above reasons, EcoRights respectfully requests a fee waiver pursuant to 5 U.S.C. section 552(a)(4)(A)(iii) and 44 C.F.R. section 5.43, for all copying costs, mailing costs, and other costs related to locating and tendering the documents.

From: [Christopher Sproul](#)
To: [FEMA-FOIA](#); [FEMA-FOIA](#)
Cc: [Tseng, Neill \(USACAN\)](#); [Christopher Hudak](#); [Rich, Paula](#)
Subject: Fwd: FOIA request for you to send
Date: Friday, April 08, 2016 12:58:16 PM
Attachments: [EcoRights 4-8-16 FOIA Request.pdf](#)

Dear FEMA FOIA Officer,

Attached please find Ecological Rights Foundation's April 8, 2016 FOIA request to FEMA and accompanying fee waiver request.

Sincerely,

Christopher Sproul

--
Christopher Sproul
Environmental Advocates
5135 Anza Street
San Francisco, California 94121
Phone: (415) 533-3376
Fax: (415) 358-5695
E-mail: csproul@enviroadvocates.com

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
Sent: Thursday, December 8, 2016 8:35 AM
To: Lola Stith - NOAA Affiliate; Mark Graff - NOAA Federal
Cc: Arlyn Penaranda - NOAA Federal; Milena Seelig - NOAA Federal; Samuel Dixon - NOAA Affiliate
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Lola/Mark,

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Lorna

On Wed, Dec 7, 2016 at 11:36 AM, Scott Doyle <scottdoyle137@aol.com> wrote:
Ladies.

Just checking

1. Remaining FOIA docs have not be delivered any update. It has not been 4 months.

Ms. Smith

I have not been reimbursed and you look into this and give me a date certain for payment.

Scott Doyle

-----Original Message-----

From: Scott Doyle <scottdoyle137@aol.com>
To: lorna.martin-gross <lorna.martin-gross@noaa.gov>; lola.m.stith <lola.m.stith@noaa.gov>
Sent: Fri, Nov 18, 2016 4:29 pm
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Nothing from OIG, today was the day it was estimated to upload its docs. OSY has now had close to 3 months and nothing from them.

Can you check and give me a update next week.

Also the reimbursement had not be paid.

Scott Doyle

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
To: lola.m.stith <lola.m.stith@noaa.gov>
Cc: scottdoyle137 <scottdoyle137@aol.com>
Sent: Wed, Nov 2, 2016 2:05 pm
Subject: FW: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Ms. Stith,

Please provide Mr. Doyle with an update of his fee reimbursement.

Thank you,

Ms. Lorna Martin-Gross

OLE Records Manager

Office: [301-427-8244](tel:301-427-8244)

From: Scott Doyle [mailto:scottdoyle137@aol.com]

Sent: Wednesday, November 02, 2016 1:51 PM

To: lorna.martin-gross@noaa.gov

Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

I have not received my reimbursement and update.?

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>

To: Scott Doyle <scottdoyle137@aol.com>

Sent: Tue, Oct 18, 2016 1:39 pm

Subject: RE: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Hello Mr. Doyle,

If you did not hear back from Ms. Stith yesterday, based on her email response to you on 10/14, I recommend you follow-up with her directly. The NOAA FOIA office handles all FOIA related funds and they will be the first to know the status.

Kind regards,

Ms. Lorna Martin-Gross

OLE Records Manager

Office: [301-427-8244](tel:301-427-8244)

From: Scott Doyle [mailto:scottdoyle137@aol.com]

Sent: Tuesday, October 18, 2016 1:15 PM

To: lorna.martin-gross@noaa.gov

Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Thank you for the response.

Can you please let me know when the refund has been issued.

Scott

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>

To: Scott Doyle <scottdoyle137@aol.com>

Cc: arlyn.penaranda <arlyn.penaranda@noaa.gov>; foia <foia@noaa.gov>

Sent: Tue, Oct 18, 2016 12:58 pm

Subject: RE: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Hello Mr. Doyle,

I understand your concern about not having received the remaining documents responsive to your FOIA request, DOC-NOAA-2016-001270. I will address each item of your email as it was written:

1. "I have not received my reimbursement as per the email below. That was well over a 2 months ago."

The NOAA FOIA office is following up on the status of your refund.

2. "I have not received all the additional FOIA documents that were originally identified. Can you give me an idea when I will receive them and reason for the continued delay?"

The latest follow-up with the Department of Commerce was this morning. DOC's Office of Inspector General (OIG) estimates to have the documents uploaded into FOIAonline by November 18, 2016. DOC's Office of Security (OSY) has not provided an estimate, but we will continue to check the status. Once the OIG documents are uploaded into FOIAonline, you will be provided a second interim release letter with instructions to access responsive documents to your request. When the documents are provided by DOC OSY, a third interim release letter will be sent electronically with instructions to access responsive documents.

3. "I would like to appeal that parts have been redacted which I don't believe which should have been redacted. I want to send in one comprehensive request. Items like complete email addresses, names, titles, the body of reports that speak to the internal investigate as it relates to my interview, witness statements and general facts of the investigation etc."

The appeal language from the interim release letter states:

"We encourage you to speak with us if you have concerns as we continue to process this request. Although you have the ability to appeal at this time, we encourage you to focus the appeal/mediation/NOAA discussion, if needed, on exemptions applied to the documents thus far, but hold specific challenges about production until you have received and reviewed more of the voluminous records that the agency is still in the process of gathering and processing.

You have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this release must be received within 90 calendar days of the date of this response letter at the following address:

*Assistant General Counsel for Litigation, Employment, and Oversight
U.S. Department of Commerce
Office of General Counsel
Room 5875
14th and Constitution Avenue, N.W.
Washington, D.C. 20230*

An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to [202-482-2552](tel:202-482-2552), or by FOIAonline at <https://foiaonline.regulations.gov/foia/action/public/home#>.

For your appeal to be complete, it must include the following items:

- *a copy of the original request,*
- *our response to your request,*
- *a statement explaining why the withheld records should be made available, and why the denial of the records was in error.*
- *"Freedom of Information Act Appeal" must appear on your appeal letter. It should also be written on your envelope, e-mail subject line, or your fax cover sheet.*

FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next business day. If the 90th calendar day for submitting

an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

FOIA grants requesters the right to challenge an agency's final action in federal court. Before doing so, an adjudication of an administrative appeal is ordinarily required.

The Office of Government Information Services (OGIS), an office created within the National Archives and Records Administration, offers free mediation services to FOIA requesters. They may be contacted in any of the following ways:

*Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001
Email: ogis@nara.gov*

Phone: [301-837-1996](tel:301-837-1996)

Fax: [301-837-0348](tel:301-837-0348)

Toll-free: [1-877-684-6448](tel:1-877-684-6448)

If you choose to submit a formal appeal, as noted in your email, all activity on your request will be stopped until the appeal is vetted and fully processed. This means all DOC documents will be on hold until the appeal is final.

Before you decide to submit a formal appeal, I can offer to schedule a telephone call with you to discuss your specific exemption concerns of the OLE documents. Prior to the call, I ask that you provide me with identifying information of the documents in question in order to avoid searching for specific documents during the call.

4. "I have a time limit of 90 days on which to appeal (Started 8/3/16), which I would like to request be extended until the all the FOIA documents have been delivered. It is unfair to ask me to make my appeal decision without the totality of all the information. I have received less than 100 of the over 320 documents.

If this is not the proper way to request an extension of an appeal please let me know the method you require."

The interim release was uploaded and sent via FOIAonline on August 16, 2016. After our call, if you choose to submit a formal appeal, you will be within the 90 calendar days limit (November 14, 2016 by 5:00 p.m., Eastern Time). The correct procedure to submit a formal appeal is found in paragraph 3, above, and in the interim release letter sent on August 16, 2016.

Please contact me if you would like to schedule a call to discuss your exemption concerns. I can be reached by email, Monday - Friday, at lorna.martin-gross@noaa.gov, or by phone on Tuesday, Thursday, and Friday, at [301-427-8244](tel:301-427-8244).

Kind regards,

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

1315 East-West Highway

SSMC 3, Suite 3301

Office: [301-427-8244](tel:301-427-8244)

lorna.martin-gross@noaa.gov

From: FOIA Office - NOAA Service Account [mailto:foia@noaa.gov]
Sent: Friday, October 14, 2016 2:20 PM
To: Scott Doyle
Cc: Lorna Martin-Gross - NOAA Federal
Subject: Re: Fee Reimbursement Request

Good afternoon Mr. Doyle,

Thank you for your inquiry.

Lorna and Mark will address the FOIA request status and appeal questions. I can be your point of contact concerning the refund for your FOIA request.

I will follow-up with the NOAA finance office to check the status of your refund, and will have an update for you on Monday.

Please do not hesitate to contact me at the number below should you have additional questions concerning your refund.

Regards,

Lola Stith
NOAA FOIA Office
[703-298-8005](tel:703-298-8005)

Mark H. Graff
FOIA Officer
National Oceanic and Atmospheric Administration
[\(301\)-628-5658](tel:301-628-5658)

On Fri, Oct 14, 2016 at 2:14 PM, Scott Doyle <scottdoyle137@aol.com> wrote:
Mr Graff, Ms. Martin,

Several items

1. I have not received my reimbursement as per the email below. That was well over a 2 months ago.
2. I have not received all the additional FOIA documents that were originally identified. Can you give me an idea when I will receive them and reason for the continued delay?
3. I would like to appeal that parts have been redacted which I don't believe which should have been redacted. I want to send in one comprehensive request. Items like complete email addresses, names, titles, the body of reports that speak to the internal investigate as it relates to my interview, witness statements and general facts of the investigation etc.
4. I have a time limit of 90 days on which to appeal (Started 8/3/16), which I would like to request be extended until the all the FOIA documents have been delivered. It is unfair to ask me to make my appeal decision without the totality of all the information. I have received less than 100 of the over 320 documents.

If this is not the proper way to request an extension of an appeal please let me know the method you require.

I appreciate your consideration on this matter and realize your office is not the reason for the delay.

Sincerely

Scott Doyle

-----Original Message-----

From: foia <foia@noaa.gov>

To: scottdoyle137 <scottdoyle137@aol.com>

Sent: Thu, Sep 1, 2016 9:08 am

Subject: Fee Reimbursement Request

09/01/2016 09:03 AM

FOIA Request: DOC-NOAA-2016-001270

This is in response to your request for the reimbursement of the fees paid for the processing of your FOIA request. You have argued that the 2016 FOIA Improvement Act of 2016 mandates the return of fees paid to you. Although that act is not retroactive, it is correct that your request is past due, and unusual circumstances have not been cited as justifying billable processing with fees assessed in your request after the statutory time frame for responding to your request. As such, I have determined that your request is not billable, and that fees should be returned to you. A request for a refund of your fees paid will be submitted to the Office of the Chief Financial Officer.

Mark Graff

NOAA FOIA Officer

--

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: 301-427-8244

lorna.martin-gross@noaa.gov

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From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
Sent: Thursday, December 8, 2016 11:07 AM
To: Mark Graff - NOAA Federal
Cc: Lola Stith - NOAA Affiliate; Arlyn Penaranda - NOAA Federal; Samuel Dixon - NOAA Affiliate
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Question,

(b)(5)
[Redacted]
[Redacted]
[Redacted] ?

Lorna

On Thu, Dec 8, 2016 at 9:25 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

(b)(5) [Redacted].

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) [Redacted] (C)

On Thu, Dec 8, 2016 at 8:34 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:

Lola/Mark,

(b)(5) [Redacted] ?

Lorna

On Wed, Dec 7, 2016 at 11:36 AM, Scott Doyle <scottdoyle137@aol.com> wrote:

Ladies.

Just checking

1. Remaining FOIA docs have not be delivered any update. It has not been 4 months.

Ms. Smith

I have not been reimbursed and you look into this and give me a date certain for payment.

Scott Doyle

-----Original Message-----

From: Scott Doyle <scottdoyle137@aol.com>

To: lorna.martin-gross <lorna.martin-gross@noaa.gov>; lola.m.stith <lola.m.stith@noaa.gov>

Sent: Fri, Nov 18, 2016 4:29 pm

Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Nothing from OIG, today was the day it was estimated to upload its docs. OSY has now had close to 3 months and nothing from them.

Can you check and give me a update next week.

Also the reimbursement had not be paid.

Scott Doyle

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>

To: lola.m.stith <lola.m.stith@noaa.gov>

Cc: scottdoyle137 <scottdoyle137@aol.com>

Sent: Wed, Nov 2, 2016 2:05 pm

Subject: FW: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Ms. Stith,

Please provide Mr. Doyle with an update of his fee reimbursement.

Thank you,

Ms. Lorna Martin-Gross

OLE Records Manager

Office: [301-427-8244](tel:301-427-8244)

From: Scott Doyle [mailto:scottdoyle137@aol.com]

Sent: Wednesday, November 02, 2016 1:51 PM

To: lorna.martin-gross@noaa.gov

Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

I have not received my reimbursement and update.?

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>

To: Scott Doyle <scottdoyle137@aol.com>

Sent: Tue, Oct 18, 2016 1:39 pm

Subject: RE: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Hello Mr. Doyle,

If you did not hear back from Ms. Stith yesterday, based on her email response to you on 10/14, I recommend you follow-up with her directly. The NOAA FOIA office handles all FOIA related funds and they will be the first to know the status.

Kind regards,

Ms. Lorna Martin-Gross

OLE Records Manager

Office: [301-427-8244](tel:301-427-8244)

From: Scott Doyle [mailto:scottdoyle137@aol.com]
Sent: Tuesday, October 18, 2016 1:15 PM
To: lorna.martin-gross@noaa.gov
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Thank you for the response.

Can you please let me know when the refund has been issued.

Scott

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
To: Scott Doyle <scottdoyle137@aol.com>
Cc: arlyn.penaranda <arlyn.penaranda@noaa.gov>; foia <foia@noaa.gov>
Sent: Tue, Oct 18, 2016 12:58 pm
Subject: RE: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Hello Mr. Doyle,

I understand your concern about not having received the remaining documents responsive to your FOIA request, DOC-NOAA-2016-001270. I will address each item of your email as it was written:

1. "I have not received my reimbursement as per the email below. That was well over a 2 months ago."

The NOAA FOIA office is following up on the status of your refund.

2. "I have not received all the additional FOIA documents that were originally identified. Can you give me an idea when I will receive them and reason for the continued delay?"

The latest follow-up with the Department of Commerce was this morning. DOC's Office of Inspector General (OIG) estimates to have the documents uploaded into FOIAonline by November 18, 2016. DOC's Office of Security (OSY) has not provided an estimate, but we will continue to check the status. Once the OIG documents are uploaded into FOIAonline, you will be provided a second interim release letter with instructions to access responsive documents to your request. When the documents are provided by DOC OSY, a third interim release letter will be sent electronically with instructions to access responsive documents.

3. "I would like to appeal that parts have been redacted which I don't believe which should have been redacted. I want to send in one comprehensive request. Items like complete email addresses, names, titles, the body of reports that speak to the internal investigate as it relates to my interview, witness statements and general facts of the investigation etc."

The appeal language from the interim release letter states:

"We encourage you to speak with us if you have concerns as we continue to process this request. Although you have the ability to appeal at this time, we encourage you to focus the appeal/mediation/NOAA discussion, if needed, on exemptions applied to the documents thus far, but hold specific challenges about production until you have received and reviewed more of the voluminous records that the agency is still in the process of gathering and processing.

You have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this release must

be received within 90 calendar days of the date of this response letter at the following address:

Assistant General Counsel for Litigation, Employment, and Oversight
U.S. Department of Commerce
Office of General Counsel
Room 5875
14th and Constitution Avenue, N.W.
Washington, D.C. 20230

An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to [202-482-2552](tel:202-482-2552), or by FOIAonline at <https://foiaonline.regulations.gov/foia/action/public/home#>.

For your appeal to be complete, it must include the following items:

- a copy of the original request,
- our response to your request,
- a statement explaining why the withheld records should be made available, and why the denial of the records was in error.
- “Freedom of Information Act Appeal” must appear on your appeal letter. It should also be written on your envelope, e-mail subject line, or your fax cover sheet.

FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

FOIA grants requesters the right to challenge an agency's final action in federal court. Before doing so, an adjudication of an administrative appeal is ordinarily required.

The Office of Government Information Services (OGIS), an office created within the National Archives and Records Administration, offers free mediation services to FOIA requesters. They may be contacted in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001
Email: ogis@nara.gov

Phone: [301-837-1996](tel:301-837-1996)

Fax: [301-837-0348](tel:301-837-0348)

Toll-free: [1-877-684-6448](tel:1-877-684-6448)

If you choose to submit a formal appeal, as noted in your email, all activity on your request will be stopped until the appeal is vetted and fully processed. This means all DOC documents will be on hold until the appeal is final.

Before you decide to submit a formal appeal, I can offer to schedule a telephone call with you to discuss your specific exemption concerns of the OLE documents. Prior to the call, I ask that you provide me with identifying information of the documents in question in order to avoid searching for specific documents during the call.

4. “I have a time limit of 90 days on which to appeal (Started 8/3/16), which I would like to request be extended until the all the FOIA documents have been delivered. It is unfair to ask me to make my appeal decision without the totality of all the information. I have received less than 100 of the over 320 documents.

If this is not the proper way to request an extension of an appeal please let me know the method you require.”

The interim release was uploaded and sent via FOIAonline on August 16, 2016. After our call, if you choose to submit a formal appeal, you will be within the 90 calendar days limit (November 14, 2016 by 5:00 p.m., Eastern Time). The correct procedure to submit a formal appeal is found in paragraph 3, above, and in the interim release letter sent on August 16, 2016.

Please contact me if you would like to schedule a call to discuss your exemption concerns. I can be reached by email, Monday – Friday, at lorna.martin-gross@noaa.gov, or by phone on Tuesday, Thursday, and Friday, at [301-427-8244](tel:301-427-8244).

Kind regards,

Ms. Lorna Martin-Gross
Records Manager
Office of Law Enforcement
NOAA Fisheries
U.S. Department of Commerce
1315 East-West Highway
SSMC 3, Suite 3301
Office: [301-427-8244](tel:301-427-8244)
lorna.martin-gross@noaa.gov

From: FOIA Office - NOAA Service Account [mailto:foia@noaa.gov]
Sent: Friday, October 14, 2016 2:20 PM
To: Scott Doyle
Cc: Lorna Martin-Gross - NOAA Federal
Subject: Re: Fee Reimbursement Request

Good afternoon Mr. Doyle,

Thank you for your inquiry.

Lorna and Mark will address the FOIA request status and appeal questions. I can be your point of contact concerning the refund for your FOIA request.

I will follow-up with the NOAA finance office to check the status of your refund, and will have an update for you on Monday.

Please do not hesitate to contact me at the number below should you have additional questions concerning your refund.

Regards,

Lola Stith
NOAA FOIA Office
[703-298-8005](tel:703-298-8005)

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FOIA Officer
National Oceanic and Atmospheric Administration
[\(301\)-628-5658](tel:301-628-5658)

On Fri, Oct 14, 2016 at 2:14 PM, Scott Doyle <scottdoyle137@aol.com> wrote:
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Several items

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Sincerely

Scott Doyle

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To: scottdoyle137 <scottdoyle137@aol.com>

Sent: Thu, Sep 1, 2016 9:08 am

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09/01/2016 09:03 AM

FOIA Request: DOC-NOAA-2016-001270

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Mark Graff

NOAA FOIA Officer

--

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: [301-427-8244](tel:301-427-8244)

lorna.martin-gross@noaa.gov

--

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: 301-427-8244

lorna.martin-gross@noaa.gov

From: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>
Sent: Thursday, December 8, 2016 11:18 AM
To: Lorna Martin-Gross - NOAA Federal
Cc: Mark Graff - NOAA Federal; Arlyn Penaranda - NOAA Federal; Samuel Dixon - NOAA Affiliate
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

(b)(5) [Redacted]
[Redacted]
[Redacted]

Lola

On Thu, Dec 8, 2016 at 11:07 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:

Question,

(b)(5) [Redacted]
[Redacted]
[Redacted]
[Redacted]

Lorna

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(b)(5) [Redacted]

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) [Redacted] (C)

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Ladies.

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Ms. Smith

I have not been reimbursed and you look into this and give me a date certain for payment.

Scott Doyle

-----Original Message-----

From: Scott Doyle <scottdoyle137@aol.com>
To: lorna.martin-gross <lorna.martin-gross@noaa.gov>; lola.m.stith <lola.m.stith@noaa.gov>
Sent: Fri, Nov 18, 2016 4:29 pm
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Nothing from OIG, today was the day it was estimated to upload its docs. OSY has now had close to 3 months and nothing from them.

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Scott Doyle

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
To: lola.m.stith <lola.m.stith@noaa.gov>
Cc: scottdoyle137 <scottdoyle137@aol.com>
Sent: Wed, Nov 2, 2016 2:05 pm
Subject: FW: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Ms. Stith,

Please provide Mr. Doyle with an update of his fee reimbursement.

Thank you,

Ms. Lorna Martin-Gross
OLE Records Manager
Office: [301-427-8244](tel:301-427-8244)

From: Scott Doyle [mailto:scottdoyle137@aol.com]
Sent: Wednesday, November 02, 2016 1:51 PM
To: lorna.martin-gross@noaa.gov
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

I have not received my reimbursement and update.?

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
To: Scott Doyle <scottdoyle137@aol.com>
Sent: Tue, Oct 18, 2016 1:39 pm
Subject: RE: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Hello Mr. Doyle,

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Kind regards,

Ms. Lorna Martin-Gross

OLE Records Manager

Office: [301-427-8244](tel:301-427-8244)

From: Scott Doyle [mailto:scottdoyle137@aol.com]

Sent: Tuesday, October 18, 2016 1:15 PM

To: lorna.martin-gross@noaa.gov

Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Thank you for the response.

Can you please let me know when the refund has been issued.

Scott

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>

To: Scott Doyle <scottdoyle137@aol.com>

Cc: arlyn.penaranda <arlyn.penaranda@noaa.gov>; foia <foia@noaa.gov>

Sent: Tue, Oct 18, 2016 12:58 pm

Subject: RE: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Hello Mr. Doyle,

I understand your concern about not having received the remaining documents responsive to your FOIA request, DOC-NOAA-2016-001270. I will address each item of your email as it was written:

1. "I have not received my reimbursement as per the email below. That was well over a 2 months ago."

The NOAA FOIA office is following up on the status of your refund.

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The latest follow-up with the Department of Commerce was this morning. DOC's Office of Inspector General (OIG) estimates to have the documents uploaded into FOIAonline by November 18, 2016. DOC's Office of Security (OSY) has not provided an estimate, but we will continue to check the status. Once the OIG documents are uploaded into FOIAonline, you will be provided a second interim release letter with instructions to access responsive documents to your request. When the documents are provided by DOC OSY, a third interim release letter will be sent electronically with instructions to access responsive documents.

3. "I would like to appeal that parts have been redacted which I don't believe which should have been redacted. I want to send in one comprehensive request. Items like complete email addresses, names, titles, the body of reports that speak to the internal investigate as it relates to my interview, witness statements and general facts of the investigation etc."

The appeal language from the interim release letter states:

“We encourage you to speak with us if you have concerns as we continue to process this request. Although you have the ability to appeal at this time, we encourage you to focus the appeal/mediation/NOAA discussion, if needed, on exemptions applied to the documents thus far, but hold specific challenges about production until you have received and reviewed more of the voluminous records that the agency is still in the process of gathering and processing.

You have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this release must be received within 90 calendar days of the date of this response letter at the following address:

*Assistant General Counsel for Litigation, Employment, and Oversight
U.S. Department of Commerce
Office of General Counsel
Room 5875
14th and Constitution Avenue, N.W.
Washington, D.C. 20230*

An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to [202-482-2552](tel:202-482-2552), or by FOIAonline at <https://foiaonline.regulations.gov/foia/action/public/home#>.

For your appeal to be complete, it must include the following items:

- a copy of the original request,*
- our response to your request,*
- a statement explaining why the withheld records should be made available, and why the denial of the records was in error.*
- “Freedom of Information Act Appeal” must appear on your appeal letter. It should also be written on your envelope, e-mail subject line, or your fax cover sheet.*

FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely. FOIA grants requesters the right to challenge an agency's final action in federal court. Before doing so, an adjudication of an administrative appeal is ordinarily required. The Office of Government Information Services (OGIS), an office created within the National Archives and Records Administration, offers free mediation services to FOIA requesters. They may be contacted in any of the following ways:

*Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001
Email: ogis@nara.gov*

Phone: [301-837-1996](tel:301-837-1996)

Fax: [301-837-0348](tel:301-837-0348)

Toll-free: [1-877-684-6448](tel:1-877-684-6448)

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Kind regards,

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Records Manager
Office of Law Enforcement
NOAA Fisheries
U.S. Department of Commerce
1315 East-West Highway
SSMC 3, Suite 3301
Office: [301-427-8244](tel:301-427-8244)
lorna.martin-gross@noaa.gov

From: FOIA Office - NOAA Service Account [mailto:foia@noaa.gov]

Sent: Friday, October 14, 2016 2:20 PM

To: Scott Doyle

Cc: Lorna Martin-Gross - NOAA Federal

Subject: Re: Fee Reimbursement Request

Good afternoon Mr. Doyle,

Thank you for your inquiry.

Lorna and Mark will address the FOIA request status and appeal questions. I can be your point of contact concerning the refund for your FOIA request.

I will follow-up with the NOAA finance office to check the status of your refund, and will have an update for you on Monday.

Please do not hesitate to contact me at the number below should you have additional questions concerning your refund.

Regards,

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[703-298-8005](tel:703-298-8005)

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FOIA Officer
National Oceanic and Atmospheric Administration
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Scott Doyle

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To: scottdoyle137 <scottdoyle137@aol.com>
Sent: Thu, Sep 1, 2016 9:08 am
Subject: Fee Reimbursement Request

09/01/2016 09:03 AM

FOIA Request: DOC-NOAA-2016-001270

This is in response to your request for the reimbursement of the fees paid for the processing of your FOIA request. You have argued that the 2016 FOIA Improvent Act of 2016 mandates the return of fees paid to you. Although that act is not retroactive, it is correct that your request is past due, and unusual circumstances have not been cited as justifying billable processing with fees assessed in your request after the statutory time frame for responding to your request. As such, I have determined that your request is not billable, and that fees should be returned to you. A request for a refund of your fees paid will be submitted to the Office of the Chief Financial Officer.

Mark Graff
NOAA FOIA Officer

--

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: [301-427-8244](tel:301-427-8244)

lorna.martin-gross@noaa.gov

--

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: [301-427-8244](tel:301-427-8244)

lorna.martin-gross@noaa.gov

--

Lola Stith

Contractor - The Ambit Group, LLC

NOAA Office of the Chief Information Officer (OCIO)

(c) **(b)(6)**

lola.m.stith@noaa.gov

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From: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>
Sent: Friday, December 9, 2016 9:21 AM
To: Lorna Martin-Gross - NOAA Federal
Cc: Mark Graff - NOAA Federal
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Lorna (b)(5)

Lola

On Fri, Dec 9, 2016 at 8:15 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:
Lola,

(b)(5)

Thank you,

Lorna

On Thu, Dec 8, 2016 at 11:34 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

(b)(5)

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) (C)

On Thu, Dec 8, 2016 at 11:31 AM, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:

(b)(5)

Lola

On Thu, Dec 8, 2016 at 11:23 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

(b)(5)

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) (C)

On Thu, Dec 8, 2016 at 11:07 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:
Question,

(b)(5)
[Redacted]
[Redacted]
[Redacted]
[Redacted] ?

Lorna

On Thu, Dec 8, 2016 at 9:25 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:
(b)(5)
[Redacted].

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) (C)

On Thu, Dec 8, 2016 at 8:34 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:
Lola/Mark,

(b)(5)
[Redacted] ?

Lorna

On Wed, Dec 7, 2016 at 11:36 AM, Scott Doyle <scottdoyle137@aol.com> wrote:
Ladies.

Just checking

1. Remaining FOIA docs have not be delivered any update. It has not been 4 months.

Ms. Smith

I have not been reimbursed and you look into this and give me a date certain for payment.

Scott Doyle

-----Original Message-----

From: Scott Doyle <scottdoyle137@aol.com>

To: lorna.martin-gross <lorna.martin-gross@noaa.gov>; lola.m.stith <lola.m.stith@noaa.gov>

Sent: Fri, Nov 18, 2016 4:29 pm

Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Nothing from OIG, today was the day it was estimated to upload its docs. OSY has now had close to 3 months and nothing from them.

Can you check and give me a update next week.

Also the reimbursement had not be paid.

Scott Doyle

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>

To: lola.m.stith <lola.m.stith@noaa.gov>

Cc: scottdoyle137 <scottdoyle137@aol.com>

Sent: Wed, Nov 2, 2016 2:05 pm

Subject: FW: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Ms. Stith,

Please provide Mr. Doyle with an update of his fee reimbursement.

Thank you,

Ms. Lorna Martin-Gross

OLE Records Manager

Office: [301-427-8244](tel:301-427-8244)

From: Scott Doyle [mailto:scottdoyle137@aol.com]

Sent: Wednesday, November 02, 2016 1:51 PM

To: lorna.martin-gross@noaa.gov

Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

I have not received my reimbursement and update.?.

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>

To: Scott Doyle <scottdoyle137@aol.com>

Sent: Tue, Oct 18, 2016 1:39 pm

Subject: RE: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Hello Mr. Doyle,

If you did not hear back from Ms. Stith yesterday, based on her email response to you on 10/14, I recommend you follow-up with her directly. The NOAA FOIA office handles all FOIA related funds and they will be the first to know the status.

Kind regards,

Ms. Lorna Martin-Gross

OLE Records Manager

Office: [301-427-8244](tel:301-427-8244)

From: Scott Doyle [mailto:scottdoyle137@aol.com]
Sent: Tuesday, October 18, 2016 1:15 PM
To: lorna.martin-gross@noaa.gov
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Thank you for the response.

Can you please let me know when the refund has been issued.

Scott

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
To: Scott Doyle <scottdoyle137@aol.com>
Cc: arlyn.penaranda <arlyn.penaranda@noaa.gov>; foia <foia@noaa.gov>
Sent: Tue, Oct 18, 2016 12:58 pm
Subject: RE: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Hello Mr. Doyle,

I understand your concern about not having received the remaining documents responsive to your FOIA request, DOC-NOAA-2016-001270. I will address each item of your email as it was written:

1. "I have not received my reimbursement as per the email below. That was well over a 2 months ago."

The NOAA FOIA office is following up on the status of your refund.

2. "I have not received all the additional FOIA documents that were originally identified. Can you give me an idea when I will receive them and reason for the continued delay?"

The latest follow-up with the Department of Commerce was this morning. DOC's Office of Inspector General (OIG) estimates to have the documents uploaded into FOIAonline by November 18, 2016. DOC's Office of Security (OSY) has not provided an estimate, but we will continue to check the status. Once the OIG documents are uploaded into FOIAonline, you will be provided a second interim release letter with instructions to access responsive documents to your request. When the documents are provided by DOC OSY, a third interim release letter will be sent electronically with instructions to access responsive documents.

3. "I would like to appeal that parts have been redacted which I don't believe which should have been redacted. I want to send in one comprehensive request. Items like complete email addresses, names, titles, the body of reports that speak to the internal investigate as it relates to my interview, witness statements and general facts of the investigation etc."

The appeal language from the interim release letter states:

"We encourage you to speak with us if you have concerns as we continue to process this request. Although you have the ability to appeal at this time, we encourage you to focus the appeal/mediation/NOAA discussion, if needed, on exemptions applied to the documents thus far, but hold specific challenges about production until you have received and reviewed more of the voluminous records that the agency is still in the process of gathering and processing.

You have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons

why you believe the FOIA response was not satisfactory. An appeal based on documents in this release must be received within 90 calendar days of the date of this response letter at the following address:

Assistant General Counsel for Litigation, Employment, and Oversight
U.S. Department of Commerce
Office of General Counsel
Room 5875

14th and Constitution Avenue, N.W.

Washington, D.C. 20230

An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to [202-482-2552](tel:202-482-2552), or by FOIAonline at <https://foiaonline.regulations.gov/foia/action/public/home#>.

For your appeal to be complete, it must include the following items:

- a copy of the original request,
- our response to your request,
- a statement explaining why the withheld records should be made available, and why the denial of the records was in error.
- “Freedom of Information Act Appeal” must appear on your appeal letter. It should also be written on your envelope, e-mail subject line, or your fax cover sheet.

FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

FOIA grants requesters the right to challenge an agency's final action in federal court. Before doing so, an adjudication of an administrative appeal is ordinarily required.

The Office of Government Information Services (OGIS), an office created within the National Archives and Records Administration, offers free mediation services to FOIA requesters. They may be contacted in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510

8601 Adelphi Road

College Park, MD 20740-6001

Email: ogis@nara.gov

Phone: [301-837-1996](tel:301-837-1996)

Fax: [301-837-0348](tel:301-837-0348)

Toll-free: [1-877-684-6448](tel:1-877-684-6448)

If you choose to submit a formal appeal, as noted in your email, all activity on your request will be stopped until the appeal is vetted and fully processed. This means all DOC documents will be on hold until the appeal is final.

Before you decide to submit a formal appeal, I can offer to schedule a telephone call with you to discuss your specific exemption concerns of the OLE documents. Prior to the call, I ask that you provide me with identifying information of the documents in question in order to avoid searching for specific documents during the call.

4. "I have a time limit of 90 days on which to appeal (Started 8/3/16), which I would like to request be extended until the all the FOIA documents have been delivered. It is unfair to ask me to make my appeal decision without the totality of all the information. I have received less than 100 of the over 320 documents.

If this is not the proper way to request an extension of an appeal please let me know the method you require."

The interim release was uploaded and sent via FOIAonline on August 16, 2016. After our call, if you choose to submit a formal appeal, you will be within the 90 calendar days limit (November 14, 2016 by 5:00 p.m., Eastern Time). The correct procedure to submit a formal appeal is found in paragraph 3, above, and in the interim release letter sent on August 16, 2016.

Please contact me if you would like to schedule a call to discuss your exemption concerns. I can be reached by email, Monday - Friday, at lorna.martin-gross@noaa.gov, or by phone on Tuesday, Thursday, and Friday, at [301-427-8244](tel:301-427-8244).

Kind regards,

Ms. Lorna Martin-Gross

*Records Manager
Office of Law Enforcement
NOAA Fisheries
U.S. Department of Commerce
1315 East-West Highway
SSMC 3, Suite 3301
Office: [301-427-8244](tel:301-427-8244)
lorna.martin-gross@noaa.gov*

From: FOIA Office - NOAA Service Account [mailto:foia@noaa.gov]
Sent: Friday, October 14, 2016 2:20 PM
To: Scott Doyle
Cc: Lorna Martin-Gross - NOAA Federal
Subject: Re: Fee Reimbursement Request

Good afternoon Mr. Doyle,

Thank you for your inquiry.

Lorna and Mark will address the FOIA request status and appeal questions. I can be your point of contact concerning the refund for your FOIA request.

I will follow-up with the NOAA finance office to check the status of your refund, and will have an update for you on Monday.

Please do not hesitate to contact me at the number below should you have additional questions concerning your refund.

Regards,

Lola Stith
NOAA FOIA Office
[703-298-8005](tel:703-298-8005)

Mark H. Graff
FOIA Officer

National Oceanic and Atmospheric Administration
[\(301\)-628-5658](tel:(301)628-5658)

On Fri, Oct 14, 2016 at 2:14 PM, Scott Doyle <scottdoyle137@aol.com> wrote:
Mr Graff, Ms. Martin,

Several items

1. I have not received my reimbursement as per the email below. That was well over a 2 months ago.
2. I have not received all the additional FOIA documents that were originally identified. Can you give me an idea when I will receive them and reason for the continued delay?
3. I would like to appeal that parts have been redacted which I don't believe which should have been redacted. I want to send in one comprehensive request. Items like complete email addresses, names, titles, the body of reports that speak to the internal investigate as it relates to my interview, witness statements and general facts of the investigation etc.
4. I have a time limit of 90 days on which to appeal (Started 8/3/16), which I would like to request be extended until the all the FOIA documents have been delivered. It is unfair to ask me to make my appeal decision without the totality of all the information. I have received less than 100 of the over 320 documents.

If this is not the proper way to request an extension of an appeal please let me know the method you require.

I appreciate your consideration on this matter and realize your office is not the reason for the delay.

Sincerely

Scott Doyle

-----Original Message-----

From: foia <foia@noaa.gov>
To: scottdoyle137 <scottdoyle137@aol.com>
Sent: Thu, Sep 1, 2016 9:08 am
Subject: Fee Reimbursement Request

09/01/2016 09:03 AM

FOIA Request: DOC-NOAA-2016-001270

This is in response to your request for the reimbursement of the fees paid for the processing of your FOIA request. You have argued that the 2016 FOIA Improvement Act of 2016 mandates the return of fees paid to you. Although that act is not retroactive, it is correct that your request is past due, and unusual circumstances have not been cited as justifying billable processing with fees assessed in your request after the statutory time frame for responding to your request. As such, I have determined that your request is not billable, and that fees should be returned to you. A request for a refund of your fees paid will be submitted to the Office of the Chief Financial Officer.

Mark Graff
NOAA FOIA Officer

--

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: [301-427-8244](tel:301-427-8244)

lorna.martin-gross@noaa.gov

--

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: [301-427-8244](tel:301-427-8244)

lorna.martin-gross@noaa.gov

--

Lola Stith

Contractor - The Ambit Group, LLC

NOAA Office of the Chief Information Officer (OCIO)

(c **(b)(6)**)

lola.m.stith@noaa.gov

--

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: [301-427-8244](tel:301-427-8244)

lorna.martin-gross@noaa.gov

--

Lola Stith

Contractor - The Ambit Group, LLC

NOAA Office of the Chief Information Officer (OCIO)

(c (b)(6) [REDACTED])

lola.m.stith@noaa.gov

(b)(5)

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
Sent: Friday, December 9, 2016 8:16 AM
To: Lola Stith - NOAA Affiliate
Cc: Mark Graff - NOAA Federal
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Lola,

(b)(5)

Thank you,

Lorna

On Thu, Dec 8, 2016 at 11:34 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

(b)(5)

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) (C)

On Thu, Dec 8, 2016 at 11:31 AM, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:

(b)(5)

Lola

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(b)(5)

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FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) (C)

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Question,

(b)(5)

Lorna

On Thu, Dec 8, 2016 at 9:25 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

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FOIA Officer/Bureau Chief Privacy Officer (BCPO)
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Lola/Mark,

(b)(5) ?

Lorna

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Ladies.

Just checking

1. Remaining FOIA docs have not be delivered any update. It has not been 4 months.

Ms. Smith

I have not been reimbursed and you look into this and give me a date certain for payment.

Scott Doyle

-----Original Message-----

From: Scott Doyle <scottdoyle137@aol.com>

To: lorna.martin-gross <lorna.martin-gross@noaa.gov>; lola.m.stith <lola.m.stith@noaa.gov>

Sent: Fri, Nov 18, 2016 4:29 pm

Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Nothing from OIG, today was the day it was estimated to upload its docs. OSY has now had close to 3 months and nothing from them.

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Also the reimbursement had not be paid.

Scott Doyle

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To: lola.m.stith <lola.m.stith@noaa.gov>
Cc: scottdoyle137 <scottdoyle137@aol.com>
Sent: Wed, Nov 2, 2016 2:05 pm
Subject: FW: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Ms. Stith,

Please provide Mr. Doyle with an update of his fee reimbursement.

Thank you,

Ms. Lorna Martin-Gross

OLE Records Manager
Office: [301-427-8244](tel:301-427-8244)

From: Scott Doyle [mailto:scottdoyle137@aol.com]
Sent: Wednesday, November 02, 2016 1:51 PM
To: lorna.martin-gross@noaa.gov
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

I have not received my reimbursement and update.?

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
To: Scott Doyle <scottdoyle137@aol.com>
Sent: Tue, Oct 18, 2016 1:39 pm
Subject: RE: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Hello Mr. Doyle,

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Kind regards,

Ms. Lorna Martin-Gross

OLE Records Manager
Office: [301-427-8244](tel:301-427-8244)

From: Scott Doyle [mailto:scottdoyle137@aol.com]
Sent: Tuesday, October 18, 2016 1:15 PM
To: lorna.martin-gross@noaa.gov
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Thank you for the response.

Can you please let me know when the refund has been issued.

Scott

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
To: Scott Doyle <scottdoyle137@aol.com>
Cc: arlyn.penaranda <arlyn.penaranda@noaa.gov>; foia <foia@noaa.gov>
Sent: Tue, Oct 18, 2016 12:58 pm
Subject: RE: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Hello Mr. Doyle,

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1. "I have not received my reimbursement as per the email below. That was well over a 2 months ago."

The NOAA FOIA office is following up on the status of your refund.

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The appeal language from the interim release letter states:

"We encourage you to speak with us if you have concerns as we continue to process this request. Although you have the ability to appeal at this time, we encourage you to focus the appeal/mediation/NOAA discussion, if needed, on exemptions applied to the documents thus far, but hold specific challenges about production until you have received and reviewed more of the voluminous records that the agency is still in the process of gathering and processing.

You have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this release must be received within 90 calendar days of the date of this response letter at the following address:

*Assistant General Counsel for Litigation, Employment, and Oversight
U.S. Department of Commerce
Office of General Counsel
Room 5875
14th and Constitution Avenue, N.W.*

Washington, D.C. 20230

An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to [202-482-2552](tel:202-482-2552), or by FOIAonline at <https://foiaonline.regulations.gov/foia/action/public/home#>.

For your appeal to be complete, it must include the following items:

- a copy of the original request,
- our response to your request,
- a statement explaining why the withheld records should be made available, and why the denial of the records was in error.
- “Freedom of Information Act Appeal” must appear on your appeal letter. It should also be written on your envelope, e-mail subject line, or your fax cover sheet.

FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely. FOIA grants requesters the right to challenge an agency's final action in federal court. Before doing so, an adjudication of an administrative appeal is ordinarily required.

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Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001
Email: ogis@nara.gov

Phone: [301-837-1996](tel:301-837-1996)

Fax: [301-837-0348](tel:301-837-0348)

Toll-free: [1-877-684-6448](tel:1-877-684-6448)

If you choose to submit a formal appeal, as noted in your email, all activity on your request will be stopped until the appeal is vetted and fully processed. This means all DOC documents will be on hold until the appeal is final.

Before you decide to submit a formal appeal, I can offer to schedule a telephone call with you to discuss your specific exemption concerns of the OLE documents. Prior to the call, I ask that you provide me with identifying information of the documents in question in order to avoid searching for specific documents during the call.

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If this is not the proper way to request an extension of an appeal please let me know the method you require.”

The interim release was uploaded and sent via FOIAonline on August 16, 2016. After our call, if you choose to submit a formal appeal, you will be within the 90 calendar days limit (November 14, 2016 by 5:00 p.m., Eastern Time). The correct procedure to submit a formal appeal is found in paragraph 3, above, and in the interim release letter sent on August 16, 2016.

Please contact me if you would like to schedule a call to discuss your exemption concerns. I can be reached by email, Monday - Friday, at lorna.martin-gross@noaa.gov, or by phone on Tuesday, Thursday, and Friday, at [301-427-8244](tel:301-427-8244).

Kind regards,

Ms. Lorna Martin-Gross
*Records Manager
Office of Law Enforcement
NOAA Fisheries
U.S. Department of Commerce
1315 East-West Highway
SSMC 3, Suite 3301
Office: 301-427-8244
lorna.martin-gross@noaa.gov*

From: FOIA Office - NOAA Service Account [mailto:foia@noaa.gov]
Sent: Friday, October 14, 2016 2:20 PM
To: Scott Doyle
Cc: Lorna Martin-Gross - NOAA Federal
Subject: Re: Fee Reimbursement Request

Good afternoon Mr. Doyle,

Thank you for your inquiry.

Lorna and Mark will address the FOIA request status and appeal questions. I can be your point of contact concerning the refund for your FOIA request.

I will follow-up with the NOAA finance office to check the status of your refund, and will have an update for you on Monday.

Please do not hesitate to contact me at the number below should you have additional questions concerning your refund.

Regards,

Lola Stith
NOAA FOIA Office
[703-298-8005](tel:703-298-8005)

Mark H. Graff
FOIA Officer
National Oceanic and Atmospheric Administration
[\(301\)-628-5658](tel:301-628-5658)

On Fri, Oct 14, 2016 at 2:14 PM, Scott Doyle <scottdoyle137@aol.com> wrote:
Mr Graff, Ms. Martin,

Several items

1. I have not received my reimbursement as per the email below. That was well over a 2 months ago.

2. I have not received all the additional FOIA documents that were originally identified. Can you give me an idea when I will receive them and reason for the continued delay?

3. I would like to appeal that parts have been redacted which I don't believe which should have been redacted. I want to send in one comprehensive request. Items like complete email addresses, names, titles, the body of reports that speak to the internal investigate as it relates to my interview, witness statements and general facts of the investigation etc.

4. I have a time limit of 90 days on which to appeal (Started 8/3/16), which I would like to request be extended until the all the FOIA documents have been delivered. It is unfair to ask me to make my appeal decision without the totality of all the information. I have received less than 100 of the over 320 documents.

If this is not the proper way to request an extension of an appeal please let me know the method you require.

I appreciate your consideration on this matter and realize your office is not the reason for the delay.

Sincerely

Scott Doyle

-----Original Message-----

From: foia <foia@noaa.gov>

To: scottdoyle137 <scottdoyle137@aol.com>

Sent: Thu, Sep 1, 2016 9:08 am

Subject: Fee Reimbursement Request

09/01/2016 09:03 AM

FOIA Request: DOC-NOAA-2016-001270

This is in response to your request for the reimbursement of the fees paid for the processing of your FOIA request. You have argued that the 2016 FOIA Improvement Act of 2016 mandates the return of fees paid to you. Although that act is not retroactive, it is correct that your request is past due, and unusual circumstances have not been cited as justifying billable processing with fees assessed in your request after the statutory time frame for responding to your request. As such, I have determined that your request is not billable, and that fees should be returned to you. A request for a refund of your fees paid will be submitted to the Office of the Chief Financial Officer.

Mark Graff

NOAA FOIA Officer

--

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: [301-427-8244](tel:301-427-8244)
lorna.martin-gross@noaa.gov

--

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--

Lola Stith
Contractor - The Ambit Group, LLC
NOAA Office of the Chief Information Officer (OCIO)
(c (b)(6))
lola.m.stith@noaa.gov

--

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lorna.martin-gross@noaa.gov

(b)(5)

From: Deanna Harwood - NOAA Federal <deanna.harwood@noaa.gov>
Sent: Friday, December 9, 2016 3:13 PM
To: Ana Liza Malabanan; Mark Graff - NOAA Federal; John Almeida - NOAA Federal; Kathryn Kempton
Cc: Judson Feder
Subject: Fwd: Ecological Rights Foundation v. FEMA: Proposed Second Amended Complaint
Attachments: 21 - Motion For Leave To File SAC.PDF; 21-1 Proposed SAC.PDF

FYI. See DOJ's email below. (b)(5)

[REDACTED]

[REDACTED]

[REDACTED]

[Deanna Harwood](#)
Deputy Chief, Southwest Section
NOAA, Office of General Counsel
U.S. Department of Commerce
501 W. Ocean Blvd., Suite 4470
Long Beach, CA 90802
(562) 980-4068

----- Forwarded message -----

From: Wall, Robin (USACAN) <Robin.Wall@usdoj.gov>
Date: Fri, Dec 9, 2016 at 11:49 AM
Subject: Ecological Rights Foundation v. FEMA: Proposed Second Amended Complaint
To: Deanna Harwood - NOAA Federal <deanna.harwood@noaa.gov>

Deanna,

FYI (b)(5)

[REDACTED]

[REDACTED]

[REDACTED]

Best,

Robin

Robin M. Wall

Assistant United States Attorney

United States Attorney's Office, Northern District of California

450 Golden Gate Avenue, 9th Floor

San Francisco, CA 94102

[415.436.7071](tel:415.436.7071)

robin.wall@usdoj.gov

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15 Attorneys for Plaintiff
16 ECOLOGICAL RIGHTS FOUNDATION

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA

19 ECOLOGICAL RIGHTS FOUNDATION, a
20 non-profit corporation,

21 Plaintiff,

22 v.

23 FEDERAL EMERGENCY MANAGEMENT
24 AGENCY, an agency of the Department of
25 Homeland Security,

26 Defendant.

Civil Case No. 16-cv-05254-MEJ

**NOTICE OF MOTION AND MOTION
FOR LEAVE TO FILE FIRST
AMENDED COMPLAINT**

Hearing Date: 10:00 AM, January 19, 2017

Location: 450 Golden Gate Avenue, 15th
Floor, Courtroom B,
San Francisco, CA 94102

27
28

NOTICE OF MOTION

Pursuant to Local Rule 7.2 Plaintiff Ecological Rights Foundation (“EcoRights” or “Plaintiff”) provides notice that on January 19, 2017 at 10:00 AM or as soon thereafter as counsel can be heard, Plaintiff will move this Court in Courtroom B, 15th Floor, 450 Golden Gate Avenue, San Francisco, California, to grant a motion pursuant to Fed. R. Civ. P. 15(a) for leave to file Plaintiff’s Second Amended Complaint. Plaintiff’s Second Amended Complaint adds additional FOIA claims against the Federal Emergency Management Agency agency ("FEMA") and new claims against the National Marine Fisheries Service (“NMFS”). Plaintiff seeks leave to amend in accord with the liberal rules allowing pleading amendment to advance the vindication of all meritorious claims in a single proceeding.

MEMORANDUM OF POINTS AND AUTHORITIES OF SUPPORT OF MOTION

I. INTRODUCTION

Plaintiff moves this court, pursuant to Federal Rules of Civil Procedure (“FRCP”) 15(a) for an order granting Plaintiff leave to amend its Complaint in this action. A copy of the proposed Second Amended Complaint is attached to this motion as Exhibit A.

Plaintiff’s proposed Second Amended Complaint would: 1) revise the First Claim for Relief to include an allegation that FEMA improperly withheld responsive documents for one of the Freedom of Information Act (“FOIA”) requests at issue, 2) revise the Third Claim for Relief to allege that FEMA imposed an invalid search cut-off for one of the FOIA requests at issue, and remove claims brought under FEMA agency regulations that will soon be superseded, 3) add a Fourth Claim for Relief regarding FEMA’s failure to timely refer documents to one of its sister agencies, including from a FOIA request not addressed in the First Amended complaint; 4) add a Fifth Claim for Relief regarding FEMA’s failure to respond to two FOIA requests within FOIA deadlines, including from a FOIA request not addressed in the First Amended Complaint 5) add a Sixth Claim for Relief regarding NMFS’s failure to make timely determinations on documents referred to it by FEMA, and for failure to promptly provide the documents to EcoRights, including from a FOIA request not addressed in the First Amended Complaint; and 6) add a Seventh Claim for Relief regarding NMFS’s pattern and practice of failing to

1 timely respond to FOIA requests, particularly those that have been referred to them by other agencies.

2 Plaintiff has contacted Defendant FEMA's counsel concerning this Motion. Counsel for FEMA
3 has stated that Defendant FEMA will not oppose this Motion for Leave to File Plaintiff's Second
4 Amended Complaint.

5 **II. FACTUAL BACKGROUND**

6 In keeping with its organizational purposes as a nonprofit public interest advocacy group,
7 Plaintiff has sent FEMA three FOIA requests seeking up-to-date information about FEMA's compliance
8 with the Endangered Species Act ("ESA") as the agency implements the National Flood Insurance
9 Program ("NFIP") in California. FOIA imposes a 20 working day deadline for federal agencies to issue
10 a final determination as to how they will respond to FOIA requests. 5 U.S.C. § 552(a)(6)(A)(i). In
11 unusual circumstances the agency may extend the time for the determination for no more than ten days
12 by written notice to the party specifying the reasons for the extension and the date on which the
13 determination is expected to be sent. 5 U.S.C. § 552(a)(6)(B)(i). A party may administratively appeal
14 any agency's adverse determination on FOIA requests. 5 U.S.C. § 552(a)(6)(A)(i). Agencies must
15 decide such appeals within twenty business days. 5 U.S.C. § 552(a)(6)(A)(ii). FEMA has not complied
16 with these mandatory deadlines.

17 Plaintiff sent the FOIA request at issue in the First Amended Complaint on April 8, 2016, which
18 FEMA assigned number "FEMA 2016-FEFO-01357" ("April 2016 FOIA Request"). The FOIA deadline
19 for FEMA's final response to this request was May 20, 2016. FEMA did not meet this deadline as it did
20 not provide what might be the final determination on the April 2016 FOIA Request until September 16,
21 2016, approximately four months after the deadlines mandated by FOIA.¹ FEMA made four interim
22 releases for the April 8, 2016 request, wherein FEMA asserted extensive withholdings under FOIA
23
24

25 ¹ FEMA's letter dated September 16, 2016 states that it was the "fourth and final interim response." Use
26 of the word "interim" suggests that FEMA had additional documents to process. Thus it is unclear
27 whether the September 16, 2016 letter was in fact FEMA's final response.

1 exemptions (b)(5) and (b)(6), referred documents to NMFS, and set a search cut-off date of the day the
2 request was made. EcoRights has yet to receive any of the documents referred to NMFS.

3 EcoRights timely appealed FEMA's determination in a letter dated June 27, 2016, wherein
4 EcoRights objected that FEMA had missed statutory deadlines, had made an inadequate search for
5 documents, had improperly withheld documents without adequate justification that the documents are
6 exempt from disclosure under FOIA, and had failed to segregate factual material. On July 15, 2016,
7 EcoRights sent FEMA a supplemental appeal statement alleging that FEMA withheld documents
8 without adequate justification that they were exempt from disclosure under FOIA as required by the new
9 FOIA Improvement Act of 2016. The twenty working day deadline for FEMA to respond to EcoRights'
10 appeal was July 26, 2016. By letter dated July 29, 2016, FEMA denied EcoRights' appeal.

11 On September 14, 2016, Plaintiff filed the Complaint in this case (Dkt. 1). On October 6, 2016,
12 Plaintiff filed its Amended Complaint (Dkt. 10). On October 17, 2016 Plaintiff sent another FOIA
13 request to FEMA, FEMA 2017-FEFO-00124, ("October 17, 2016 FOIA Request"), seeking additional
14 documents relating to the NFIP. On October 19, 2016, Plaintiff sent another FOIA request to FEMA
15 ("October 19, 2016 Request"), which sought additional documents relating to the implementation of the
16 NFIP in Monterey County, California. The FOIA deadline for FEMA to issue a final determination
17 concerning its response to the October 19, 2016 request was December 2, 2016. On November 29, 2016,
18 FEMA issued its final determination on the October 17, 2016 Request, which notified Plaintiff that
19 FEMA had referred 7 pages to NMFS for the latter agency to determine whether to release. NMFS has
20 failed to meet either the 20 or 30 working day FOIA deadline for response to Plaintiff's October 17,
21 2016 FOIA Request.

22 On December 2, 2016, Plaintiff received an interim response letter from FEMA to the October
23 19, 2016 Request, which processed 19 out of 1,182 responsive pages. FEMA redacted portions of 11
24 pages under FOIA exemption (b)(6), and referred 3 pages to the U.S. Fish and Wildlife Service for the
25 latter agency's review and potential release. FEMA's letter stated that "We anticipate the next release of
26 all or a substantial number of the documents will occur in two to three weeks." As December 2, 2016
27 was the deadline for FEMA to have completed its response, FEMA is therefore in violation of FOIA

1 deadlines. On December 8, 2016, Plaintiff is filing a motion and proposed order for leave to file the
2 second amended complaint.

3 **III. ARGUMENT**

4 After a responsive pleading has been filed, a party may amend a pleading “only by leave of court
5 or by written consent of the adverse party; and leave shall be freely given when justice so requires.”
6 FRCP 15(a). This rule that leave to amend shall be freely given is applied with “strong liberality.”
7 *Foman v. Davis*, 371 U.S. 178 (1962); see *DCD Programs, Ltd. V. Leighton*, 833 F.2d 183, 186 (9th Cir.
8 1987); *Morango Band of Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990). As the U.S. Court of
9 Appeals for the Ninth Circuit has explained, under FRCP 15(a):

10 Where there is a lack of prejudice to the opposing party and the amended complaint is obviously
11 not frivolous, or made as a dilatory maneuver in bad faith, it is an abuse of discretion to deny
12 such a motion. The purpose of the litigation process is to vindicate meritorious claims.

13 *Howey v. United States*, 481 F.2d 1187, 1190-91 (9th Cir. 1973); see also *Sweaney v. Ada County,*
14 *Idaho*, 119 F.3d 1385, 1392-93 (9th Cir. 1997); *Sierra Club v. Union Oil Co. of California*, 813 F.2d
15 1480, 1493 (9th Cir. 1987), *vacated on other grounds*, 99 L.Ed.2d 264 (1988). Plaintiff must be granted
16 leave to amend its Complaint to add its proposed new FOIA claims under FRCP 15(a) because (1) the
17 new FOIA claims are not frivolous nor futile, (2) Plaintiff is not proceeding in bad faith, and (3),
18 Defendants will not be prejudiced by the Complaint amendment. *E.g., Sweaney*, 119 F.3d at 1392-93.

19 **A. The Proposed Revisions to Existing Claims and Addition of Claims is Neither Frivolous 20 nor Futile.**

21 Plaintiff proposed revisions to existing claims and addition of new claims is meritorious and
22 cannot conceivably be characterized as frivolous. FEMA has continued to be in violation of FOIA in
23 regards to the April 8, 2016 Request, and is now in violation of FOIA over the October 17, 2016
24 Request and October 19, 2016 Request. NMFS similarly is in violation of FOIA in regards to the April
25 8, 2016 Request and October 17, 2016 Request. The standard Plaintiff must meet in this respect is very
26 lenient: “[A] proposed amendment is futile only if no set of facts can be proved under the amendment to
27 the pleadings that would constitute a valid and sufficient claim or defense.” *Miller v. Rykoff-Sexton, Inc.*,
845 F.2d 209, 214 (9th Cir. 1998). Defendants cannot show that Plaintiff can prove no set of facts

1 establishing that FEMA and NMFS have not met FOIA deadlines or complied with other requirements
2 of FOIA.

3 **B. Plaintiff is Not Proceeding in Bad Faith.**

4 Plaintiff has not acted in bad faith in proposing to amend its Complaint, as would be the case
5 if this proposal was part of a series of vexatious amendments meant merely to harass or catch
6 Defendants off-guard or keep meritless claims in court. Instead, Plaintiff seeks leave “to ensure that the
7 claims already presented would be decided on their merits, in furtherance of the very purposes of Rule
8 15.” *Jones v. Bates*, 127 F.3d 839, 847 (9th Cir. 1997). Plaintiff is moving to amend to add additional
9 valid claims to support the relief sought under existing facts already at issue and new, closely related
10 facts.

11 **C. Defendants Will Suffer No Prejudice Due to the Complaint Amendment.**

12 Prejudice to the opposing party for FRCP 15(a) purposes means that the timing of the
13 amendment precludes the Defendants from fairly preparing their defense. *E.g., Howey*, 481 F.2d at
14 1191. The Defendants must be put “to some serious disadvantage,” “it is not enough that [a defendant]
15 advance an imagined grievance or seeks to protect some tactical advantage.” *Hodgson v. Colonnades,*
16 *Inc.* 472 F.2d 42, 48 (5th Cir. 1973). The Defendants can make no showing of prejudice by allowing the
17 Plaintiff’s revisions and additions to be heard in this proceeding.

18 **D. Allowing This Amendment Will Promote Judicial Efficiency.**

19 Finally, the Second Amended Complaint ensures that all of Plaintiff’s claims against the
20 Defendants are encompassed in one lawsuit. The courts would be used more efficiently if Plaintiff is
21 permitted to amend its Complaint rather than requiring Plaintiff to commence a second action against
22 the Defendants for the revised and additional claims.

23 **IV. CONCLUSION**

24 Because Plaintiff’s Second Amended Complaint will foster the determination of the case on the
25 merits and in one action, because leave was sought in a timely fashion which does not Prejudice
26 Defendants and because leave to amend is freely granted, Plaintiff should be granted leave to amend.
27 Plaintiff further suggests that the Court dispense with a hearing on this Motion and grant the Motion on

1 the papers, as it appears likely it will not be opposed.

2
3 Respectfully Submitted,

4 Dated: December 8, 2016

5 

6

Christopher Sproul
7 *Counsel for Ecological Rights Foundation*

EXHIBIT 1

1 Christopher Sproul (State Bar No. 126398)
2 Christopher Hudak (State Bar No. 282283)
3 Danielle Rathje (State Bar No. 300167)
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15 Attorneys for Plaintiff
16 ECOLOGICAL RIGHTS FOUNDATION

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA

19 ECOLOGICAL RIGHTS FOUNDATION, a
20 non-profit corporation,

21 Plaintiff,

22 v.

23 FEDERAL EMERGENCY MANAGEMENT
24 AGENCY, an agency of the Department of
25 Homeland Security, and NATIONAL MARINE
26 FISHERIES SERVICE, an agency of the
27 Department of Commerce,

28 Defendants.

Civil Case No. 16-cv-05254-MEJ

**[PROPOSED] SECOND AMENDED
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 Ecological Rights Foundation (“EcoRights”) alleges as follows:

2 **INTRODUCTION**

3 1. EcoRights amends its First Amended Complaint (Dkt. 10) to: 1) revise the First Claim for
4 Relief to include an allegation that the Federal Emergency Management Agency (“FEMA”) improperly
5 withheld responsive documents for one of the Freedom of Information Act (“FOIA”) requests at issue,
6 2) revise the Third Claim for Relief to allege that FEMA imposed an invalid search cut-off for one of the
7 FOIA requests at issue, and remove claims brought under FEMA agency regulations that will soon be
8 superseded, 3) add a Fourth Claim for Relief regarding FEMA’s failure to timely refer documents to one
9 of it’s sister agencies, including from a FOIA request not addressed in the first amended complaint; 4)
10 add a Fifth Claim for Relief regarding FEMA’s failure to respond to two FOIA requests within FOIA
11 deadlines, including from a FOIA request not addressed in the first amended complaint 5) add a Sixth
12 Claim for Relief regarding National Marine Fisheries Service’s (“NMFS”) failure to make timely
13 determinations on documents referred to them by FEMA, and for failure to promptly provide the
14 documents to EcoRights, including from a FOIA request not addressed in the first amended complaint;
15 and 6) add a Seventh Claim for Relief regarding NMFS’s pattern and practice of failing to timely
16 respond to FOIA requests, particularly those that have been referred to them by other agencies.

17 2. EcoRights brings this action under FOIA, which allows an aggrieved party to seek relief when
18 documents are unlawfully withheld, and authorizes a reviewing court to enjoin the agency from
19 withholding records and to order the production of any agency records improperly withheld from the
20 complainant. 5 U.S.C. § 552(a)(4)(B). EcoRights seeks declaratory and injunctive relief for FOIA
21 violations by FEMA and NMFS.

22 3. At issue in this case are three FOIA requests. The first, dated April 8, 2016 and assigned
23 tracking number FEMA 2016-FEFO-01357 (“April 2016 Request”), is a FOIA request to FEMA
24 seeking documents addressing Endangered Species Act (“ESA”) section 7 consultations (16 U.S.C. §
25 1536) that have been initiated or proposed pertaining to the implementation of the National Flood
26 Insurance Program (“NFIP”) in California; documents concerning any ESA section 10 permits or habitat
27 conservation plans (16 U.S.C. § 1539) that have been initiated or proposed, pertaining to the

1 implementation of the NFIP in California; documents submitted to FEMA by NMFS, U.S. Fish and
2 Wildlife Service (“USFWS”), the California Department of Fish and Wildlife (“CDFW”), or any other
3 State or Federal agency or department pertaining to the ESA and the implementation of the NFIP in
4 California; and documents concerning any ESA section 7 consultations (16 U.S.C. § 1536) that have
5 been initiated or proposed, pertaining to any national level draft or final rule(s) related to the NFIP.

6 4. The second FOIA request at issue, dated October 17, 2016 and assigned tracking number
7 FEMA 2017-FEFO-00124 (“October 17, 2016 Request”), sought the same types of documents as the
8 April 2016 Request, except for documents dated only after April 8, 2016 and with the addition of a
9 request for any materials that would have released to EcoRights in FEMA’s response to EcoRights’
10 April 2016 Request had FEMA considered the FOIA Improvement Act of 2016 to apply, including
11 relevant documents not included in FEMA’s releases to EcoRights or the removal of redactions in
12 documents already released to EcoRights.

13 5. The third FOIA request at issue, dated October 19, 2016 and assigned tracking number FEMA
14 2017-FEFO-00145 (“October 19, 2016 Request”), sought documents addressing ESA section 7
15 consultations (16 U.S.C. § 1536) that have been initiated or proposed pertaining to certain Letters of
16 Map Correction (with Product ID Number and Effective Date), issued for properties in Monterey
17 County, California, through the NFIP; documents submitted to FEMA by NMFS, USFWS, the CDFW,
18 or any other State or Federal agency or department pertaining to the Letters of Map Correction at issue
19 in the request; documents addressing ESA section 7 consultations (16 U.S.C. § 1536) that have been
20 initiated or proposed pertaining to the implementation of the NFIP in Monterey County, California,
21 dated from January 1, 2000 to December 31, 2008; documents submitted to FEMA by NMFS, USFWS,
22 the CDFW, or any other State or Federal agency or department pertaining to ESA section 7
23 consultations (16 U.S.C. § 1536) that have been initiated or proposed pertaining to the implementation
24 of the NFIP in Monterey County, California, dated from January 1, 2000 to December 31, 2008;
25 documents addressing ESA section 10 permits or habitat conservation plans (16 U.S.C. § 1539) that
26 have been initiated or proposed pertaining to the implementation of the NFIP in Monterey County,
27 California, dated from January 1, 2000 to December 31, 2008; any Conditional Letters of Map Revision

1 Based on Fill (“CLOMR-F”), Conditional Letters of Map Revision (“CLOMR”), or Conditional Letters
 2 of Map Amendment (“CLOMA”), or any other type of conditional letter of map change, issued in
 3 Monterey County, between January 1, 2000 and the date FEMA responded to the request; documents
 4 addressing ESA section 7 consultations (16 U.S.C. § 1536) that have been initiated or proposed
 5 pertaining to any letters of map change issued in Monterey County, between January 1, 2000 and the
 6 date FEMA responded to the request; and documents submitted to FEMA by NMFS, USFWS, the
 7 CDFW, or any other State or Federal agency or department pertaining to any letters of map correction
 8 issued in Monterey County, between January 1, 2000 and the date FEMA responded to the request.

9 6. EcoRights alleges that FEMA: 1) has improperly withheld documents under invalid claims of
 10 exemptions under 5 U.S.C. section 552(b)(5) (“Exemption 5”) and 5 U.S.C. section 552(b)(6)
 11 (“Exemption 6”) of FOIA, and improperly withheld other responsive documents; 2) has failed to
 12 segregate and provide purely factual material responsive to EcoRights’ April 2016 Request but has
 13 instead swept up such factual material in its withholding claim; 3) imposed an improper search date for
 14 the April 2016 Request, 4) improperly delayed referrals of documents to be evaluated for release to
 15 NMFS, and 5) failed to provide final determinations concerning the April 2016 Request and October 19,
 16 2016 Request at issue within statutory deadlines.

17 7. EcoRights alleges that NMFS: 1) failed to provide final determinations concerning the
 18 documents referred to them by FEMA from EcoRights’ April 2016 Request and October 17, 2016
 19 Request within statutory deadlines or to “promptly” produce the referred documents and 2), that NMFS
 20 engages in a pattern and practice of failing to timely respond to FOIA requests, particularly those that
 21 have been referred to them by other agencies.

22 8. FEMA’s and NMFS’s continued failure to properly respond to EcoRights’ FOIA requests has
 23 harmed the ability of EcoRights and other public interest organizations and individuals to serve as
 24 effective public interest watchdogs over FEMA’s and NMFS’s compliance with the ESA as the FEMA
 25 implements the NFIP in California.

JURISDICTION

26
 27 9. This Court has subject matter jurisdiction under 5 U.S.C. section 552(a)(4)(B), which allows an

1 aggrieved party to seek relief when documents are unlawfully withheld, and authorizes a reviewing
2 court to enjoin the agency from withholding records and to order the production of any agency records
3 improperly withheld from the complainant.

4 10. This Court has personal jurisdiction over FEMA and NMFS, both of which are agencies of the
5 federal government and operating within the United States.

6 **VENUE**

7 11. Venue in the United States District for the Northern District of California is proper under 5
8 U.S.C. section 552(a)(4)(B) because the complainants have their principal place of business in the
9 Northern District, and many of the records sought by complainants are most likely situated in the FEMA
10 office located at 1111 Broadway, Oakland, California, and in the NMFS office located at 777 Sonoma
11 Avenue, Santa Rosa, California--which are located within the Northern District.

12 **INTRADISTRICT ASSIGNMENT**

13 12. Intradistrict assignment of this matter to the San Francisco Division of the Court is
14 appropriate pursuant to Civil Local Rule 3-2(d) because EcoRights' principal counsel resides in San
15 Francisco County, EcoRights' principal place of business is located in Garberville, California and the
16 office of the Deputy U.S. Attorney who is serving as FEMA's counsel and possibly NMFS's in this
17 matter is located in the Federal Building in San Francisco County.

18 **THE PARTIES**

19 13. EcoRights is a non-profit, public benefit corporation, organized under the laws of the State of
20 California, devoted to furthering the rights of all people to a clean, healthful, and biologically diverse
21 environment. To further its environmental advocacy goals, EcoRights actively seeks federal and state
22 agency implementation of state and federal wildlife related laws, and as necessary, directly initiates
23 enforcement actions on behalf of itself and its members.

24 14. Defendant FEMA, an agency of the Department of Homeland Security, is the agency of the
25 United States Government responsible for administering and implementing the National Flood Insurance
26 Program.
27

1 15. Defendant NMFS, a branch of the National Oceanic and Atmospheric Administration, a
2 division of the Department of Commerce, is the agency of the United States Government responsible for
3 administering and implementing the ESA for anadromous fisheries and generally is responsible for the
4 stewardship of the nation's living marine resources and their habitat.

5 **STATUTORY AND REGULATORY BACKGROUND**

6 16. FOIA requires that an agency disclose documents to any person except where the document
7 falls under a specifically enumerated exemption. 5 U.S.C. § 552. The courts have emphasized the
8 narrow scope of these exemptions and “the strong policy of the FOIA that the public is entitled to know
9 what its government is doing and why.” *Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 868
10 (D.C. Cir. 1980).

11 17. When an agency decides to withhold records under a claim of exemption it must notify the
12 person making such request of such determination and the reasons therefor. 5 U.S.C. § 552(a)(6)(A)(i).
13 Government agencies bear the burden of proof to show that any withheld documents are exempt from
14 the duty to disclose. 5 U.S.C. § 522(a)(4)(B).

15 18. On June 30, 2016, President Obama signed into law the FOIA Improvement Act of 2016. The
16 Act made significant amendments to FOIA, effective as of enactment on June 30, 2016. 5 U.S.C. § 522,
17 § 6; Department of Justice Office of Information Policy Summary of the FOIA Improvement Act of
18 2016, available at <https://www.justice.gov/oip/oip-summary-foia-improvement-act-2016> (“OIP FOIA
19 2016 Summary”). The amendments include changes to the standard by which FEMA must evaluate
20 withholdings. The FOIA Improvement Act of 2016 dictates that agencies shall withhold information
21 only if disclosure would harm an interest protected by an exemption what is referred to as the
22 “foreseeable harm standard.” 5 U.S.C. § 552(a)(8)(A)(i); OIP FOIA 2016 Summary.

23 19. Agencies may not make blanket redactions of the names and contact information of agency
24 employees under Exemption 6 unless the information regards personnel, medical, and similar files the
25 disclosure of which would constitute an invasion of personal privacy. 5 U.S.C. § 552(b)(6).
26 Individualized inquiry, not categorical non-disclosure, is required to balance individual privacy interests
27 with the right of the public to free access to information about its government. 5 U.S.C § 552(b)(6);

1 *American Immigration Lawyers Assn. v. Executive Office for Immigration Review*, 2016 WL 4056405
2 (D.C. Cir. 2016).

3 20. Furthermore, 5 U.S.C. section 552(a)(6)(A)(i) requires that the agency provide enough
4 information, presented with sufficient detail, clarity, and verification, so that the requester can fairly
5 determine what has not been produced and “the reasons therefore.”

6 21. Additionally, FOIA requires an agency to consider partial disclosure whenever the agency
7 determines that full disclosure of a requested record is not possible and to take reasonable steps
8 necessary to segregate and release nonexempt information. 5 U.S.C. § 552(a)(8)(A).

9 22. FOIA also requires that an agency, upon any request for records, shall make the records
10 available promptly. 5 U.S.C. § 552(a)(3)(A). An agency shall make a determination whether to comply
11 with a request within twenty (20) business days after the receipt of the request and shall immediately
12 notify the party making the request of such determination, the reasons for the determination, and the
13 party’s right to appeal. 5 U.S.C. § 552(a)(6)(A)(i). In unusual circumstances, the agency may extend the
14 time for the determination, for no more than ten (10) days, by written notice to the party, specifying the
15 reasons for the extension and the date on which the determination is expected to be sent. 5 U.S.C. §
16 552(a)(6)(B)(i). “Unusual circumstances” means (1) the need to search for and collect requested records
17 from field facilities or other establishments separate from the office processing the request; (2) the need
18 to search for, collect, and appropriately examine a voluminous amount of separate and distinct records;
19 or (3) the need for consultation with another agency or agency component having a substantial interest
20 in the determination of the request. *Id.* Consultation with another agency shall be conducted with all
21 practicable speed. 5 U.S.C. § 552(a)(6)(B)(iii)(III).

22 23. Federal agencies are under a duty to conduct a reasonable search for records responsive to a
23 party’s request using methods that can be reasonably expected to produce the information requested to
24 the extent they exist. 5 U.S.C. § 522(a)(3)(C).

25 24. An agency’s process for dealing with FOIA requests constitutes “withholding” if its net effect
26 is to significantly impair the requester’s ability to obtain the records or significantly increase the amount
27

1 of time he or she must wait to obtain them. *McGehee, III v. Central Intelligence Agency*, 697 F.2d 1095,
2 1110 (D.C. Cir. 1983), *vacated in part on other grounds*, 711 F.2d 1076 (1983).

3 **FACTUAL BACKGROUND**

4 **EcoRights' FOIA Requests**

5 25. EcoRights has sent FEMA a series of FOIA requests for documents related to ESA section 7
6 consultations (16 U.S.C. § 1536) over implementation of the NFIP. EcoRights' most recent three FOIA
7 requests are at issue in this case: the April 2016 Request, the October 17, 2016 Request, and the October
8 19, 2016 Request. FEMA has failed to issue final determinations concerning EcoRights' April 2016
9 Request and October 19, 2016 Request within the deadlines mandated by FOIA or to produce
10 documents responsive to these two requests promptly. For the April 2016 Request, FEMA has withheld
11 documents without adequate justification, has failed to segregate factual material, and imposed improper
12 search cut-off dates. For the April 2016 Request and October 17, 2016 Request, FEMA has failed to
13 refer the documents to NMFS in a timely fashion. NMFS has failed to issue final determinations
14 concerning the April 2016 Request and October 17, 2016 Request within the deadline mandated by
15 FOIA or to produce documents responsive to these two requests promptly.

16 26. The records sought by EcoRights are crucial for the public to understand how the NFIP can
17 impact development and wildlife habitat in floodplains and to evaluate how FEMA or NMFS may or
18 may not be fulfilling their obligations under the ESA. As a public interest environmental organization,
19 EcoRights is concerned that because a number of federal courts have already held that FEMA failed to
20 properly consult with NMFS or USFWS over the NFIP in other states, FEMA has similarly not fulfilled
21 its requirements under the ESA in California.

22 27. EcoRights has intended to use the information requested to educate the public about any steps
23 taken by FEMA to comply with the ESA and any USFWS, NMFS, or CDFW considerations of the
24 impacts of the NFIP on listed species. Without this information, EcoRights cannot successfully serve as
25 an effective public interest watchdog ensuring FEMA's or NMFS' compliance with the ESA in
26 California.

27 **EcoRights' April 2016 Request**

1 28. On April 8, 2016, EcoRights' counsel received a letter from FEMA acknowledging receipt of
2 the April 2016 Request (submitted April 8, 2016), which invoked a 10-day extension per 5 U.S.C. §
3 552(a)(6)(B). With the invocation of the ten-day extension, the FOIA deadline for FEMA's final
4 response to the April 2016 Request was May 20, 2016. As detailed further below, FEMA provided a
5 partial release of responsive documents only after the FOIA deadline had passed, and did not provide
6 what might be the final release of documents responsive to the April 2016 Request until September 16,
7 2016, approximately 4 months after the deadline mandated by FOIA.¹

8 ***FEMA's First Interim Response to EcoRights' April 2016 Request***

9 29. In its May 26, 2016 first interim letter responding to the April 2016 Request, FEMA indicated
10 that it had identified 4,267 records responsive to EcoRights' FOIA request, of which FEMA processed
11 500 pages for its first interim release. The letter stated that "FEMA will produce additional document
12 releases approximately every three weeks [which] will comprise approximately 1,000 pages per
13 installment, leaving three to four installments of documents anticipated." The letter indicated that FEMA
14 was granting full access to 4 records, was withholding access in part to 486 pages, and was withholding
15 access in full to 5 pages. FEMA also indicated that it had referred 5 pages to NMFS for the latter agency
16 to review and potentially release.

17 30. FEMA claimed the documents constituted deliberative process, attorney-client, and attorney
18 work product exempt from disclosure pursuant to Exemption 5 and were further exempt from disclosure
19 pursuant to Exemption 6. FEMA did not provide the reasons for withholding documents other than the
20 conclusory assertion that the documents were exempt from disclosure pursuant to Exemption 5 and
21 Exemption 6. FEMA provided no reasons as to why this assertion was ostensibly true nor any
22 explanation of how disclosure of the particular documents would damage the interest protected by the
23 claimed exemption, as required by FOIA. The FOIA Improvement Act of 2016 expressly requires that
24 FEMA can only withhold such information if "the agency reasonably foresees that disclosure would

25 _____
26 ¹ FEMA's letter dated September 16, 2016 states that it was the "fourth and final interim response." Use of the word
27 "interim" suggests that FEMA had additional documents to process. Thus it is unclear whether the September 16, 2016 letter
was in fact FEMA's final response.

1 harm an interest protected by an exemption.” 5 U.S.C § 552(a)(8)(A)(i)(I). On information and belief,
2 EcoRights alleges that there is no such FEMA interest in withholding this information.

3 31. Furthermore, many of the documents FEMA partially released were so heavily redacted that
4 they were of little to no use.

5 32. EcoRights has not received any of the documents FEMA referred to NMFS.

6 33. EcoRights via their public interest counsel at Environmental Advocates timely appealed
7 FEMA’s determination in a letter dated June 27, 2016.

8 ***FEMA’s Second Interim Response to EcoRights’ April 2016 Request***

9 34. In its second interim letter, dated June 29, 2016, responding to the April 2016 Request,
10 FEMA indicated that it made partial and full redactions of 491 documents under Exemption 5 and
11 Exemption 6 but failed to indicate how many of the 491 documents were withheld pursuant to either
12 exemption.

13 35. FEMA stated that of 1,138 pages, only 103 were releasable, portions of 1,010 pages were
14 exempted, and 25 pages were exempted in their entirety under the attorney-client privilege, attorney
15 work product privilege, deliberative process privilege, or Exemption 6.

16 36. FEMA also indicated that its search cut-off date for documents responsive to the April 2016
17 Request was April 8, 2016 (the day the request was submitted), *i.e.*, FEMA had instructed its staff in
18 responding to the April 2016 Request that they should not search for documents generated after April 8,
19 2016.

20 37. FEMA did not provide the reasons for withholding documents other than the conclusory
21 assertion that the documents were exempt from disclosure pursuant to Exemption 5 and Exemption 6.
22 FEMA provided no reasons as to why this assertion was ostensibly true nor any explanation of how
23 disclosure of the particular documents would damage the interest protected by the claimed exemption, as
24 required by FOIA. The FOIA Improvement Act of 2016 expressly requires that FEMA can only
25 withhold such information if “the agency reasonably foresees that disclosure would harm an interest
26 protected by an exemption.” 5 U.S.C § 552(a)(8)(A)(i)(I). On information and belief, EcoRights alleges
27 that there is no such FEMA interest in withholding this information.

1 38. Many of the documents FEMA partially released were so heavily redacted that they were of
2 little to no use.

3 ***EcoRights' Supplemental Appeal Statement Regarding the FOIA Improvement Act***

4 39. EcoRights sent FEMA a supplemental appeal statement dated July 15, 2016 alleging that
5 FEMA withheld documents without adequate justification that they were exempt from disclosure under
6 FOIA as required by the new FOIA Improvement Act of 2016.

7 40. FEMA denied EcoRights' claims by letter dated July 29, 2016. In its denial, FEMA
8 contended that EcoRights' FOIA request "is not subject to the provisions of the FOIA Improvement
9 Act."

10 ***FEMA's Third Interim Letter in Response to EcoRights' April 2016 Request***

11 41. In its third interim letter in response to EcoRights' request, dated July 18, 2016, FEMA
12 indicated that after processing 1,314 pages, 1,022 were releasable in their entirety, portions of 186
13 pages were exempt, 102 pages were being withheld in their entirety, and two pages were referred to
14 NMFS.

15 42. FEMA again claimed the documents constituted deliberative process, attorney-client, and
16 attorney work product exempt from disclosure pursuant to Exemption 5 and were further exempt from
17 disclosure pursuant to Exemption 6. FEMA did not provide the reasons for withholding documents other
18 than the conclusory assertion that the documents were exempt from disclosure pursuant to Exemptions 5
19 and 6. FEMA provided no reasons as to why these assertions were ostensibly true nor any explanation of
20 how disclosure of the particular documents would damage the interest protected by the claimed
21 exemption, as required by FOIA. The FOIA Improvement Act of 2016 expressly requires that FEMA
22 can only withhold such information if "the agency reasonably foresees that disclosure would harm an
23 interest protected by an exemption." 5 U.S.C § 552(a)(8)(A)(i)(I). On information and belief, EcoRights
24 alleges that there is no such FEMA interest in withholding this information. Furthermore, many of the
25 documents FEMA partially released were so heavily redacted that they were of little to no use.

26 43. FEMA also indicated that its search cut-off date for documents responsive to the April 2016
27

1 Request was April 8, 2016 (the day the request was submitted), *i.e.*, FEMA had instructed its staff in
2 responding to the April 2016 Request that they should not search for documents generated after April 8,
3 2016.

4 44. EcoRights has not received any of the documents that FEMA indicated in its July 18, 2016
5 letter that FEMA had referred to NMFS for the latter agency to review and potentially release.

6 ***FEMA's Fourth and Final Interim Letter in Response to Ecoright's April 2016 Request***

7 45. On September 16, 2016, more than five months after EcoRights sent the April 2016 Request,
8 FEMA provided its "Fourth and Final Interim Letter," stating that of 781 pages processed in this fourth
9 interim round of FEMA responses to the Request, it had referred 38 pages to NMFS, determined that
10 564 pages were releasable in their entirety, and that portions of the remaining 178 pages were exempted
11 from release.

12 46. FEMA again claimed the documents constituted deliberative process, attorney-client, and
13 attorney work product exempt from disclosure pursuant to Exemption 5 and were further exempt from
14 disclosure pursuant to Exemption 6. FEMA did not provide the reasons for withholding documents other
15 than the conclusory assertion that the documents were exempt from disclosure pursuant to Exemption 5
16 and Exemption 6. FEMA provided no reasons as to why these assertions were ostensibly true nor any
17 explanation of how disclosure of the particular documents would damage the interest protected by the
18 claimed exemption, as required by FOIA. The FOIA Improvement Act of 2016 expressly requires that
19 FEMA can only withhold such information if "the agency reasonably foresees that disclosure would
20 harm an interest protected by an exemption." 5 U.S.C § 552(a)(8)(A)(i)(I). On information and belief,
21 EcoRights alleges that there is no such FEMA interest in withholding this information.

22 47. FEMA also indicated that its search cut-off date for documents responsive to the April 2016
23 Request was April 8, 2016 (the day the request was submitted), *i.e.*, FEMA had instructed its staff in
24 responding to the April 2016 Request that they should not search for documents generated after April 8,
25 2016.

26 48. Many of the documents FEMA partially released were so heavily redacted that they were of
27

1 little to no use; many documents included only partial e-mail chains or parts of emails, including almost
2 no attachments.

3 49. NMFS has also failed to provide EcoRights with any of the 38 documents that FEMA and
4 indicated in its September 16, 2016 letter that FEMA has referred to NMFS for the latter agency to
5 review and potentially release. On information and belief, EcoRights alleges that FEMA has not
6 complied with 5 U.S.C. § 552(b)'s requirement that when asserting a document contains materials
7 exempt from disclosure the federal agency must segregate any purely factual material not exempt from
8 disclosure. FEMA's FOIA determination letter makes no mention of any attempt by FEMA to review
9 the documents for segregable factual information.

10 50. In its four interim releases of documents responsive to the April 2016 Request, FEMA
11 extensively invoked Exemption 5 for documents that relate to FEMA's rulemaking on the NFIP.
12 However, FEMA has already twice waived confidentiality to at least some of the documents that pertain
13 to this rulemaking, and has thus improperly redacted these documents.

14 51. First, FEMA effectively disclosed many of the documents' contents in other public
15 communications about its policies, such as numerous public documents that have already revealed that
16 NMFS and FEMA disagree whether FEMA must consult under ESA § 7 with NMFS over the NFIP.
17 *See, e.g.*, "The Changing Landscape of Flood Plains," Environmental and Land Use Law, Sept.
18 2014., Vol. 40, No. 2 at page 5, *available at* <http://www.wsba.org/~media/Files/Legal>
19 [%20Community/Sections/ELUL/Newsletters/September%202014.ashx](http://www.wsba.org/~media/Files/Legal%20Community/Sections/ELUL/Newsletters/September%202014.ashx) (accessed 7/12/16); "Guidance
20 for Flood Risk Analysis and Mapping: Documentation of Endangered Species Act Compliance for
21 Conditional Letters of Map Change," FEMA, Nov. 2015, *available at* [http://www.fema.gov/media-](http://www.fema.gov/media-library-data/1449865883913-95472b08561a5a14738b38683ec256c7/ESA_Guidance_Nov_2015.pdf)
22 [library-data/1449865883913-95472b08561a5a14738b38683ec256c7/ESA_Guidance_Nov_2015.pdf](http://www.fema.gov/media-library-data/1449865883913-95472b08561a5a14738b38683ec256c7/ESA_Guidance_Nov_2015.pdf)
23 (accessed 7/12/16); NMFS Biological Opinion on the NFIP in Oregon (at page 2 pointing out that
24 FEMA engaged in ESA section 7 consultation on aspect of NFIP in response to federal court order),
25 *available at* [http://www.westcoast.fisheries.noaa.gov/publications/habitat/2016_04-14_fema_nfip_nwr-](http://www.westcoast.fisheries.noaa.gov/publications/habitat/2016_04-14_fema_nfip_nwr-2011-3197.pdf)
26 [2011-3197.pdf](http://www.westcoast.fisheries.noaa.gov/publications/habitat/2016_04-14_fema_nfip_nwr-2011-3197.pdf) (accessed 7/12/16).

27 52. Second, FEMA has also waived confidentiality of documents pertaining to the conflict

1 between NMFS and FEMA over FEMA's duties under the ESA since FEMA has already disclosed un-
2 redacted documents on the issue to EcoRights in prior FOIA releases, which are the subject of an
3 ongoing "clawback" dispute in *EcoRights v. FEMA*, 4:15-cv-04068-DMR (N.D. Cal). In the prior
4 releases, FEMA directly released documents detailing the dispute between FEMA and NMFS to
5 EcoRights, and NMFS published online documents referred to NMFS by FEMA.

6 53. FEMA has also redacted names in released documents in its four interim releases of
7 documents responsive to the April 2016 Request under a claim of Exemption 6. However, on the face of
8 the documents, there is nothing to show that names redacted fall under any privacy protections. On
9 information and belief, EcoRights alleges that the extensive redactions of third-party names have not
10 been the result of a thoughtful process, but rather have been applied in a blanket fashion. The FOIA
11 Improvement Act of 2016 expressly requires that FEMA can only withhold such information if "the
12 agency reasonably foresees that disclosure would harm an interest protected by an exemption." 5 U.S.C
13 § 552(a)(8)(A)(i)(I). On information and belief, EcoRights alleges that there is no such FEMA interest in
14 withholding these documents.

15 54. The redaction of full names in FOIA documents dramatically reduces the utility of released
16 documents by hampering efforts by requesters such as EcoRights to construct an accurate narrative. A
17 given document might appear entirely cryptic until its context can be seen as part of a chain of related
18 documents, and it is frequently impossible or exceedingly difficult to create a chain of related documents
19 without knowing who generated and received them.

20 55. In its second interim response letter, FEMA explained that it was imposing a search cutoff
21 date of April 8, 2016 the date the request was made. FEMA set an improper cutoff date by looking
22 only for documents in its possession as of the date it received the April 2016 Request, not the date it
23 actually conducts each of its searches. This is problematic because now that it has taken four
24 installments and more than five months for FEMA to respond to EcoRights' request, all of the responses
25 are now more than 5 months out of date. This problem is further exacerbated by the fact that NMFS has
26 failed to provide any of the documents that FEMA allegedly referred to NMFS.

27 56. Ultimately, FEMA's methodology of utilizing an improper cutoff date effectively precludes

1 EcoRights and other public interest organizations and individuals from promptly obtaining current
2 documents addressing the topics of its FOIA request and constitutes an unjustifiable withholding under
3 FOIA.

4 **EcoRights' October 17, 2016 Request**

5 57. On October 18, 2016, EcoRights' counsel received a letter from FEMA acknowledging
6 receipt of the October 17, 2016 Request, which invoked a 10-day extension of the deadline to respond to
7 the October 17, 2016 Request per 5 U.S.C. § 552(a)(6)(B). FEMA issued its final determination on the
8 October 17, 2016 Request on November 29, 2016, which notified Plaintiff that FEMA had referred 7
9 pages to NMFS for the latter agency to determine whether to release. The 20 working day deadline for
10 NMFS to have responded to the referral was November 14, 2016 or November 29, 2016 if a 10 working
11 day extension was invoked. To date, Plaintiff has not received any communication from NMFS
12 regarding the request, and either 1) NMFS has failed to meet either the 20 or 30 working day FOIA
13 deadline for response to Plaintiff's October 17, Request, or 2) FEMA never forwarded the referral to
14 NMFS in violation of FOIA.

15 **EcoRights' October 19, 2016 Request**

16 58. On October 20, 2016, EcoRights' counsel received a letter from FEMA acknowledging
17 receipt of the October 19, 2016 Request, which invoked a 10-day extension of the deadline to respond to
18 the Request per 5 U.S.C. § 552(a)(6)(B). With the invocation of the 10-day extension, the FOIA
19 deadline for the October 19, 2016 Request was December 2, 2016. On December 2, 2016, Plaintiff
20 received an interim response letter from FEMA to the October 19, 2016 Request, which processed 19
21 out of 1,182 responsive pages. FEMA released five pages in their entirety, redacted portions of 11 pages
22 on contention that they were exempt from release pursuant to Exemption 6, and referred 3 pages to U.S.
23 Fish and Wildlife Service for the latter agency to review and potentially release. FEMA's letter stated
24 that "We anticipate the next release of all or a substantial number of the documents will occur in two to three
25 weeks." FEMA has not yet provided a final determination with respect to whether it will release documents
26 responsive to the October 19, 2016 Request. As December 2, 2016 was the deadline for FEMA to have
27 completed its response, FEMA is in violation of FOIA deadlines.

1 59. In its first interim release of documents responsive to the October 19, 2016 Request, FEMA
2 again redacted names in released documents under a claim of Exemption 6. FEMA did not provide the
3 reasons for withholding documents other than the conclusory assertion that the documents were exempt
4 from disclosure pursuant to FOIA Exemption 6. FEMA provided no reasons as to why this assertion was
5 ostensibly true nor any explanation of how disclosure of the particular documents would damage the
6 interest protected by the claimed exemption, as required by FOIA. On the face of the documents, there is
7 nothing to show that the redacted names fall under any privacy protections. On information and belief,
8 EcoRights alleges that the redactions of third-party names have again not been the result of a thoughtful
9 process, but rather have been applied in a blanket fashion. The FOIA Improvement Act of 2016
10 expressly requires that FEMA can only withhold such information if “the agency reasonably foresees
11 that disclosure would harm an interest protected by an exemption.” 5 U.S.C § 552(a)(8)(A)(i)(I). On
12 information and belief, EcoRights alleges that there is no such FEMA interest in withholding this
13 information.

14 **FIRST CLAIM FOR RELIEF**
15 **FEMA Violation of FOIA**
16 **5 U.S.C. §§ 552(a)**

17 **Request for Declaratory Relief and Injunction to Compel FEMA to Comply with FOIA**
18 **Requirement to Release Documents Unless a Valid Exemption Applies**

19 60. EcoRights reasserts and realleges the preceding paragraphs above.

20 61. FEMA has violated 5 U.S.C. § 552(a)(8)(A) by withholding documents under invalid and
21 unjustified claims of exemption under Exemption 5 and Exemption 6. FEMA may not withhold
22 documents unless foreseeable harm will occur to an interest protected by an enumerated exemption. 5
23 U.S.C. § 552(a)(8)(A)(i). Exemptions are read narrowly and FEMA bears the burden of proving
24 exemptions apply, which it has failed to do. 5 U.S.C. § 552(a)(4)(b). FEMA has violated FOIA by
25 failing to promptly produce all documents responsive to EcoRights’ April 2016 Request and October 19,
26 2016 Request not subject to a valid FOIA exemption. 5 U.S.C. § 552(a)(3)(A).

27 62. Furthermore, 5 U.S.C. section 552(a)(6)(A)(i) “requires that the agency provide enough

1 information, presented with sufficient detail, clarity, and verification, so that the requester can fairly
2 determine what has not been produced and why, and the court can decide whether the exemptions
3 claimed justify the nondisclosure.” When an agency invokes any of the FOIA exemptions, the agency
4 must also explain its reasons for withholding documents. FEMA has not complied with these
5 requirements.

6 63. Furthermore, FEMA violated FOIA by improperly withholding responsive documents,
7 particularly from the fourth interim release from the April 2016 Request. There are numerous examples
8 in the fourth interim release from the April 2016 Request where FEMA did not include attachments to
9 emails that were clearly pertinent to the April 2016 Request. Moreover, there are numerous examples
10 from the fourth interim release of the April 2016 Request where FEMA did not release complete email
11 chains which, on information and belief, included documents responsive to the April 2016 Request.

12 64. EcoRights has constructively exhausted its administrative remedies given FEMA's failure to
13 provide a final determination for the April 2016 Request or October 19, 2016 Request within FOIA's
14 statutory time limits. 5 U.S.C. § 552(a)(6)(C)(i).

15 **SECOND CLAIM FOR RELIEF**
16 **FEMA Violation of 5 U.S.C. § 552(a)(8)(A)(ii)**

17 **Request for Declaratory Relief and Injunction to Compel FEMA to Comply with FEMA's**
18 **Requirement to Segregate Factual and Exempted Material**

19 65. EcoRights reasserts and realleges all the preceding paragraphs above.

20 66. On information and belief, EcoRights alleges that FEMA has violated 5 U.S.C. §
21 552(a)(8)(A)(ii) in failing to segregate any factual material contained within the documents requested by
22 EcoRights' April 2016 Request from any materials that may be withheld under a valid claim of
23 exemption.

24 67. EcoRights has constructively exhausted its administrative remedies given FEMA's failure to
25 provide a final determination for the April 2016 Request and October 19, 2016 Request within FOIA's
26 statutory time limits. 5 U.S.C. § 552(a)(6)(C)(i).

THIRD CLAIM FOR RELIEF
FEMA Violation of FOIA
5 U.S.C. § 552

**Request for Declaratory Relief Establishing that FEMA
Has Employed Improper Search Cut-Off Dates that Violate FOIA**

68. EcoRights reasserts and realleges all the preceding paragraphs above.

69. FEMA has violated 5 U.S.C. § 552 by imposing an invalid cut-off date for the April 2016 Request that constitute an unjustified withholding of relevant information and delay the release of current information relevant to requests. By applying a search cut-off date of the date of the request despite not providing what is purportedly the final release over 5 months later, Plaintiff was precluded from receiving up-to-date information.

70. EcoRights has constructively exhausted its administrative remedies given FEMA's failure to provide a final determination for the April 2016 Request within FOIA's statutory time limits. 5 U.S.C. § 552(a)(6)(C)(i).

FOURTH CLAIM FOR RELIEF
FEMA Violation of
5 U.S.C. §§ 552

**Request for Declaratory and Injunctive Relief Compelling FEMA
To Complete Delayed Referrals of FOIA Requests**

71. EcoRights reasserts and realleges all the preceding paragraphs above.

72. On information and belief, FEMA has violated 5 U.S.C. § 552 by delaying referrals of documents from the April 2016 Request and October 17, 2016 Request to NMFS.

FIFTH CLAIM FOR RELIEF
FEMA Violation of
5 U.S.C. §§ 552(a) and (b)

**Request for Declaratory Relief and Injunction to Compel FEMA
To Comply with FOIA Deadlines and Produce Illegally Withheld Records**

73. EcoRights reasserts and realleges all the preceding paragraphs above.

74. FEMA has violated 5 U.S.C. §§ 552(a)(6)(A) and (B) by failing to provide final

1 determinations concerning the April 2016 Request and October 19, 2016 Request within the statutory
 2 deadlines. 5 U.S.C. § 552(a)(6)(A)(i) is plain: within 20 working days of the date that a FOIA request is
 3 received federal agencies must provide a determination that (1) informs the requester as to the
 4 disposition of its request, *i.e.*, whether documents will be provided or withheld and if the latter, why, and
 5 (2) that informs the requester of a right to appeal any decision not to provide requested documents.
 6 Federal agencies at most can extend this 20 working day deadline by an additional 10 working days by
 7 informing the requester in writing (1) that "unusual circumstances" necessitate such an extension and (2)
 8 when the agency will respond. 5 U.S.C. § 552(a)(6)(B)(i). The statutory deadline for FEMA's
 9 determination on EcoRights' April 2016 Request was May 20, 2016, which includes the 10-day "unusual
 10 circumstances" extension. FEMA provided a partial release six days after the deadline had passed, and
 11 did not provide what might be the final release until September 16, 2016, approximately 4 months after
 12 the deadline. The statutory deadline for FEMA's determination on EcoRights' October 19, 2016 Request
 13 was December 2, 2016, which includes the 10 working day "unusual circumstances" extension. FEMA
 14 provided a partial release on the day of the deadline, while stating that "We anticipate the next release of
 15 all or a substantial number of the documents will occur in two to three weeks." FEMA has thus violated
 16 FOIA's statutory deadlines for responding to the April 2016 Request and October 19, 2016 Request.

17 75. FEMA has violated FOIA by failing to "promptly" produce all documents responsive to the
 18 April 2016 Request and October 19, 2016 Request not subject to a lawful FOIA exemption, as the final
 19 determinations are overdue. 5 U.S.C. § 552(a)(3)(A).

20 **SIXTH CLAIM FOR RELIEF**

21 **NMFS Violation of FOIA**

22 **5 U.S.C. §§ 552(a)**

23 **Request for Declaratory Relief and Injunction to Compel NMFS
 24 To Comply with FOIA Deadlines and Produce Illegally Withheld Records**

25 76. EcoRights reasserts and realleges all the preceding paragraphs above.

26 77. NMFS has violated 5 U.S.C. §§ 552(a)(6)(A) by failing to provide final
 27 determinations concerning documents referred to them by FEMA within the statutory deadlines,
 pertaining to the April 2016 Request and the October 17, 2016 Request. 5 U.S.C. § 552(a)(6)(A)(i) is

1 plain: within 20 working days of the date that a FOIA request is received federal agencies must provide
2 a determination that (1) informs the requester as to the disposition of its request, *i.e.*, whether documents
3 will be provided or withheld and if the latter, why, and (2) that informs the requester of a right to appeal
4 any decision not to provide requested documents. Federal agencies at most can extend this 20 working
5 day deadline by an additional 10 working days by informing the requester in writing (1) that "unusual
6 circumstances" necessitate such an extension and (2) when the agency will respond. 5 U.S.C. §
7 552(a)(6)(B)(i).

8 78. The documents referred to NMFS by FEMA from the April 2016 Request were due 20
9 working days from April 8, 2016, on May 5, 2016. However, to date EcoRights has received no
10 communication from NMFS on this referral and NMFS is therefore in violation of 5 U.S.C. §
11 552(a)(6)(A)(i).

12 79. In the alternative, the 20 working day deadline for NMFS to respond to the April 2016
13 Request began on the date that NMFS was first made aware of the referral. On information and belief,
14 EcoRights believes that it has been more than 20 working days since that date.

15 80. The documents referred to NMFS by FEMA from the October 17, 2016 Request were due 20
16 working days later, on November 29, 2016. However, to date EcoRights has received no communication
17 from NMFS on this referral and NMFS is therefore in violation of 5 U.S.C. § 552(a)(6)(A)(i).

18 81. In the alternative, the 20 working day deadline for NMFS to respond to the October 17, 2016
19 Request began on the date that NMFS was first made aware of the referral. On information and belief,
20 EcoRights believes that it has been more than 20 working days since that date.

21 82. NMFS has therefore failed to provide its final determinations within FOIA's statutory time
22 limits.

23 83. NMFS has also violated FOIA by failing to "promptly" produce the referred documents at
24 issue, because it failed to complete its document productions of the documents referred to them by
25 FEMA, which are now well overdue. 5 U.S.C. § 552(a)(3)(A).

1 **SEVENTH CLAIM FOR RELIEF**
2 **NMFS Violation of FOIA**
3 **5 U.S.C. § 552**

4 **Request for Declaratory Relief and Injunction to Compel NMFS to Cease Its Patterns and**
5 **Practices that Violate FOIA**

6 84. Plaintiffs reassert and reallege all preceding paragraphs above.

7 85. Defendant NMFS has violated and is in ongoing violation of 5 U.S.C. § 552 by continuing a
8 pattern and practice of illegally delaying final determinations for Plaintiffs' FOIA requests, particularly
9 with regards to documents that have been referred to them by other agencies.

10 86. NMFS's pattern and practice of responding to Plaintiff's FOIA requests necessarily causes
11 many types of relevant documents to be released only after considerable delay and in some cases
12 completely precludes Plaintiffs from obtaining documents and the information they contain when the
13 information is still relevant.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, EcoRights seeks the following relief:

16 a. A declaratory judgment pursuant to 5 U.S.C. § 552 that FEMA violated FOIA by: asserting
17 invalid claims of Exemption 5 and Exemption 6 in its responses to the April 2016 Request, and invalid
18 claims of Exemption 6 in its response to the October 19, 2016 Request; improperly withholding
19 responsive documents from the April 2016 Request; failing to segregate any factual material in violation
20 of 5 U.S.C. § 552(a)(8)(A)(ii) contained within the documents requested by EcoRights' April 2016
21 Request from any materials that may be withheld under a valid claim of exemption; imposing improper
22 cut-off dates for its searches in response to the April 2016 Request; delaying referral of documents to
23 NMFS from the April 2016 Request and October 17, 2016 Request; failing to provide final
24 determinations for EcoRights' April 2016 Request and October 19, 2016 Request in accordance with
25 FOIA's statutory deadlines and to promptly produce the documents; and failing to provide detailed,
26 legally adequate explanations for its reasons for withholding of any and all documents or portions of
27 documents responsive to EcoRights' April 2016 Request and October 19, 2016 Request.

b. A declaratory judgment pursuant to 5 U.S.C. § 552 that NMFS violated FOIA by: failing to

1 provide final determinations concerning documents referred to them by FEMA within the statutory
2 deadlines; failing to promptly produce responsive documents; and engaging in a pattern and practice of
3 illegally delaying final determinations for FOIA requests, particularly with regards to documents that
4 have been referred to NMFS by other agencies.

5 d. An injunction pursuant to 5 U.S.C. § 552(a)(4)(B) ordering FEMA to: immediately provide
6 EcoRights with detailed, legally adequate explanations for the withholding of any and all documents or
7 portions of documents responsive to EcoRights' April 2016 Request and October 19, 2016 Request;
8 segregate any factual material contained within the documents requested by EcoRights' April 2016
9 Request; immediately produce all documents that have been illegally withheld; immediately refer any
10 documents from the April 2016 Request and October 19, 2016 Request not already referred to NMFS;
11 immediately produce final determinations for the April 2016 Request and October 19, 2016 Request in
12 accordance with FOIA's statutory deadlines; promptly produce documents responsive to the April 2016
13 Request and October 19, 2016 Request.

14 f. An injunction pursuant to 5 U.S.C. § 552(a)(4)(B) ordering NMFS to: immediately provide its
15 determinations on documents referred to it by FEMA pertaining to the April 2016 Request and October
16 17, 2016 Request and promptly produce all documents in its possession responsive to these requests;
17 immediately provide EcoRights with a detailed, legally adequate explanation for the withholding of any
18 documents or portions of documents responsive to the April 2016 Request and October 17, 2016
19 Request; and cease its pattern and practice of illegally delaying final determinations for FOIA requests,
20 particularly with regards to documents that have been referred to NMFS by other agencies.

21 g. An award of attorney's fees and costs to EcoRights pursuant to 5 U.S.C. § 552(a)(4)(E); and

22 h. Such other and further relief as this Court deems just and proper.

23 Respectfully Submitted,

24 Dated: December 8, 2016

25 By:



26 Christopher Sproul
27 *Counsel for Ecological Rights Foundation*

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Monday, December 12, 2016 7:26 AM
To: Martin, Lisa (Federal)
Cc: David Bedell - NOAA Federal; Robert Hembrook - NOAA Federal; Robert Swisher - NOAA Federal; Sarah Brabson - NOAA Federal; Lola Stith - NOAA Affiliate; Dennis Morgan - NOAA Federal; Stefan Leeb - NOAA Federal
Subject: Re: DLP Tool Implementation
Attachments: NOAA DLPBroadcastMessage.docx; NOAA DLP Plan Final signed.pdf

Good Morning Lisa,

(b)(5) [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) [Redacted] (C)

On Thu, Dec 8, 2016 at 5:40 PM, Martin, Lisa (Federal) <LMartin1@doc.gov> wrote:

Hi Mark,

(b)(5) [Redacted]

[Redacted] Please provide this information no later than 12:00 noon on Monday, December 12, 2016.

Thanks,

Lisa

Lisa J. Martin

Lisa J. Martin

Deputy Director of Departmental Privacy Operations

U.S. Department of Commerce

Office of Privacy and Open Government

Office: [\(202\) 482-2459](tel:2024822459)

Email: LMartin1@doc.gov

NOAA Data Loss Prevention Plan

**Office of the Chief Information Officer
Governance and Portfolio Division
August 2016**



Background

[01] The protection of sensitive and personal information is more important than ever with electronic communications becoming increasingly prevalent. Safeguarding Personally Identifiable Information (PII) in the possession of the Federal Government and preventing its breach are essential to retaining the trust of the American public¹. This responsibility is shared by officials accountable for administering operational, privacy, and security programs. PII is any information that, by itself or in combination with other information, may be used to uniquely identify an individual. Within NOAA systems, this primarily can consist of Social Security Numbers (SSN), names, addresses, dates and places of birth, bank account numbers, e-mail addresses, telephone numbers, and passport numbers. The Office of Management and Budget (OMB) and the Department of Commerce (Commerce) released several memoranda to address the issue of safeguarding PII².

[02] This plan is intended as a framework for future action that will address user and system specific restrictions, controls, use cases, parameters, and other actions implemented based on the needs of individual systems and mission goals. This plan is intended to satisfy the implementation plan obligations to meet the minimum Privacy DLP Standards within 1 year as outlined in the April 15, 2016 Memorandum entitled “Departmental Privacy Standards for Commerce Data Loss Prevention (DLP) Security Tools”, as well as the corresponding May 3, 2016 data call issued by Commerce.

NOAA Data Overview

[01] NOAA provides the data, science, and information that allow the economy to function effectively and grow sustainably. NOAA helps to ensure a competitive economy by monitoring and predicting changes in the Earth's environment, protecting lives and property, and conserving and managing the nation's coastal and marine resources. NOAA's data portfolio mirrors the diversity and complexity of its mission ... and NOAA is very complex! Our mission and data diversity includes:

- 21,335 Staff (federal, contractor, associate)
- 435 Buildings
- 122 Weather Forecast Offices
- 13 River Forecast Centers
- 1,429 Real-Time Weather Stations
- 17 Satellites
- 8 Buoy Networks: 1042 Stations Deployed
- 13 National Marine Sanctuaries and 1 Marine National Monument
- 286 Data Centers

¹ The definition of PII can be found in the OMB Memorandum M-06-19, July 12, 2006.

² See, e.g., Memorandum from David A. Sampson, RE: Safeguarding Personally Identifiable Information, November 6, 2006.

- 94 Federal Information System Management Act Systems
- 33 Exhibit 300 IT Investments

NOAA DLP Strategy Overview

[01] NOAA uses, and will further deploy, a “Defense in Depth” approach to DLP. NOAA will use existing operational controls and privacy enhancing technologies. These include PII identifying solutions, encryption, firewalls, authorized use system access controls, and system audit logs. To further reduce the risk of compromise of sensitive PII in agency communications, NOAA will implement a Data Loss Prevention (DLP) solution set that monitors network communications and prevents sensitive PII from leaving the network, in addition to other sensitive data, as determined when the scope and capability of the solution is determined. Other sensitive data may include law enforcement sensitive data, business identifiable data, or other data sets for which the DLP solution can feasibly be leveraged. Each of these data sets may have one or more data owners, who will classify the information type, as described in the fourth development step below. In addition to these technical controls, NOAA utilizes administrative policies and procedures, as well as privacy training, to further safeguard information privacy and control access to information systems and information assets.

[02] NOAA conducts Privacy Threshold Analyses, (PTA’s), and, where applicable, Privacy Impact Assessments (PIAs) on all information systems to ensure privacy implications are addressed when planning, developing, implementing, and operating information technology (IT) systems that maintain information on individuals. NOAA utilizes a PIA template and guidance on conducting PIAs. The NOAA Bureau Chief Privacy Officer (BCPO) collaborates with system owners and IT security professionals to assess existing, new, or proposed programs, systems or applications for privacy risks, and recommends methods to protect individual privacy.

[03] The NOAA DLP solution(s) will be designed to monitor and prevent data from being leaked. NOAA’s DLP strategy, however, is to make sure the DLP solution(s) are as efficient and effective as possible. DLP needs to be rationally deployed in order to ensure that false positives do not overwhelm the system and the capacity of NOAA privacy and cyber security managers and staff. DLP tools such as McAfee Security, as powerful as they may be, require careful and organized deployment, otherwise reported incidents may be of little value.

[04] In response to the OMB M-07-16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information, and NIST SP 800-122, at 2.1, the NOAA Governance and Portfolio Division is leading the DLP initiative to promote secure practices in electronic communications (e-mails and Internet access) on the NOAA network to protect Controlled Unclassified Information (CUI) data. Taking a phased approach, the DLP initiative may include plans to implement specific solutions, for example, McAfee’s Data Loss Prevention (DLP) commercial off-the-shelf software solution that is capable of identifying and tracking a number of NOAA’s defined PII datasets. The NOAA DLP solution(s) will be designed to give NOAA an enterprise view into where it's most sensitive data are stored, who has access to the data, and where and by whom the data are sent outside the NOAA network. By using this information, NOAA can spot broken business processes and reduce the overall risk of exposure. The DLP solution(s) will take a data-centric approach to security, in which policies can be developed

around the content that should be protected and then deployed across multiple data states or functionalities, such as identifying, monitoring, and preventing.

DLP Development Steps

[01] A multi-layered approach will be applied to prevent data leakage for all routes and states. Data is classified under one of several schemes like data in motion, data in use, and at rest; or by data in-store, in-use and in-transit.

- Data in motion: Data that needs to be protected when in transit including HTTP/S, S/FTP/S, IM, P2P, SMTP.
- Data in use: Data that resides on end user workstation and needs to be protected from being leaked through removable media devices like USB, DVD, CD's.
- Data at rest: Data that resides on local storage media or server storage.

[02] Each of these layered types of data will be considered during deployment to maximize the prevention of data leakage. A multi-step approach to deployment, shown below, will be used as well. These steps are discussed in detail below.

1. Define policies
2. Identify sensitive data
3. Determine information flows
4. Identify data owners
5. Identify deployment scenarios
6. Plan DLP operations
7. Deploy DLP product(s)

Define Policies

[01] NOAA will build policies to protect the sensitive data. Every policy will consist of some rules, such as to protect credit card numbers, PII, and social security numbers, if such policies are not already in place. If there is a requirement for NOAA to protect sensitive information and a DLP product such as McAfee DLP does not support it out of the box, then NOAA will create rules using regular expressions (regex). It should be noted that DLP policies at this stage will be defined and not applied.

[02] Those policies will reflect the internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our objective: Commerce Directives; and OMB, White House, and National Institute for Standards and Technology (NIST) guidelines. Each of these sources provide a framework for implementing an automatic tool to monitor transfers of PII and for developing, or implementing, a commercial off-the-shelf product. We are evaluating these controls against an enterprise life cycle approach, and by reviewing enterprise life cycle commercial off-the-shelf artifacts and documents supporting the procurement, budget, and expenses for the DLP solution.

[03] Policies will take into consideration existing guidelines and recommendations as well as other factors, such as impact and dependency for other systems, also needed to be considered when implementing a DLP solution. The National Institute for Standards and Technology Special Publication 800-122, Guide to Protecting the Confidentiality of Personally Identifiable Information³[1], recommends that agencies implement automated tools, such as a network data leakage prevention tool, to monitor transfers of PII and to monitor inbound and outbound communications for unauthorized activities. In addition, the Government Accountability Office's Standards for Internal Control in the Federal Government⁴[2] provides that application controls should be designed to help ensure completeness, accuracy, authorization, and validity of all transactions during application processing. Controls should be installed as an application interfaces with other systems to ensure that all inputs are received and are valid and that outputs are correct and properly distributed.

Identify Sensitive Data

[01] NOAA will identify all the confidential, restricted, and highly restricted data across the whole organization and across the three categories, i.e. for data in-transit, in-store and in-use. In identifying the sensitive data, NOAA will define the scope within which the DLP Solution will function. Each data set analyzed will be considered as to whether or not leveraging the DLP product would be an efficient use of resources, whether the data is non-sensitive, or whether the DLP would be an effective tool in further securing the data. DLP products work with signatures to identify any restricted data when it is crossing boundaries. To identify the critical data and develop its signatures, there is a term in DLP products known as fingerprinting. Data is stored in various forms at various locations in an organization and it requires identifying and fingerprinting. Various products come with a discovery engine which crawl all searchable data in a given data store, index it and make it accessible through an intuitive interface which allows quick searching on data to find its sensitivity and ownership details.

Determine Information Flows

[01] It is very important for an organization to identify their information flow. NOAA OCIO will prepare a questionnaire to identify and extract all the useful information. A sample questionnaire would address, at a minimum, the following three issues:

- What is a standard data flow, and what should be the source and destination of the identified data?
- What are all the egress points present in the network?
- What processes are in place to govern the informational flow?

³ National Institute of Standards and Technology, NIST SP 800-122, Guide to Protecting the Confidentiality of Personally Identifiable Information (PII) (April 2010).

⁴ Government Accountability Office (formerly known as the General Accounting Office), GAO/AIMD-00-21.3.1, Internal Control: Standards for Internal Control in the Federal Government (Nov. 1999).

Identify Data Owners

[01] Identification of the NOAA staff and line office owners of data is also an important step in the planning strategy of DLP, so a list will be prepared by OCIO of whom to send the notifications to in case any sensitive data is lost. NOAA OCIO will distribute an assessment to identify the owners of each of the different sensitive data elements across the organization. The data owners also will be responsible for classifying the information types⁵. Many types of data will have multiple owners, governed by separate line and staff office policies for the collection and use of that data, depending on mission needs. The assessment will attempt to identify each offices ownership, collection, storage, and transmission of sensitive data so that when an incident occurs, the incident is properly triaged, escalated where necessary, reported⁶, and the DLP processes and application are modified and tuned as necessary.

Identify Deployment Scenarios

[01] The following questions arise in identifying potential Deployment Scenarios. Each of these must be addressed prior to agency-wide deployment of a mature DLP solution.

1. Will the Initial Deployment be applied to all of the traffic of data in use, or in motion, or at rest?
2. Alternatively, should NOAA deploy the DLP appliance by copying the network traffic and analyzing it at a different port before deploying it directly to the data states of the network traffic?
3. Should the deployment occur in high availability mode or should we configure in bypass mode?
4. How will the setup of endpoints with the DLP manager occur?
5. How do we maintaining integrity between communication ports and firewalls?
6. How do we ensure proper configuration of a crawling agent?

[02] As discussed above, sensitive data falls under three categories, i.e. data in motion, data at rest and data in use. After identifying the sensitive data and defining policies, NOAA will prepare for the deployment of DLP product(s). DLP deployment scenario of all three categories include :

- Data in motion: Data that needs to be protected when in transit, i.e. data on the wire. This includes channels like HTTP/S, S/FTP/S, IM, P2P, SMTP etc. NOAA will install the DLP protector appliance or software so it is not directly inline with the traffic. This is prudent to start with a minimally invasive method by not putting the appliances inline, to prevent a huge number of false positives or a network outage if the inline device fails. The NOAA approach will be to deploy DLP appliances or software in a span port first,

⁵ See, NIST SP 800-60.

⁶ Reporting here is referring to both internal reporting to the Office that owns the information, the Bureau Chief Privacy Officer, and N-CIRT as necessary, as well as external notifications (such as Privacy Incident reporting to DOC) and external reporting to OMB. Organizations report annually on specific privacy and security activities in their annual FISMA reports to OMB. The most recent memorandum is OMB M-10-15, FY 2010 Reporting Instructions for the Federal Information Security Management Act and Agency Privacy Management, available at http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-15.pdf

and then after the DLP strategy is mature, then put into inline mode. In order to mitigate the second risk, NOAA may deploy two options: first, deploy DLP in High Availability mode, and second, configure the inline DLP product in bypass mode, which will enable the traffic to bypass the inline DLP product in case the DLP product is down.

- **Data in Use:** Data that resides on the end user workstation and needs to be protected from being leaked through removable media devices like USB, DVD, CDs, etc. will fall under this category. In Data in Use, an agent may be installed in every NOAA endpoint device like laptop, desktop, etc. which is loaded with policies and is managed by a centralized DLP management server. Agents would be distributed on the endpoints via pushing strategies like SMS, GPO, etc.
- **Data in Store:** Data that resides on file servers and DBs and needs to be monitored from being getting leaked will fall under this category. All NOAA data that resides in storage servers or devices would be crawled using a DLP crawling agent. After crawling, data is fingerprinted to see if any unstructured data is present or not.

Plan DLP Operations

[01] NOAA will need to split the DLP operations into three phases: a triaging phase, a reporting and escalation phase, and a tuning phase. The security operation's team will monitor the alerts fired or triggered by the policies set up in the DLP product. N-CIRT will fine tune the policies as a result of some mis-configurations earlier or due to eventual policy or guidance changes and apply the changes to the DLP product. NOAA will need to identify the staffing, budget, training, and other resource demands that each phase of the DLP Operations will require, and determine the capabilities in effectively carrying out each phase with the available resources.

Deploy DLP Product(s)

[01] Deployment of security components is of no use if they cannot be monitored, and a DLP product is no exception. Below is an overview of what a DLP operation of an organization can be. First of all, the DLP product needs to be created with the right set of policies on the identified data among data at rest, in motion or in transit categories. The DLP operations can be separated into three phases, namely: the triaging phase, the reporting and escalation phase, and the tuning phase. These will need to be modified depending on the nature of the incident identified in the triaging phase for referral to N-CIRT and for DOC notification, as necessary. The triaging phase, incident reporting and escalation, as well as the any parameter modifications and tuning will be carried out in accordance with existing PII/BII Breach Response and Notification Plan.

Conclusion

[01] NOAA will employ a Defense in Depth approach to DLP. NOAA's DLP solution(s) need to minimize deployment and operating costs. As an off-the-shelf product, the McAfee Total Protection, or a similar product solution would potentially be an additional tool within the DID approach to effectively protect PII and BII data wherever it may be.

[02] NOAA has maintained a high awareness of data security, and is vigilant in protecting the sensitive information located within its systems. These Data Loss Prevention measures will

enhance the security of NOAA information systems and maintain the highest level of compliance with all regulatory and guidance documents that govern Data Loss Prevention at the agency⁷.

Definitions

Business Identifiable Information (BII) Information that is defined in the Freedom of Information Act (FOIA) as "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Commercial or financial information is considered confidential if disclosure is likely to cause substantial harm to the competitive position of the person from whom the information was obtained.

Personally Identifiable Information (PII) Information that can be used to distinguish or trace an individual's identity, such as name, Social Security number (SSN), biometric records, etc., alone, or when combined with other personal or identifying information, which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc. [OMB M-07-16].

Sensitive Personally Identifiable Information (Sensitive PII) Sensitive PII is defined as PII which, when disclosed, could result in harm to the individual whose name or identity is linked to the information. Further, in determining what PII is sensitive, the context in which the PII is used must be considered. For example, a list of people subscribing to a government newsletter is not sensitive PII; a list of people receiving treatment for substance abuse is sensitive PII. As well as context, the association of two or more non-sensitive PII elements may result in sensitive PII. For instance, the name of an individual would be sensitive when grouped with place and date of birth and/or mother's maiden name, but each of these elements would not be sensitive independent of one another. For the purpose of determining which PII may be electronically transmitted, the following types of PII are considered sensitive when they are associated with an individual. Secure methods must be employed in transmitting this data when associated with an individual:

- Place of birth
- Date of birth
- Mother's maiden name
- Biometric information
- Medical information, except brief references to absences from work
- Personal financial information
- Credit card or purchase card account numbers
- Passport numbers

⁷ NIST SP 800-53A, Recommended Security Controls for Federal Information Systems, establishes common criteria for assessing the effectiveness of security controls in federal information systems. Organizations use the recommended assessment procedures from NIST SP 800-53A to develop their own assessment procedures.

- Potentially sensitive employment information, e.g., personnel ratings, disciplinary actions, and result of background investigations
- Criminal history
- Any information that may stigmatize or adversely affect an individual.

This list is not exhaustive, and other data may be sensitive depending on specific circumstances. Social Security Numbers (SSNs), including truncated SSNs that include only the last four digits, are sensitive regardless of whether they are associated with an individual. If it is determined that such transmission is required, then secure methods must be employed. [DOC Electronic Transmission of PII Policy].

Controlled Unclassified Information (CUI) Information that requires safeguarding or dissemination controls pursuant to and consistent with applicable law, regulations, and government-wide policies but is not classified under Executive Order 13526 or the Atomic Energy Act, as amended.

Signed this ____ day of _____, 2016.

GOLDSTEIN.ZACHARY.G.1228698985
ARY.G.1228698985

Digitally signed by
GOLDSTEIN.ZACHARY.G.1228698985
DN: c US, o U.S. Government, ou DoD, ou PKI,
ou OTHER, cn GOLDSTEIN.ZACHARY.G.1228698985
Date: 2016.08.30 15:28:33 -0400

Zachary Goldstein, NOAA CIO

(b) (5)

(b) (5)

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
Sent: Monday, December 12, 2016 8:05 AM
To: Lola Stith - NOAA Affiliate
Cc: Mark Graff - NOAA Federal; Arlyn Penaranda - NOAA Federal
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Good morning Lola,



Thank you,

Lorna

On Fri, Dec 9, 2016 at 10:41 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:
Thanks again!

On Fri, Dec 9, 2016 at 10:26 AM, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:

Hi Lorna (b)(5)

[Redacted]

[Redacted]

[Redacted]

Lola

On Fri, Dec 9, 2016 at 9:49 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:

Ok, thank you.

On Friday, December 9, 2016, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:

Lorna (b)(5)

Lola

On Fri, Dec 9, 2016 at 8:15 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:

Lola,

(b)(5)

Thank you,

Lorna

On Thu, Dec 8, 2016 at 11:34 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

(b)(5)

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) (C)

On Thu, Dec 8, 2016 at 11:31 AM, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:

(b)(5)

Lola

On Thu, Dec 8, 2016 at 11:23 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

(b)(5)

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) (C)

On Thu, Dec 8, 2016 at 11:07 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:

Question,

(b)(5)

[REDACTED]

Lorna

On Thu, Dec 8, 2016 at 9:25 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

(b)(5)

[REDACTED]

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) (C)

On Thu, Dec 8, 2016 at 8:34 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:

Lola/Mark,

The OIG docs were approved for the 2nd interim release by the AA on 11/7. I am working

(b)(5)

Lorna

On Wed, Dec 7, 2016 at 11:36 AM, Scott Doyle <scottdoyle137@aol.com> wrote:

Ladies.

Just checking

1. Remaining FOIA docs have not be delivered any update. It has not been 4 months.

Ms. Smith

I have not been reimbursed and you look into this and give me a date certain for payment.

Scott Doyle

-----Original Message-----

From: Scott Doyle <scottdoyle137@aol.com>

To: lorna.martin-gross <lorna.martin-gross@noaa.gov>; lola.m.stith <lola.m.stith@noaa.gov>

Sent: Fri, Nov 18, 2016 4:29 pm

Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Nothing from OIG, today was the day it was estimated to upload its docs. OSY has now had close to 3 months and nothing from them.

Can you check and give me a update next week.

Also the reimbursement had not be paid.

Scott Doyle

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
To: lola.m.stith <lola.m.stith@noaa.gov>
Cc: scottdoyle137 <scottdoyle137@aol.com>
Sent: Wed, Nov 2, 2016 2:05 pm
Subject: FW: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Ms. Stith,

Please provide Mr. Doyle with an update of his fee reimbursement.

Thank you,

Ms. Lorna Martin-Gross

OLE Records Manager
Office: [301-427-8244](tel:301-427-8244)

From: Scott Doyle [mailto:scottdoyle137@aol.com]
Sent: Wednesday, November 02, 2016 1:51 PM
To: lorna.martin-gross@noaa.gov
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

I have not received my reimbursement and update.?

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
To: Scott Doyle <scottdoyle137@aol.com>
Sent: Tue, Oct 18, 2016 1:39 pm
Subject: RE: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Hello Mr. Doyle,

If you did not hear back from Ms. Stith yesterday, based on her email response to you on 10/14, I recommend you follow-up with her directly. The NOAA FOIA office handles all FOIA related funds and they will be the first to know the status.

Kind regards,

Ms. Lorna Martin-Gross

OLE Records Manager
Office: [301-427-8244](tel:301-427-8244)

From: Scott Doyle [mailto:scottdoyle137@aol.com]
Sent: Tuesday, October 18, 2016 1:15 PM
To: lorna.martin-gross@noaa.gov
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Thank you for the response.

Can you please let me know when the refund has been issued.

Scott

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>

To: Scott Doyle <scottdoyle137@aol.com>

Cc: arlyn.penaranda <arlyn.penaranda@noaa.gov>; foia <foia@noaa.gov>

Sent: Tue, Oct 18, 2016 12:58 pm

Subject: RE: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Hello Mr. Doyle,

I understand your concern about not having received the remaining documents responsive to your FOIA request, DOC-NOAA-2016-001270. I will address each item of your email as it was written:

1. "I have not received my reimbursement as per the email below. That was well over a 2 months ago."

The NOAA FOIA office is following up on the status of your refund.

2. "I have not received all the additional FOIA documents that were originally identified. Can you give me an idea when I will receive them and reason for the continued delay?"

The latest follow-up with the Department of Commerce was this morning. DOC's Office of Inspector General (OIG) estimates to have the documents uploaded into FOIAonline by November 18, 2016. DOC's Office of Security (OSY) has not provided an estimate, but we will continue to check the status. Once the OIG documents are uploaded into FOIAonline, you will be provided a second interim release letter with instructions to access responsive documents to your request. When the documents are provided by DOC OSY, a third interim release letter will be sent electronically with instructions to access responsive documents.

3. "I would like to appeal that parts have been redacted which I don't believe which should have been redacted. I want to send in one comprehensive request. Items like complete email addresses, names, titles, the body of reports that speak to the internal investigate as it relates to my interview, witness statements and general facts of the investigation etc."

The appeal language from the interim release letter states:

"We encourage you to speak with us if you have concerns as we continue to process this request. Although you have the ability to appeal at this time, we encourage you to focus the appeal/mediation/NOAA discussion, if needed, on exemptions applied to the documents thus far, but hold specific challenges about production until you have received and reviewed more of the voluminous records that the agency is still in the process of gathering and processing.

You have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this release must be received within 90 calendar days of the date of this response letter at the following address:

*Assistant General Counsel for Litigation, Employment, and Oversight
U.S. Department of Commerce*

Office of General Counsel
Room 5875
14th and Constitution Avenue, N.W.
Washington, D.C. 20230

An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to [202-482-2552](tel:202-482-2552), or by FOIAonline at <https://foiaonline.regulations.gov/foia/action/public/home#>.

For your appeal to be complete, it must include the following items:

- a copy of the original request,
- our response to your request,
- a statement explaining why the withheld records should be made available, and why the denial of the records was in error.
- “Freedom of Information Act Appeal” must appear on your appeal letter. It should also be written on your envelope, e-mail subject line, or your fax cover sheet.

FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

FOIA grants requesters the right to challenge an agency's final action in federal court. Before doing so, an adjudication of an administrative appeal is ordinarily required.

The Office of Government Information Services (OGIS), an office created within the National Archives and Records Administration, offers free mediation services to FOIA requesters. They may be contacted in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001
Email: ogis@nara.gov

Phone: [301-837-1996](tel:301-837-1996)

Fax: [301-837-0348](tel:301-837-0348)

Toll-free: [1-877-684-6448](tel:1-877-684-6448)

If you choose to submit a formal appeal, as noted in your email, all activity on your request will be stopped until the appeal is vetted and fully processed. This means all DOC documents will be on hold until the appeal is final.

Before you decide to submit a formal appeal, I can offer to schedule a telephone call with you to discuss your specific exemption concerns of the OLE documents. Prior to the call, I ask that you provide me with identifying information of the documents in question in order to avoid searching for specific documents during the call.

4. “I have a time limit of 90 days on which to appeal (Started 8/3/16), which I would like to request be extended until the all the FOIA documents have been delivered. It is unfair to ask me to make my appeal decision without the totality of all the information. I have received less than 100 of the over 320 documents.

If this is not the proper way to request an extension of an appeal please let me know the method you require.”

The interim release was uploaded and sent via FOIAonline on August 16, 2016. After our call, if you choose to submit a formal appeal, you will be within the 90 calendar days limit (November 14, 2016 by 5:00 p.m., Eastern Time). The correct procedure to submit a formal appeal is found in paragraph 3, above, and in the interim release letter sent on August 16, 2016.

Please contact me if you would like to schedule a call to discuss your exemption concerns. I can be reached by email, Monday – Friday, at lorna.martin-gross@noaa.gov, or by phone on Tuesday, Thursday, and Friday, at [301-427-8244](tel:301-427-8244).

Kind regards,

Ms. Lorna Martin-Gross

*Records Manager
Office of Law Enforcement
NOAA Fisheries
U.S. Department of Commerce
1315 East-West Highway
SSMC 3, Suite 3301
Office: [301-427-8244](tel:301-427-8244)
lorna.martin-gross@noaa.gov*

From: FOIA Office - NOAA Service Account [<mailto:foia@noaa.gov>]

Sent: Friday, October 14, 2016 2:20 PM

To: Scott Doyle

Cc: Lorna Martin-Gross - NOAA Federal

Subject: Re: Fee Reimbursement Request

Good afternoon Mr. Doyle,

Thank you for your inquiry.

Lorna and Mark will address the FOIA request status and appeal questions. I can be your point of contact concerning the refund for your FOIA request.

I will follow-up with the NOAA finance office to check the status of your refund, and will have an update for you on Monday.

Please do not hesitate to contact me at the number below should you have additional questions concerning your refund.

Regards,

Lola Stith
NOAA FOIA Office
[703-298-8005](tel:703-298-8005)

Mark H. Graff
FOIA Officer
National Oceanic and Atmospheric Administration
[\(301\)-628-5658](tel:301-628-5658)

On Fri, Oct 14, 2016 at 2:14 PM, Scott Doyle <scottdoyle137@aol.com> wrote:
Mr Graff, Ms. Martin,

Several items

1. I have not received my reimbursement as per the email below. That was well over a 2 months ago.
2. I have not received all the additional FOIA documents that were originally identified. Can you give me an idea when I will receive them and reason for the continued delay?
3. I would like to appeal that parts have been redacted which I don't believe which should have been redacted. I want to send in one comprehensive request. Items like complete email addresses, names, titles, the body of reports that speak to the internal investigate as it relates to my interview, witness statements and general facts of the investigation etc.
4. I have a time limit of 90 days on which to appeal (Started 8/3/16), which I would like to request be extended until the all the FOIA documents have been delivered. It is unfair to ask me to make my appeal decision without the totality of all the information. I have received less than 100 of the over 320 documents.

If this is not the proper way to request an extension of an appeal please let me know the method you require.

I appreciate your consideration on this matter and realize your office is not the reason for the delay.

Sincerely

Scott Doyle

-----Original Message-----

From: foia <foia@noaa.gov>
To: scottdoyle137 <scottdoyle137@aol.com>
Sent: Thu, Sep 1, 2016 9:08 am
Subject: Fee Reimbursement Request

09/01/2016 09:03 AM

FOIA Request: DOC-NOAA-2016-001270

This is in response to your request for the reimbursement of the fees paid for the processing of your FOIA request. You have argued that the 2016 FOIA Improvement Act of 2016 mandates the return of fees paid to you. Although that act is not retroactive, it is correct that your request is past due, and unusual circumstances have not been cited as justifying billable processing with fees assessed in your request after the statutory time frame for responding to your request. As such, I have determined that your request is not billable, and that fees should be returned to you. A request for a refund of your fees paid will be submitted to the Office of the Chief Financial Officer.

Mark Graff
NOAA FOIA Officer

--

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: [301-427-8244](tel:301-427-8244)

lorna.martin-gross@noaa.gov

--

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: [301-427-8244](tel:301-427-8244)

lorna.martin-gross@noaa.gov

--

Lola Stith

Contractor - The Ambit Group, LLC

NOAA Office of the Chief Information Officer (OCIO)

(c (b)(6) [REDACTED])

lola.m.stith@noaa.gov

--

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: [301-427-8244](tel:301-427-8244)

lorna.martin-gross@noaa.gov

--

Lola Stith

Contractor - The Ambit Group, LLC

NOAA Office of the Chief Information Officer (OCIO)

(c (b)(6) [REDACTED])

lola.m.stith@noaa.gov

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Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: [301-427-8244](tel:301-427-8244)

lorna.martin-gross@noaa.gov

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Lola Stith

Contractor - The Ambit Group, LLC

NOAA Office of the Chief Information Officer (OCIO)

(c (b)(6) [REDACTED])

lola.m.stith@noaa.gov

--

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: [301-427-8244](tel:301-427-8244)

lorna.martin-gross@noaa.gov

--

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: 301-427-8244

lorna.martin-gross@noaa.gov

(b)(5)

(b)(5)

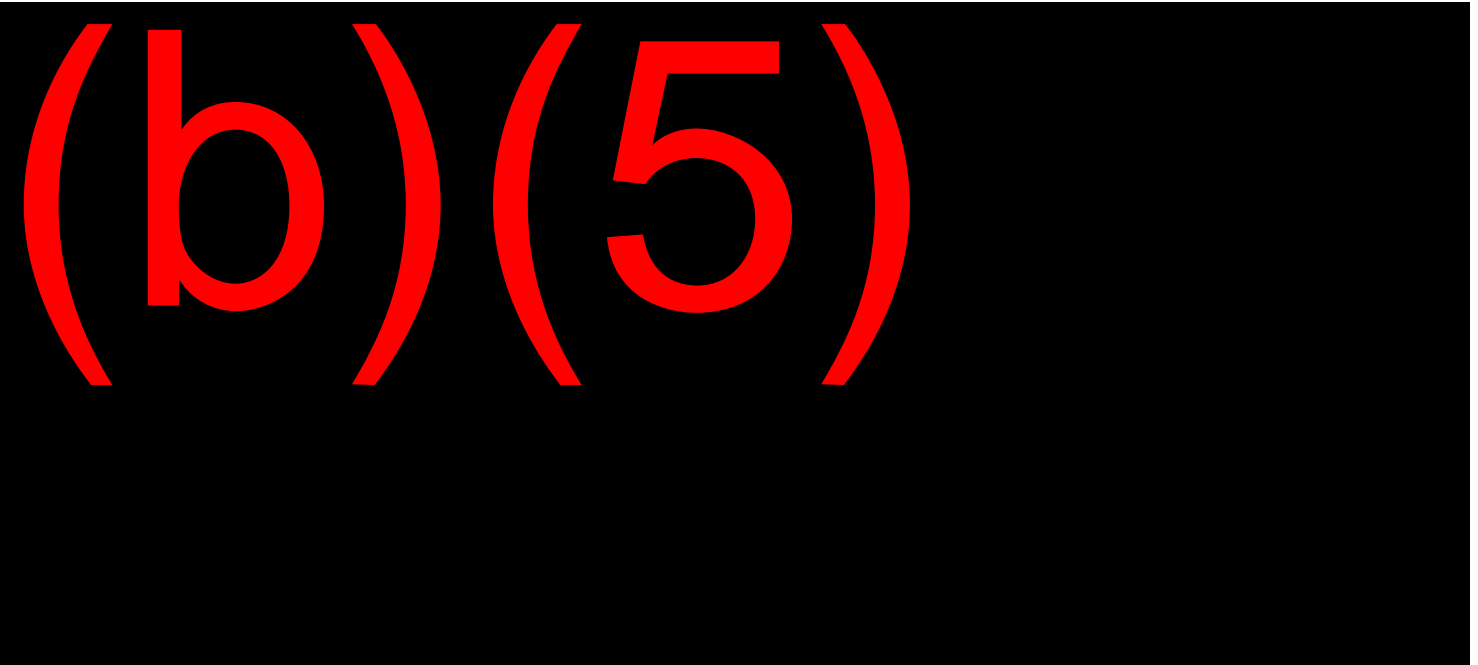
From: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>
Sent: Monday, December 12, 2016 3:08 PM
To: Lorna Martin-Gross - NOAA Federal
Cc: Mark Graff - NOAA Federal; Arlyn Penaranda - NOAA Federal
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Hi Lorna (b)(5) [REDACTED].

Lola

On Mon, Dec 12, 2016 at 8:05 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:

Good morning Lola,



Thank you,

Lorna

On Fri, Dec 9, 2016 at 10:41 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:

Thanks again!

On Fri, Dec 9, 2016 at 10:26 AM, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:

Hi Lorna (b)(5) [REDACTED]
[REDACTED]

[REDACTED].

Lola

On Fri, Dec 9, 2016 at 9:49 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:

Ok, thank you.

On Friday, December 9, 2016, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:

Lorna (b)(5)

Lola

On Fri, Dec 9, 2016 at 8:15 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:

Lola,

(b)(5)

(b)(5)

Thank you,

Lorna

On Thu, Dec 8, 2016 at 11:34 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

(b)(5)

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)

(b)(6) (C)

On Thu, Dec 8, 2016 at 11:31 AM, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:

(b)(5)

Lola

On Thu, Dec 8, 2016 at 11:23 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

(b)(5)

Mark H. Graff

FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) (C)

On Thu, Dec 8, 2016 at 11:07 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:
Question,

(b)(5)
[Redacted]
[Redacted]
[Redacted]?

Lorna

On Thu, Dec 8, 2016 at 9:25 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:
(b)(5)
[Redacted].

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) (C)

On Thu, Dec 8, 2016 at 8:34 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:
Lola/Mark,

(b)(5)
[Redacted]?

Lorna

On Wed, Dec 7, 2016 at 11:36 AM, Scott Doyle <scottdoyle137@aol.com> wrote:
Ladies.

Just checking

1. Remaining FOIA docs have not be delivered any update. It has not been 4 months.

Ms. Smith

I have not been reimbursed and you look into this and give me a date certain for payment.

Scott Doyle

-----Original Message-----

From: Scott Doyle <scottdoyle137@aol.com>

To: lorna.martin-gross <lorna.martin-gross@noaa.gov>; lola.m.stith <lola.m.stith@noaa.gov>

Sent: Fri, Nov 18, 2016 4:29 pm
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Nothing from OIG, today was the day it was estimated to upload its docs. OSY has now had close to 3 months and nothing from them.

Can you check and give me a update next week.

Also the reimbursement had not be paid.

Scott Doyle

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
To: lola.m.stith <lola.m.stith@noaa.gov>
Cc: scottdoyle137 <scottdoyle137@aol.com>
Sent: Wed, Nov 2, 2016 2:05 pm
Subject: FW: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Ms. Stith,

Please provide Mr. Doyle with an update of his fee reimbursement.

Thank you,

Ms. Lorna Martin-Gross

OLE Records Manager

Office: [301-427-8244](tel:301-427-8244)

From: Scott Doyle [mailto:scottdoyle137@aol.com]
Sent: Wednesday, November 02, 2016 1:51 PM
To: lorna.martin-gross@noaa.gov
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

I have not received my reimbursement and update.?

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
To: Scott Doyle <scottdoyle137@aol.com>
Sent: Tue, Oct 18, 2016 1:39 pm
Subject: RE: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Hello Mr. Doyle,

If you did not hear back from Ms. Stith yesterday, based on her email response to you on 10/14, I recommend you follow-up with her directly. The NOAA FOIA office handles all FOIA related funds and they will be the first to know the status.

Kind regards,

Ms. Lorna Martin-Gross

OLE Records Manager

Office: [301-427-8244](tel:301-427-8244)

From: Scott Doyle [mailto:scottdoyle137@aol.com]
Sent: Tuesday, October 18, 2016 1:15 PM

To: lorna.martin-gross@noaa.gov

Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Thank you for the response.

Can you please let me know when the refund has been issued.

Scott

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>

To: Scott Doyle <scottdoyle137@aol.com>

Cc: arlyn.penaranda <arlyn.penaranda@noaa.gov>; foia <foia@noaa.gov>

Sent: Tue, Oct 18, 2016 12:58 pm

Subject: RE: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Hello Mr. Doyle,

I understand your concern about not having received the remaining documents responsive to your FOIA request, DOC-NOAA-2016-001270. I will address each item of your email as it was written:

1. "I have not received my reimbursement as per the email below. That was well over a 2 months ago."

The NOAA FOIA office is following up on the status of your refund.

2. "I have not received all the additional FOIA documents that were originally identified. Can you give me an idea when I will receive them and reason for the continued delay?"

The latest follow-up with the Department of Commerce was this morning. DOC's Office of Inspector General (OIG) estimates to have the documents uploaded into FOIAonline by November 18, 2016. DOC's Office of Security (OSY) has not provided an estimate, but we will continue to check the status. Once the OIG documents are uploaded into FOIAonline, you will be provided a second interim release letter with instructions to access responsive documents to your request. When the documents are provided by DOC OSY, a third interim release letter will be sent electronically with instructions to access responsive documents.

3. "I would like to appeal that parts have been redacted which I don't believe which should have been redacted. I want to send in one comprehensive request. Items like complete email addresses, names, titles, the body of reports that speak to the internal investigate as it relates to my interview, witness statements and general facts of the investigation etc."

The appeal language from the interim release letter states:

"We encourage you to speak with us if you have concerns as we continue to process this request. Although you have the ability to appeal at this time, we encourage you to focus the appeal/mediation/NOAA discussion, if needed, on exemptions applied to the documents thus far, but hold specific challenges about production until you have received and reviewed more of the voluminous records that the agency is still in the process of gathering and processing.

You have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this release must be received within 90 calendar days of the date of this response letter at the following address:

*Assistant General Counsel for Litigation, Employment, and Oversight
U.S. Department of Commerce
Office of General Counsel
Room 5875
14th and Constitution Avenue, N.W.
Washington, D.C. 20230*

An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to [202-482-2552](tel:202-482-2552), or by FOIAonline at <https://foiaonline.regulations.gov/foia/action/public/home#>.

For your appeal to be complete, it must include the following items:

- a copy of the original request,*
- our response to your request,*
- a statement explaining why the withheld records should be made available, and why the denial of the records was in error.*
- “Freedom of Information Act Appeal” must appear on your appeal letter. It should also be written on your envelope, e-mail subject line, or your fax cover sheet.*

FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

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*Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001
Email: ogis@nara.gov*

*Phone: [301-837-1996](tel:301-837-1996)
Fax: [301-837-0348](tel:301-837-0348)
Toll-free: [1-877-684-6448](tel:1-877-684-6448)*

If you choose to submit a formal appeal, as noted in your email, all activity on your request will be stopped until the appeal is vetted and fully processed. This means all DOC documents will be on hold until the appeal is final.

Before you decide to submit a formal appeal, I can offer to schedule a telephone call with you to discuss your specific exemption concerns of the OLE documents. Prior to the call, I ask that you provide me with identifying information of the documents in question in order to avoid searching for specific documents during the call.

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If this is not the proper way to request an extension of an appeal please let me know the method you require."

The interim release was uploaded and sent via FOIAonline on August 16, 2016. After our call, if you choose to submit a formal appeal, you will be within the 90 calendar days limit (November 14, 2016 by 5:00 p.m., Eastern Time). The correct procedure to submit a formal appeal is found in paragraph 3, above, and in the interim release letter sent on August 16, 2016.

Please contact me if you would like to schedule a call to discuss your exemption concerns. I can be reached by email, Monday - Friday, at lorna.martin-gross@noaa.gov, or by phone on Tuesday, Thursday, and Friday, at [301-427-8244](tel:301-427-8244).

Kind regards,

Ms. Lorna Martin-Gross
*Records Manager
Office of Law Enforcement
NOAA Fisheries
U.S. Department of Commerce
1315 East-West Highway
SSMC 3, Suite 3301
Office: [301-427-8244](tel:301-427-8244)
lorna.martin-gross@noaa.gov*

From: FOIA Office - NOAA Service Account [<mailto:foia@noaa.gov>]
Sent: Friday, October 14, 2016 2:20 PM
To: Scott Doyle
Cc: Lorna Martin-Gross - NOAA Federal
Subject: Re: Fee Reimbursement Request

Good afternoon Mr. Doyle,

Thank you for your inquiry.

Lorna and Mark will address the FOIA request status and appeal questions. I can be your point of contact concerning the refund for your FOIA request.

I will follow-up with the NOAA finance office to check the status of your refund, and will have an update for you on Monday.

Please do not hesitate to contact me at the number below should you have additional questions concerning your refund.

Regards,

Lola Stith
NOAA FOIA Office
[703-298-8005](tel:703-298-8005)

Mark H. Graff
FOIA Officer
National Oceanic and Atmospheric Administration
[\(301\)-628-5658](tel:301-628-5658)

On Fri, Oct 14, 2016 at 2:14 PM, Scott Doyle <scottdoyle137@aol.com> wrote:
Mr Graff, Ms. Martin,

Several items

1. I have not received my reimbursement as per the email below. That was well over a 2 months ago.
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I appreciate your consideration on this matter and realize your office is not the reason for the delay.

Sincerely

Scott Doyle

-----Original Message-----

From: foia <foia@noaa.gov>
To: scottdoyle137 <scottdoyle137@aol.com>
Sent: Thu, Sep 1, 2016 9:08 am
Subject: Fee Reimbursement Request

09/01/2016 09:03 AM

FOIA Request: DOC-NOAA-2016-001270

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Mark Graff
NOAA FOIA Officer

--

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: [301-427-8244](tel:301-427-8244)

lorna.martin-gross@noaa.gov

--

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: [301-427-8244](tel:301-427-8244)

lorna.martin-gross@noaa.gov

--

Lola Stith

Contractor - The Ambit Group, LLC

NOAA Office of the Chief Information Officer (OCIO)

(c (b)(6) [REDACTED])

lola.m.stith@noaa.gov

--

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: [301-427-8244](tel:301-427-8244)

lorna.martin-gross@noaa.gov

--

Lola Stith

Contractor - The Ambit Group, LLC

NOAA Office of the Chief Information Officer (OCIO)

(c (b)(6) [REDACTED])

lola.m.stith@noaa.gov

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Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: [301-427-8244](tel:301-427-8244)

lorna.martin-gross@noaa.gov

--

Lola Stith
Contractor - The Ambit Group, LLC
NOAA Office of the Chief Information Officer (OCIO)
(c (b)(6))
lola.m.stith@noaa.gov

--

Ms. Lorna Martin-Gross
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NOAA Fisheries
U.S. Department of Commerce
Office: [301-427-8244](tel:301-427-8244)
lorna.martin-gross@noaa.gov

--

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Office of Law Enforcement
NOAA Fisheries
U.S. Department of Commerce
Office: [301-427-8244](tel:301-427-8244)
lorna.martin-gross@noaa.gov

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Lola Stith

Contractor - The Ambit Group, LLC
NOAA Office of the Chief Information Officer (OCIO)
(c (b)(6) [REDACTED])
lola.m.stith@noaa.gov

(b)(5)

(b)(5)

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Tuesday, December 13, 2016 10:21 AM
To: Purvis, Catrina; CPO
Cc: Sarah Brabson - NOAA Federal; Robert Swisher - NOAA Federal; Martin, Lisa
Subject: NOAA0201
Attachments: NOAA0201 PTA 120616 v3 DP mhg.pdf

Good Morning Catrina,

(b)(5) [Redacted]

[Redacted]

[Redacted]

[Redacted]

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) [Redacted] (C)

**U.S. Department of Commerce
National Oceanic and Atmospheric Administration
(NOAA)**



**Privacy Threshold Analysis
for the
Web Operations Center (NOAA0201)**

U.S. Department of Commerce Privacy Threshold Analysis

NOAA/Web Operations Center

Unique Project Identifier: 006-000351100 00-48-03-17-01-00

Introduction: This Privacy Threshold Analysis (PTA) is a questionnaire to assist with determining if a Privacy Impact Assessment (PIA) is necessary for this IT system. This PTA is primarily based from the Office of Management and Budget (OMB) privacy guidance and the Department of Commerce (DOC) IT security/privacy policy. If questions arise or further guidance is needed in order to complete this PTA, please contact your Bureau Chief Privacy Officer (BCPO).

Description of the information system and its purpose: *Provide a general description of the information system and its purpose in a way that a non-technical person can understand.*

The E-Government Act of 2002 defines “information system” by reference to the definition section of Title 44 of the United States Code. The following is a summary of the definition: “Information system” means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information. See: 44. U.S.C. § 3502(8).

The Web Operations Center (WOC) is a diverse information technology services provider to Line and Staff Offices within NOAA. The WOC provide a wide range of information technology services and functions which include high availability, scalability, redundancy, clustering, and high performance computing to replicate and distributed general information as well as critical time sensitive life and property information to the general public and meteorology community.

The services and functions of the information system technology have been broken down into four (4) core services and functions: WOC Domain Name System Services (WOCDNSS), WOC Information Sharing Services (WOCISS), WOC Adoptive System Framework (WOCASF), and WOC Collaboration Services. These services and functions make up the subsystems within NOAA0201. Each subsystem has a different FIPS 199 security categorization as described in the NOAA0201 FIPS 199 Security Categorization document. NIST SP 300-37 rev1 describes how various independent subsystems could be grouped together for purpose of risk management into more comprehensive system (system of systems).

The WOC systems are physically located at 8 NOAA datacenters (W1: Silver Spring, Maryland W2: Largo, Maryland W3: Norman, Oklahoma W4: Boulder, Colorado W5: Fort Worth, Texas and W6: Seattle, Washington, W7 Ashville, NC, W8 Fairmont, WVA).

Note: NOAA0201 has been assessed on 1/12/2016 using NIST 800-53 Rev 4.

Questionnaire:

1. What is the status of this information system?

This is a new information system. *Continue to answer questions and complete certification.*

This is an existing information system with changes that create new privacy risks. *Complete chart below, continue to answer questions, and complete certification.*

Changes That Create New Privacy Risks (CTCNPR)					
a. Conversions		d. Significant Merging	x	g. New Interagency Uses	
b. Anonymous to Non-Anonymous		e. New Public Access		h. Internal Flow or Collection	
c. Significant System Management Changes		f. Commercial Sources		i. Alteration in Character of Data	
j. Other changes that create new privacy risks (specify):					

In 2016, the Message Operations Center (NOAA0300) was decommissioned and was combined into NOAA0201.

This is an existing information system in which changes do not create new privacy risks. *Continue to answer questions, and complete certification.*

Is the IT system or its information used to support any activity which may raise privacy concerns?

NIST Special Publication 800-53 Revision 4, Appendix J, states "Organizations may also engage in activities that do not involve the collection and use of PII, but may nevertheless raise privacy concerns and associated risk. The privacy controls are equally applicable to those activities and can be used to analyze the privacy risk and mitigate such risk when necessary." Examples include, but are not limited to, audio recordings, video surveillance, building entry readers, and electronic purchase transactions.

Yes. *Please describe the activities which may raise privacy concerns.*

No

2. Does the IT system collect, maintain, or disseminate business identifiable information (BII)?

As per DOC Privacy Policy: "For the purpose of this policy, business identifiable information consists of (a) information that is defined in the Freedom of Information Act (FOIA) as "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." (5 U.S.C.552(b)(4)). This information is exempt from automatic release under the (b)(4) FOIA exemption. "Commercial" is not confined to records that reveal basic commercial operations" but includes any records [or information] in which the

submitter has a commercial interest" and can include information submitted by a nonprofit entity, or (b) commercial or other information that, although it may not be exempt from release under FOIA, is exempt from disclosure by law (e.g., 13 U.S.C.)."

___ Yes, the IT system collects, maintains, or disseminates BII about: *(Check all that apply.)*

___ Companies

___ Other business entities

x No, this IT system does not collect any BII.

3. Personally Identifiable Information

4a. Does the IT system collect, maintain, or disseminate personally identifiable information (PII)?

As per OMB 07-16, Footnote 1: "The term 'personally identifiable information' refers to information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc... alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc..."

___ Yes, the IT system collects, maintains, or disseminates PII about: *(Check all that apply.)*

x DOC employees

x Contractors working on behalf of DOC

___ Members of the public

___ No, this IT system does not collect any PII.

If the answer is "yes" to question 4a, please respond to the following questions.

4b. Does the IT system collect, maintain, or disseminate PII other than user ID?

x Yes, the IT system collects, maintains, or disseminates PII other than user ID.

No, the user ID is the only PII collected, maintained, or disseminated by the IT system.

4c. Will the purpose for which the PII is collected, stored, used, processed, disclosed, or disseminated (context of use) cause the assignment of a higher PII confidentiality impact level?

Examples of context of use include, but are not limited to, law enforcement investigations, administration of benefits, contagious disease treatments, etc.

Yes, the context of use will cause the assignment of a higher PII confidentiality impact level.

No, the context of use will not cause the assignment of a higher PII confidentiality impact level.

If any of the answers to questions 2, 3, 4b, and/or 4c are “Yes,” a Privacy Impact Assessment (PIA) must be completed for the IT system. This PTA and the approved PIA must be a part of the IT system’s Assessment and Authorization Package.

CERTIFICATION

X I certify the criteria implied by one or more of the questions above **apply** to the [IT SYSTEM NAME] and as a consequence of this applicability, I will perform and document a PIA for this IT system.

I certify the criteria implied by the questions above **do not apply** to the [IT SYSTEM NAME] and as a consequence of this non-applicability, a PIA for this IT system is not necessary.

Name of Information System Security Officer (ISSO) or System Owner (SO):

David J. Skiffington

Signature of ISSO or SO: SKIFFINGTON.DAVID.1374262730 Digitally signed by SKIFFINGTON.DAVID.1374262730
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI, ou=CONTRACTOR
cn=SKIFFINGTON.DAVID.1374262730
Date: 2016.12.07 08:01:42 -05'00' Date: _____

Name of Information Technology Security Officer (ITSO): Jean Apedo

Signature of ITSO: APEDO.JEAN.1188076064 Digitally signed by APEDO.JEAN.1188076064
DN: c=US, o=U.S. Government,
ou=DoD, ou=PKI, ou=OTHER,
cn=APEDO.JEAN.1188076064
Date: 2016.12.08 13:07:33 -05'00' Date: _____

Name of Authorizing Official (AO): Douglas Perry

Signature of AO: PERRY.DOUGLAS.A.1365847270 Digitally signed by PERRY.DOUGLAS.A.1365847270
Date: 2016.12.09 15:43:09 -05'00'

Name of Bureau Chief Privacy Officer (BCPO): MARK GRAFF

Signature of BCPO: GRAFF.MARK.HYRUM.1514447892 Digitally signed by GRAFF.MARK.HYRUM.1514447892
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI,
ou=OTHER, cn=GRAFF.MARK.HYRUM.1514447892
Date: 2016.12.12 09:01:44 -05'00' Date: _____

From: Ruth Ann Lowery - NOAA Federal <ruthann.lowery@noaa.gov>
Sent: Tuesday, December 13, 2016 10:28 AM
To: Mark Graff - NOAA Federal
Subject: Draft Spinrad Declaration - Judicial Watch
Attachments: Judicial Watch DRAFT Declaration Spinrad 12.13.16.docx

Hi, Mark,

As we discussed.

Ruth Ann

Ruth Ann Lowery, Attorney-Advisor
NOAA Office of General Counsel
Fisheries & Protected Resources Section
1315 East-West Highway, SSMC III, Room 15114
Silver Spring, MD 20910
(301)713-9671
Fax: (301) 713-0658

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Image not available for this document, ID: 0.7.3707.13483 000001

From: Ruth Ann Lowery - NOAA... (via Google Docs) <drive-shares-noreply@google.com>
Sent: Thursday, December 15, 2016 1:08 PM
To: Mark.Graff@noaa.gov
Cc: kevin.snell@usdoj.gov; rod.vieira@noaa.gov; h davidson@doc.gov;
rose.stanley@noaa.gov; jmyers@doc.gov; stacey.nathanson@noaa.gov;
lois.schiffer@noaa.gov
Subject: Judicial Watch: NOAA Cmts on Opening Motion
Attachments: Opening Motion 12 14 16.docx

Ruth Ann Lowery - NOAA Federal has attached the following document:



Opening Motion 12 14 16.docx



Kevin,

(b)(5)

?

Thanks,
Ruth Ann

Google Docs: Create and edit documents online.

Google Inc. 1600 Amphitheatre Parkway, Mountain View, CA 94043, USA

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From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Thursday, December 15, 2016 1:31 PM
To: Robert Swisher - NOAA Federal; Dennis Morgan - NOAA Federal
Cc: Lola Stith - NOAA Affiliate
Subject: JW Motion for Summary Judgment
Attachments: OpeningMotion121416 final to DOJ.docx

Hey Guys,

(b)(5)
[Redacted]

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) (C)

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Image not available for this document, ID: 0.7.3707.13493 000001

From: Snell, Kevin (CIV) <Kevin.Snell@usdoj.gov>
Sent: Thursday, December 15, 2016 7:54 PM
To: Lowery, Ruth Ann (Federal); Rose Stanley - NOAA Federal; Davidson, Hillary (Federal); Myers, Jordan (Federal); Vieira, Rodney (Federal); Graff, Mark (Federal)
Subject: Filed!
Attachments: Dkt. 16 - 2 Vaughn Index.pdf; Dkt. 16 - 3 May 27 Cover Letter.pdf; Dkt. 16 - 4 Spinrad Declaration.pdf; Dkt. 16 - 5 Proposed Order.pdf; Dkt. 16 - Motion for Summary Judgment.pdf; Dkt. 16 - 1 Graff Declaration.pdf

Thanks everyone for your incredible efforts in this case. This was not an easy task and it truly took a team effort. I greatly appreciate everyone's help!

Hope everyone has great weekends!

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

)	
JUDICIAL WATCH, INC.,)	
425 Third Street, SW, Suite 800)	
Washington, D.C. 20024)	
)	
Plaintiff,)	
)	
v.	)	Civil Action No. 15-2088 (CRC)
)	
U.S. DEPARTMENT OF)	
COMMERCE,)	
1401 Constitution Avenue, NW)	
Washington, D.C. 20230)	
)	
Defendant.)	
_____)	

DECLARATION OF MARK H. GRAFF

Pursuant to 28 U.S.C. § 1746, I, Mark H. Graff, declare and state as follows:

1. I am currently the Freedom of Information Act (FOIA) Officer for the National Oceanic and Atmospheric Administration (NOAA), which is a part of the United States Department of Commerce (DOC). I have occupied this position since September 6, 2015. My primary duties include management of requests submitted to NOAA for records made under both the FOIA, 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a (PA). In that capacity, I oversee NOAA's receipt and log-in of in-coming FOIA requests, the tasking and coordination of searches for responsive records, and review of out-going responses.

2. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, upon conclusions and determinations reached and made in accordance therewith, and upon my personal examination of

the withheld and redacted documents. Additionally, this declaration includes the search terms, locations and parameters agreed upon with the plaintiffs and utilized by those who conducted the search. I am personally familiar with Plaintiff Judicial Watch's FOIA request, which is at issue in this civil action. I submit this declaration in support of a motion for summary judgment filed by the Department of Commerce in the above-captioned lawsuit.

3. This declaration provides background information on the development of a paper entitled *Possible Artifacts of Data Biases in the Recent Global Surface Warming Hiatus* ("Hiatus Paper" or "the Paper"), which was published in June 2015 in the journal *Science* and is the focus of the FOIA request at issue in this case. It also explains NOAA's search for records responsive to Plaintiff's FOIA request and the FOIA exemptions applied in processing the responsive records. A *Vaughn* index (Exhibit 1) provides a detailed description of information withheld by NOAA and challenged by Plaintiff, as well as NOAA's basis for those withholdings.

I. BACKGROUND

4. The National Centers for Environmental Information (NCEI), located within the NOAA's National Environmental Satellite, Data, and Information Service (NESDIS), develops use-inspired datasets, products and reports that describe average weather conditions (and changes therein) over the United States and the globe. NCEI acts as the "Nation's Scorekeeper" regarding the trends and anomalies of weather and climate, focusing on essential climatic elements such as temperature and rainfall, as well as extreme events such as hurricanes and droughts.

5. NCEI produces and maintains datasets for global ocean areas and global land areas. Changes in surface temperature over long periods are studied using several datasets that are continuously maintained and updated. There are separate datasets for the ocean and the land, which are then merged to create a global dataset.

6. Scientists throughout the government, including at agencies other than NOAA and researchers outside of the government, use NOAA's temperature datasets for a variety of purposes, including for climatic research and climate assessments. NCEI scientists are continually working on improving these datasets to provide scientists and the public with the most up-to-date and accurate information.

7. NCEI scientists periodically interpret and analyze global datasets and release to the public the most up-to-date climate science, often through publication in scientific journals. NCEI scientists use the most recent information from these datasets to propose new scientific theories and also re-evaluate earlier conclusions reached within the scientific community in light of new or updated data.

8. The Hiatus Paper is an example of analysis and interpretation of the updated underlying data, work which is consistent with the mission of NOAA. Nine NOAA scientists contributed to this paper: Thomas Karl (the lead author), Dr. Anthony Arguez, Dr. Boyin Huang, Mr. Jay Lawrimore, Mr. James McMahon, Dr. Matthew Menne, Dr. Thomas Peterson, Dr. Russell Vose, and Dr. Huai-min Zhang. Thomas Karl is the former Director of NCEI. Jay Lawrimore, Dr. Russell Vose, and Dr. Huai-min Zhang are supervisory scientists at NCEI. Dr. Anthony Arguez and Dr. Matthew Menne are climate scientists at NCEI. Since the publication

of the paper, Dr. Thomas Karl and Dr. Thomas Peterson have retired, and Mr. James McMahon no longer works at NCEI.

9. The Intergovernmental Panel on Climate Change (IPCC) released a report in stages between September 2013 and November 2014 that concluded that the upward global surface temperature trend from 1998-2012 was lower than the upward global surface temperature trend from 1951-2012. This apparent observed slowing was dubbed the “hiatus.”

10. There were significant developments related to the alleged “hiatus” in the two years immediately following the release of the IPCC report. In particular, both 2013 and 2014 were among the top-five warmest years on record for the globe. In addition, NOAA scientists made significant improvements to its sea surface temperature dataset, one of the largest being a correction that accounted for the difference in data collected from buoys and ships. (Until the mid-1970s, ships were used to measure sea surface temperatures; since then, buoys have increasingly been used.) Scientists developed a method to correct for the difference between these two observing systems, and incorporated those corrections into its dataset and subsequently the paper that is the subject of this request.

11. On or about October 31, 2014, Director Karl shared with a group of NOAA scientists a draft of a paper that he had worked on himself, inspired by some of the papers exchanged previously by the NCEI scientists. The draft developed an idea for properly accounting for the “hiatus,” based on the additional two years of global temperature data and the improvements to NOAA’s sea surface temperature dataset. Director Karl asked the scientists to provide feedback to his draft.

12. The scientists who received the draft responded with feedback in various forms, including exchanging drafts of the paper with edits done via track changes and sending emails providing feedback.

13. Until the paper was submitted to *Science*, many drafts and revisions were exchanged along with emails and one-on-one discussions about various aspects of the paper, including: suggestions on how best to describe the data, opinions on statistical error uncertainty ranges, thoughts on implications of other researchers' work, and so on. Such collaboration via drafts and discussions in emails and orally is standard practice at NCEI.

14. On or about December 23, 2014, a NOAA author submitted the draft paper to *Science* via an online portal.

15. *Science* follows a formal peer review process that is described on their public website. See <http://www.sciencemag.org/authors/peer-review-science-publications>. Peer reviewers are subject matter experts in the topic of the submitted paper who are able to use their expertise to evaluate the scientific rigor and merit of the paper.

16. Peer reviewers provide feedback on an array of issues, including making an overall recommendation as to whether the paper should be published, in view of *Science's* mission and also providing more detailed critique on a range of issues. These issues include the technical rigor of the data and methods used and whether the conclusions of the report are novel or similar to work already published. See <http://www.sciencemag.org/sites/default/files/REinstr13.pdf>.

17. According to *Science*, their peer review process is anonymous. The identities of reviewers are never revealed to authors, and reviewers are instructed not to identify themselves to any entity, including the press. Reviews are shared only with the author, potentially other reviewers (for cross-comment), and the Board of the journal. See <http://www.sciencemag.org/authors/peer-review-science-publications>.

18. Reviewers are expressly instructed to treat the submitted manuscript as privileged and confidential:

The submitted manuscript is a privileged communication and must be treated as a confidential document. Please destroy all copies of the manuscript after review. Please do not share the manuscript with any colleagues without the explicit permission of the editor. Reviewers should not make personal or professional use of the data or interpretations before publication without the authors' specific permission (unless you are writing an editorial or commentary to accompany the article).

<http://www.sciencemag.org/authors/peer-review-science-publications>.

19. This is reinforced in the journal's Instructions to Peer Reviewers of reports, which states:

Confidentiality: We expect reviewers to protect the confidentiality of the manuscript and ensure that it is not disseminated or exploited. Please destroy your copy of the manuscript when you are done. Only discuss the paper with a colleague with permission from the editor. We do not disclose the identity of our reviewers.

<http://www.sciencemag.org/sites/default/files/REinstr13.pdf>.

20. The authors received via email the first round of reviews from *Science* on or about February 26, 2015. In this case, *Science* sent the manuscript to five peer reviewers. These reviewers provided their comments anonymously to NOAA through *Science*, as is standard in the peer review process for *Science*.

21. After determining the best response to all of the peer reviewer comments, the authors submitted the revised manuscript and a response to reviewer comments to *Science* via the online submission portal on or about March 27, 2015. See Categories C and D of part 2 of the *Vaughn* Index.

22. On or about April 22, 2015, the authors received the second round of reviews from *Science* via email. The authors developed responses to this second round of comments, made revisions accordingly, and submitted the revised manuscript and response to reviewer comments to *Science* via the online portal on or about May 5, 2015. *See id.*

23. After submitting the revised manuscript, the authors received notice that it would be published, received galley proofs, and approved them. On June 4, 2015, the paper was published online on the *Science* website. This was followed up by publication in the printed volume of *Science* on June 26, 2015 (Volume 348, Issue 6242, at 1469).

II. ADMINISTRATIVE PROCESSING OF PLAINTIFF'S REQUEST

24. Plaintiff's FOIA request was addressed to NOAA, which is located within the Department of Commerce ("the Department"). The request sought, in relevant part:

1. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the methodology and utilization of Night Marine Air Temperatures to adjust ship and buoy temperature data.
2. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the use of other global temperature datasets for both NOAA's in-house dataset improvements and monthly press releases conveying information to the public about global temperatures.

3. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the utilization and consideration of satellite bulk atmospheric temperature readings for use in global temperature datasets.

25. When NOAA officials first reviewed the request, they determined that it did not reasonably describe the records sought. NOAA and the Department, through counsel, conferred with Plaintiff's counsel to negotiate a clear description of the materials sought.

26. During the course of those discussions, NOAA indicated to Plaintiff that it understood Plaintiff's request to reflect an interest in the Hiatus Paper. Defendant suggested Plaintiff modify the FOIA request to call for a search for all documents and communications referring to the Hiatus Paper from October 1, 2014 through June 4, 2015. Defendant offered to search the files of the nine authors of the Study. Plaintiff confirmed its interest in the Hiatus Paper, but indicated that it sought only records referring to the topics listed in its initial FOIA request.

27. The parties ultimately "reached an agreement regarding the scope of the request and the relevant search parameters," which was memorialized in the Second Joint Status Report, submitted to this Court on March 1, 2016. Regarding the documents at issue in this litigation, the parties agreed that:

"Defendant will search the records of the nine authors of the June 4, 2015 study entitled Possible Artifacts of Data Biases in the Recent Global Surface Warming Hiatus published in Science ("Karl Study") for records referring to the Karl Study and that contain the following search terms:

(1) "NMAT" and "Night Marine Air Temperatures";

(2) "ISTU", "ICOADS", and "sea ice";

(3) "satellite", "Advanced Very High Resolution Radiometer", "AVHRR", "Advanced Microwave Scanning Radiometer", and "AMSR".

For items 1, 2, and 3 of Plaintiff's FOIA request, the timeframe for the searches will be October 1, 2014 to June 4, 2015."

See Second Joint Status Report, ECF No. 10.

28. In the Third Joint Status Report, submitted to this Court on March 22, 2016, the parties agreed that NOAA, through the Department, would produce responsive, non-exempt records, as described above, to Plaintiff by May 27, 2016. *See* ECF No. 11.

29. On May 27, 2016, the Department released 102 pages of material in its entirety and 90 partially redacted pages. Defendant withheld in their entirety 8,013 pages of records. *See* May 27 Cover Letter (Exhibit 2); *see also* Fourth Joint Status Report, ECF No. 12. In that letter, NOAA informed Plaintiff that "[b]ecause the request sought records of multiple custodians, there is a significant amount of duplicative material in the responsive records." Exhibit 2.

30. NOAA made a supplemental release of records on September 16, 2016, providing Plaintiff with an additional 44 pages of released material after further review the records identified and described in the letter accompanying the May 27, 2016, production, 7 of which were partially redacted because they included Tom Karl's personal telephone number.

31. After the September release, NOAA continued to evaluate the responsiveness and exemption status of the records that had been identified. Contemporaneously with this filing (on December 15), NOAA is releasing another 62 records providing Plaintiff with additional records that were previously withheld.

32. Because of the further segregation and responsiveness review NOAA conducted that led to the release of additional material to the Plaintiff, the page counts in the May 27 cover letter (and also the Fourth Joint Status Report) originally provided to Plaintiff are no longer accurate. A complete listing of all records withheld in full or in part pursuant to an exemption is reflected in the attached *Vaughn* Index.

II. THE SEARCH PROCESS

33. After NOAA and Plaintiffs, through counsel, reached an agreement as to the terms of the search for this FOIA request, it was determined that the records requested resided within one office: NCEI. NCEI's headquarters is located in Asheville, North Carolina. This determination was based on the fact that all of the agreed-upon custodians work or had worked within NCEI during the time in which responsive records were created.

34. The nine authors of the Hiatus Paper were Thomas R. Karl, Anthony Arguez, Boyin Huang, Jay H. Lawrimore, James R. McMahon, Matthew J. Menne, Thomas C. Peterson, Russell S. Vose, and Huai-Min Zhang.

35. NOAA instructed eight of the nine authors (record custodians) that were still within NCEI to conduct a search in accordance with the parameters agreed to by the parties and memorialized in the Second Joint Status Report. NOAA specified that custodians must search their email, electronic, and paper records.

36. Each records custodian still at NCEI¹ searched his own records in accordance with these instructions. As such, all search terms and parameters of the search as agreed upon by the Plaintiff were utilized by NOAA in the search of the files where responsive records were likely to be filed.

37. There were no common areas to be searched at NCEI because the authors all kept their own files separate.

38. After the custodians collected their records, they were forwarded for responsiveness and exemption review.

39. The search conducted was reasonably calculated to uncover all relevant, non-duplicative documents.

40. The Department compiled two sets of bates-numbered files, which included, in addition to the partially redacted and fully withheld email records, placeholder pages, which are discussed further in Paragraph 49. One bates-numbered file reflects the email records, and the other bates-numbered file reflects documents, as contained on parts 1 and 2 of the *Vaughn*.

41. Each record was evaluated separately for responsiveness, and each email was deemed to be one record.

42. In the case of an email with attachment(s), responsiveness determinations were made independently for that email and any attachment(s) to that email.

43. For email records that were joined with other emails in a chain, NOAA deemed responsive any email that related to the Paper and contained an agreed-upon search term as well

¹ One custodian (Thomas Peterson) had retired by the time of the search. His archived email inbox and outbox were searched by another author who was still with NOAA at the time. No additional, non-duplicative records created by Mr. Peterson that are responsive to this request are known to have existed following the retirement of Mr. Peterson.

as other, surrounding emails that were related to or provided important context for the email that contained the search term. If an email appeared to directly relate to the subject matter of the request in an email containing the search term, a case-by-case determination was made in good faith and in the effort to maximize transparency as to whether that record was responsive even though not technically within the search terms outlined in the Second Joint Status Report.

44. The search was reasonably calculated to uncover all relevant documents and there are no known locations where additional, non-duplicative, responsive material is likely to be found. Accordingly, all files determined to be reasonably likely to contain responsive, non-duplicative material were searched.

III. The Vaughn Index

45. I have read the *Vaughn* index attached as Exhibit 1 and reviewed the documents referenced in that index. Based on my review of the documents and on information provided me in the course of my official duties, I have determined that the material redacted from the referenced documents falls within the enumerated FOIA exemptions identified in the index.

46. The *Vaughn* index is divided into two parts. The first part covers responsive emails that were withheld or redacted. It identifies each record by Bates stamp numbers (which correspond to the numbering on records provided to Plaintiff), the originator, the recipient(s), the date of the record, the title of the email, the exemption invoked, and the basis for withholding.

47. Due to how the email records are stored in and were printed from the user's email accounts, some email records are duplicative but certain copies truncate the metadata for that record email (e.g., the sender, recipient, subject line, who was cc'd on the records). Sometimes

NOAA was able to reconstruct the information by looking to duplicate instances that were printed differently, or by going to the original files. We have generally inferred that the subject line that prints at the top of the printed email chain carried through for individual email records connected to that string of emails.

48. The second part of the *Vaughn* index covers non-email documents that were withheld in their entirety, except for a relatively small number of documents that were released to Plaintiffs upon further review. These documents consist almost exclusively of five categories of records. Records that fell into one of the five categories are labeled in the *Vaughn* index by a letter that corresponds to a category. The few exceptions that do not fall into one of the five categories have a more detailed description.

49. The *Vaughn* index reflects occasional “gaps” in the Bates stamp numbering. For example, *Vaughn* part one reflects an entry for bates page 1, and the next entry is for bates page 4. Such “gaps” exist for three reasons. First, not all pages had redacted information. Only pages with redacted information are accounted for on the *Vaughn*. Second, NOAA, in an effort to be transparent during production, included pages that served as “placeholders” for records in email chains that were removed because those records were either non-responsive or were fully withheld under Exemption 5. For example, if one page with responsive records was produced with redactions, followed by four fully withheld pages of records, the four fully withheld pages were represented in the production by a placeholder page that indicated four pages of material had been withheld as either not responsive or as exempt under Exemption 5. That placeholder page was bates stamped during the initial production, but NOAA has not listed it in the *Vaughn*

index. And third, NOAA removed bates-marked documents that were non-responsive that had been inadvertently bates stamped during the initial production. The withheld records, if responsive, are represented elsewhere in the *Vaughn* index.

50. As reflected in the first part of the *Vaughn* index, NOAA withheld or redacted emails under Exemption 5 because they are protected by the deliberative process privilege. *See, generally, Vaughn* part 1. These records are inter-agency or intra-agency communications. The bulk of this information reflects the predecisional and deliberative exchange of ideas and recommendations among scientists within and outside NOAA as NOAA scientists developed and edited the Hiatus Paper or discussed the underlying analysis of the datasets for purposes of developing the paper. The information also includes communications among NOAA personnel carrying out related agency deliberations such as development of public communications and presentations to Congress. The communications are, unless otherwise indicated, among NOAA personnel and reflect agency deliberations or input to agency determinations. These deliberations were in preparation for agency decisions, including how to analyze and present the data and interpretation. A relatively small number of the deliberative communications reflect input from non-federal scientists who were contacted either by one of the authors or by the journal *Science* to provide feedback and input on the Paper. These non-federal scientists provided NOAA's scientists input for the agency's ongoing processes of developing the Hiatus Paper, as well as providing input for the agency's potential updating of underlying datasets and analysis based on those datasets. Additionally, one scientist provided input to inform the agency's development of a communications plan for the paper.

51. In addition to the emails redacted or withheld, NOAA withheld drafts of the Hiatus Paper. *See Vaughn* part two Category A. These documents are inter-agency or intra-agency drafts. This category includes the drafts of the “supplementary materials” that accompanied the Hiatus Paper and were made available for download by *Science* upon publication of the Paper. Category A in the *Vaughn* Index sometimes lists the draft paper text, figures and supplementary materials as one entry and sometimes separately. These were pre-decisional drafts that contained the opinions and recommendations of one or more NOAA authors; draft language, data, and data interpretation for consideration by other NOAA authors; comments on previous drafts of the paper; and/or responses to other NOAA authors’ or expert reviewers’ comments on earlier drafts of the paper. Disclosure of deliberative draft documents that were not ultimately finalized or adopted by NOAA risks confusing the public concerning NOAA’s position and also risks data or statements being taken out of context. Disclosure of these deliberative draft materials would also seriously undermine the quality and integrity of NOAA’s decisionmaking process, by deterring NOAA staff or experts outside the agency who are collaborating in development of the agency’s work from expressing their candid views on the development of data analysis and presentation.

52. NOAA also withheld documents that contain questions for discussion and draft graphs that were circulated by an author and created for author discussions during the development of the Hiatus Paper. *See Vaughn* part two Category E. These records are inter-agency or intra-agency documents. These documents are deliberative and pre-decisional, as they

reflect NOAA scientists' deliberations as to what constitutes the best data analysis and presentation for the Hiatus Paper.

53. NOAA also withheld drafts of a cover letter from Tom Karl to *Science* magazine in response to peer review comments. *See Vaughn* part two Category B. These records are inter-agency or intra-agency drafts. These drafts are predecisional and deliberative in that they include discussions and exchanges among authors in determining what to include, and how to present, their formal letter to accompany their peer review responses. The draft cover letters to *Science* contain edits or otherwise do not include the final wording of the letter, reflecting that the scientists' approach had not been finalized at that point.

54. NOAA also withheld draft responses to peer reviewers enlisted by *Science* as part of that journal's peer review process. *See Vaughn* Index part two Category C. These records are inter-agency or intra-agency drafts. These drafts reflect pre-decisional discussions and proposed responses to peer review comments. The drafts contain opinions and recommendations of one or more NOAA authors; draft language, data, and data interpretation for consideration by other authors; comments on previous drafts of the responses to peer reviewers; and/or responses to other authors' comments on earlier drafts of the responses to peer reviewers. These drafts helped the NOAA authors determine how best to respond to comments provided during the peer review process initiated by the submission of the Hiatus Paper to *Science* for potential publication. These documents are internal, pre-decisional drafts that reflect the view of NOAA authors as to how to present their response to peer review feedback.

55. NOAA also withheld the final responses to peer reviewers enlisted by *Science* as part of that journal's peer review process. See *Vaughn* Index Part 2 Category D. These records are inter-agency or intra-agency documents. These documents are predecisional and deliberative because they are responses to constructive criticism and advice submitted by scientific experts as part of the confidential peer review process for papers submitted to scientific journals. The responses were submitted as part of a process to assist in the authors' deliberations regarding whether and in what form to publish the paper. Confidentiality is important to the peer review process, and disclosure of the responses to peer reviews would discourage the sharing of candid thoughts of both the reviewers and of the scientists.

56. In addition to this formal peer review, NOAA's authors also welcomed the assistance of informal peer review from a limited group of scientific experts in evaluating the underlying datasets and developing the Hiatus Paper. It is common for NOAA scientists to seek input from other qualified experts to get a second opinion on a working hypothesis or to provide expertise that an author's affiliated organization may lack. Sometimes those scientists are employed outside the federal government, but they share the common goal with NOAA of advancing scientific inquiry and developing accurate information on climate science.

57. This collegial relationship and shared goals lays the groundwork for an author to reach out for the kind of honest, confidential feedback necessary to formulate a sustainable, justified scientific conclusion.

58. Each of these scientists who offered their assistance is highly regarded in their specialized fields. Their prior work represents a portion of the prior published literature on the

alleged hiatus. Some of those works were consulted by the team in developing the “hiatus” paper and were cited as references in it.

59. One of the outside scientists who contributed (and is listed in the “Acknowledgements” section of the Hiatus Paper) is Dr. Gerald (Jerry) A. Meehl, an affiliate with the National Center for Atmospheric Research (NCAR), which is a National Science Foundation Federally Funded Research and Development Center. *See* <https://www2.ucar.edu/about-us/quick-facts>. In November 2014, Director Karl emailed Dr. Meehl and invited him to comment on drafts of the paper, and he provided insights and feedback in response. *See* Bates 66 (11/27/14) (released).

60. If a paper is expected to get an unusual amount of attention, a journal may seek pre-publication reactions from experts in the field outside of that journal’s formal peer review process. On occasion, those experts who are contacted by the journal will then directly communicate with the author(s) of the article and share their thoughts on the article.

61. These communications provide important feedback to the authors on the Hiatus Paper and often provide information, relied upon by NOAA, about the external expert’s own related recent or ongoing work. These communications provide input to the continuous, ongoing work to update and improve datasets and trend analyses, as described in Paragraphs 5 through 7.

62. One outside scientist who provided input (and is cited in the references for the Hiatus Paper) is Dr. Kevin E. Trenberth, who (like Dr. Meehl) is also affiliated with the NCAR. Dr. Trenberth was contacted for his expertise by a journalist prior to publication of the Hiatus Paper and asked to provide comment on the paper. Dr. Trenberth then contacted Director Karl

by email to provide feedback and discuss implications of the conclusion in light of other literature. *See* Bates 379 (6/1/15). As discussed in paragraph 61, above, this type of input provides important feedback and also helps inform the continuous, ongoing work to update and improve datasets and trend analyses. In part, this information was also provided to inform NOAA in its deliberations as it formulated its public communications messaging for the Hiatus Paper. *See* Bates 381-382 (6/1/15).

63. Last, Dr. Kevin Cowtan, who is affiliated with the University of York in the United Kingdom, is an outside scientist who contacted Dr. Boyin and Director Karl, after being contacted by a writer at *Science* who was seeking comment on the paper before publication, during the embargo period. *See* Bates 292-293 (6/2/15). Those emails indicate that all participants understood and respected that there was an embargo on publicly disseminating or discussing the work until it was officially released on June 4. *See, e.g.*, Bates 295 (6/2/15). Director Karl indicated in an email that he would like to continue to review and incorporate Dr. Cowtan's work in NOAA's ongoing work. *See* Bates 295-296 (6/2/15). As discussed in paragraph 61, above, this type of input provides important feedback and also helps inform the continuous, ongoing work to update and improve our datasets and trend analyses.

64. Disclosure of any of this information that is pre-decisional and deliberative would inhibit candid internal discussions and expressions of ideas, recommendations, criticism, and judgments regarding the development of scientific theories and presentations of information to the public and to Congress. Disclosure of the details of these confidential discussions, drafts, and responses, could reasonably be expected to chill the open and frank exchange of comments

and opinions that occurs between NOAA scientists and a limited group of qualified outside experts at such times. It would also inhibit candid internal discussions and the expression of recommendations and judgments regarding preferred courses of action for agency personnel.

65. To the extent the redacted or withheld information contains some factual material, the authors' selection and presentation of that factual material reflects the agency's deliberative process and is therefore protected from disclosure. Singling out a particular data point in the course of a deliberative discussion reflects a preliminary judgment or argument rather than an assertion of scientific fact. There is a risk of misconstruing or taking out of context an instance where one piece of information has been singled out for purposes of an informal discussion.

66. With regard to information withheld pursuant to exemption (b)(6), NOAA has determined that the individual privacy interests outweighed the public interest in disclosure.

67. I am further satisfied that NOAA has reasonably concluded that there was no additional non-exempt, responsive information that could be reasonably segregated and released to the plaintiff.

IV. CONCLUSION

In summary, the Department conducted thorough searches of all components that were reasonably likely to maintain responsive records and withheld only reasonably segregable information under exemption (b)(5) and (b)(6). Additionally, the search was reasonably calculated to uncover all relevant documents, and there are no known locations where additional, non-duplicative, responsive material is likely to be found.

Pursuant to 28 U.S.C. § 1746, I hereby affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 14th day of December, 2016, Silver Spring, Maryland.

A handwritten signature in blue ink, consisting of a stylized 'M' followed by a large, looped 'G' and 'A'.

Mark H. Graff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

Exhibit 1 to Declaration of Mark Graff

Vaughn Index Part 1: Emails

Bates Page	Originator	Addressee	Date	Time	Title	Exemption	Released Status	Basis
1	Maycock, Tom	Zhang, Huai-min	05/06/2015	9:30 AM	Re: NCEI communications: question re. uncertainty in "hiatus" paper	(b)(5)	Partially Redacted	NOAA affiliate asking NOAA scientist for clarification on data results from the paper prior to publication for development of communications materials related to the paper.
4	Peterson, Thomas C.	Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin; Zhang, Huai-min	3/16/2015	10:50 AM	Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper. Scientist is also asking for opinion of another scientist.
6	Huang, Boyin	Mcmahon, James; Vose, Russell; Peterson, Thomas C.; Tanner, Michael; Karl, Thomas R.; Menne, Matthew; Arguez, Anthony; Lawrimore, Jay; Zhang, Huai-min	3/19/2015	4:02 PM	Re: Invitation: Update on Science Hiatus paper @ Fri Mar 20, 2015 11am 12pm	(b)(5)	Partially Redacted	NOAA scientist sharing draft data analysis, based on scientist discussions, for development of the paper with other scientists.
14	Vose, Russell	Peterson, Thomas C.; McMahon, James; Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Lawrimore, Jay; Matthews, Jessica	3/23/2015	9:12 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist sharing drafts of the paper and discussing edits made to the paper. Email is duplicate of email found on page 102.
14	Peterson, Thomas C.	Mcmahon, James; Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	4:03 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist sharing drafts of supplemental materials for the paper and discussing edits made to the paper.
14-15	Mcmahon, James	Huang, Boyin; Peterson, Thomas C.; Karl, Thomas R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	2:15 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist sharing drafts of the paper and discussing edits made for the development the paper.

15	Huang, Boyin	Peterson, Thomas C.; Karl, Thomas R.; Arguez, Anthony; McMahan, James; Huai-min, Zhang; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	10:03 AM	Re: Science-hiatus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist sharing opinion on results of draft data analysis for development of the paper.
15	Peterson, Thomas C.	Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; McMahan, James; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	9:55 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist sharing opinion on results of draft data analysis for development of the paper.
17	Peterson, Thomas C.	Lawrimore, Jay; Huang, Boyin; Zhang, Huai-min	3/16/2015	2:51 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist discussing edits to be made for development of the paper. Asking another NOAA scientist about work to be done for the paper.
19	Peterson, Thomas C.	McMahon, James; Huang, Boyin; Karl, Thomas, R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	4:03 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 14.
22	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew	12/16/2014	1:02 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
22-23	McMahon, James	Zhang, Huai-min	12/16/2014	12:45 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist asking another scientist for clarification on data analysis conducted for the development of the paper.
23	Zhang, Huai-min	McMahon, James	12/16/2014	11:17 AM	Interpolation of LSAT over the arctic and antarctic	(b)(6)	Partially Redacted	Personal cell phone number of scientist.
25-26	McMahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew	12/16/2014	1:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper. Scientist is also asking for opinion of another scientist.

26	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	1:31 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper. Scientist is also asking for opinion of another scientist.
27	Huang, Boyin	Zhang, Huai-min; Mcmahon, James; Menne, Matthew; Lawrimore, Jay	12/16/2014	2:26 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
27-28	Mcmahon, James	Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Lawrimore, Jay	12/16/2014	2:55 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper. Scientist is also asking for opinion of another scientist.
28	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	3:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
28-29	Mcmahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	3:21 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
33	Maycock, Tom	Zhang, Huai-min	05/06/2015	9:30 AM	Re: NCEI communications: question re. uncertainty in "hiatus" paper	(b)(5)	Partially Redacted	Duplicate of page 1.
37	Huang, Boyin	Karl, Thomas R.; Zhang, Hai-min; Mcmahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	2:20 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist discussing proposed data analysis and potential research methods to be conducted for the development of the paper.

37-38	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	12:21 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist discussing proposed data analysis and potential research methods to be conducted for the development of the paper.
38-40	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	11:35 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper (the scientist's responses are inserted into text of earlier email).
41	Huang, Boyin	Zhang, Huai-min; Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	8:43 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
41	Zhang, Huai-min	Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:27 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
42	Karl, Thomas R.	Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:21 AM	Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to question from another scientist and offering personal opinion on data analysis and graphics for the paper.
42	Zhang, Huai-min	McMahon, James; Karl, Thomas R.; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	1:56 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist sharing data analysis and graphics for development of the paper with other scientists.
45	Zhang, Huai-min	Lawrimore, Jay; Huang, Boyin	11/20/2014	2:47 PM	article method	(b)(5)	Partially Redacted	NOAA scientist sharing drafts of the paper and asking about edits to be made to the paper.

48	Karl, Thomas R.	Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:21 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Email text is cut off but text is duplicate of full text on page 42.
48	Zhang, Huai-min	Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:27 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 41.
48	Huang, Boyin	Zhang, Huai-min; Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	8:43 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 41.
48-49	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	8:49 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist is responding to question from another scientist and offering personal opinion on draft data analysis for development of the paper.
49	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	10:39 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist is responding to question from another scientist and offering personal opinion on draft data analysis for development of the paper.
49-50	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	11:35 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of pages 38-40.
50	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	12:21 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37-38.

50-51	Huang, Boyin	Karl, Thomas R.; Zhang, Hai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	2:20 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37.
51	Menne, Matthew	Lawrimore, Jay; Karl, Thomas R.; Huang, Boyin; Zhang, Hai-min; McMahon, James; Vose, Russell	11/06/2014	10:55 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist sharing proposed language for the paper as well as draft data analysis and graphics for development of the paper. Although this email was initially identified as not responsive, NOAA has determined the email to be responsive and exempt under (b)(5).
53	Huang, Boyin	Karl, Thomas R.; Zhang, Hai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	2:20 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37.
53	Karl, Thomas R.	Huang, Boyin; Zhang, Hai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	12:21 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37-38.
53	Huang, Boyin	Karl, Thomas R.; Zhang, Hai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	11:35 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of pages 38-40.
66-67	Meehl, Gerald	Karl, Thomas R.	11/28/2014	5:45 PM	Jerry this is not finished. We have another figure to add and describe, but it will give you an idea of where we are going with this	(b)(5)	Partially Redacted	Outside scientist is providing feedback and review of data analysis for the paper in response to request for feedback from Tom Karl (via email that was Released). The outside scientist is providing observations regarding the climatic data used in the paper and raising issues for further discussion and clarification.

67-68	Karl, Thomas R.	Meehl, Gerald	11/29/2014	9:41 AM	Jerry this is not finished. We have another figure to add and describe, but it will give you an idea of where we are going with this	(b)(5)	Fully Withheld	NOAA scientist is responding to feedback on the hiatus paper provided by outside scientist and discussing data analysis conducted for the development of the paper. Although this email was initially identified as not responsive, NOAA has determined the email to be responsive and exempt under (b)(5).
69	Huang, Boyin	Mcmahon, James; Vose, Russell; Peterson, Thomas, C.; Tanner, Michael; Karl, Thomas R.; Menne, Matthew; Arguez, Anthony; Lawrimore, Jay; Zhang, Huai-min	3/19/2015	4:02 PM	Re: Invitation: Update on Science Hiatus paper @ Fri Mar 20, 2015 11am 12pm	(b)(5)	Partially Redacted	Duplicate of page 6.
70	Kossin, James P.	Karl, Thomas R.	5/21/2015	11:44 AM	Science paper	(b)(5)	Partially Redacted	NOAA scientist asking paper author offering personal opinion and inquiring about potential data analysis for the paper.
70	Karl, Thomas R.	Kossin, James P.	5/21/2015	11:55 AM	Science paper	(b)(5)	Partially Redacted	Paper author responding to personal opinion of NOAA scientist and sharing his personal opinion on draft data analysis for the paper. Asking if NOAA scientist about involvement future research and data analysis.
75	Karl, Thomas R.	Holdren, John P.	3/26/2015	4:35 PM	Acceptance of your Science Manuscript aaa5632	(b)(5)	Partially Redacted	NOAA scientist sharing release date for paper. NOAA scientist is also discussing future climate research for the agency and asking for opinion of John Holdren on this research and on the possible role of NOAA scientists in this research.
88	Huang, Boyin	Karl, Thomas R.; Lawrimore, Jay	1/15/2015	4:16 PM	Your recent paper	(b)(5)	Partially Redacted	NOAA scientist is responding to question from another scientist and sharing results of data analysis he conducted for the paper and personal opinion on future research.
88	Karl, Thomas R.	Huang, Boyin; Lawrimore, Jay	1/15/2015	16:20	Your recent paper	(b)(5)	Partially Redacted	NOAA scientist asking other scientists about data to potentially be used in further research study.

88-89	Huang, Boyin	Karl, Thomas R.; Lawrimore, Jay	1/15/2015	4:33 PM	Your recent paper	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to question from another scientist and offering personal opinion on data analysis for the paper and personal opinion on future research.
100	Huang, Boyin	Peterson, Thomas C.; Karl, Thomas R.; Arguez, Anthony; McMahon, James; Huai-min, Zhang; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	10:03 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 15.
100-101	Peterson, Thomas C.	Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; McMahon, James; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	9:55 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 15.
101	Mcmahon, James	Huang, Boyin; Peterson, Thomas C.; Karl, Thomas R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	2:15 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 15.
101-102	Peterson, Thomas C.	Mcmahon, James; Huang, Boyin; Karl, Thomas, R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	4:03 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 14.
102	Vose, Russell	Peterson, Thomas C.; McMahon, James; Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Lawrimore, Jay; Matthews, Jessica	3/23/2015	9:12 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 14.
104	Zhang, Huai-min	Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:27 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Email text is partially cut off. Duplicate of full email found on page 41.

104	Huang, Boyin	Zhang, Huai-min; Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	8:43 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 41.
104	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	8:49 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of pages 48-49.
104-105	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	10:39 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 49.
105-106	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	11:35 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of pages 38-40.
106	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	12:21 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37-38.
106	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	2:20 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37.

108-109	Meehl, Gerald	Karl, Thomas R.	11/28/2014	5:45 PM	Jerry this is not finished. We have another figure to add and describe, but it will give you an idea of where we are going with this	(b)(5)	Partially Redacted	Email addresses are cut off. Duplicate of full email found on pages 66-67.
112	Zhang, Huai-min	Mcmahon, James	12/16/2014	11:17 AM	Interpolation of LSAT over the arctic and antarctic	(b)(6)	Partially Redacted	Duplicate of page 23.
112	Mcmahon, James	Zhang, Huai-min	12/16/2014	12:45 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22-23.
112	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew	12/16/2014	1:02 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22.
112-113	Mcmahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew	12/16/2014	1:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 25-26.
113	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	1:31 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 26.
113	Huang, Boyin	Zhang, Huai-min; Mcmahon, James; Menne, Matthew; Lawrimore, Jay	12/16/2014	2:26 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 27.
113-114	Mcmahon, James	Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Lawrimore, Jay	12/16/2014	2:55 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of pages 27-28.
114	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	3:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 28.
114	Mcmahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	3:21 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 28-29.
116	Karl, Thomas R.	Sessing, Janice; Vose, Russell; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; Mcmahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/21/2015	2:54 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Partially Redacted	NOAA scientist sharing with other NOAA affiliates his thoughts on presenting the agency's climate change research to Congress.

128	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew	12/16/2014	1:02 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22.
128	Mcmahon, James	Zhang, Huai-min	12/16/2014	12:45 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22-23.
128	Zhang, Huai-min	Mcmahon, James	12/16/2014	11:17 AM	Interpolation of LSAT over the arctic and antarctic	(b)(6)	Partially Redacted	Duplicate of 23.
128-129	Mcmahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew	12/16/2014	1:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22-23.
129	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	1:31 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 26.
129	Huang, Boyin	Zhang, Huai-min; Mcmahon, James; Menne, Matthew; Lawrimore, Jay	12/16/2014	2:26 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 27.
130	Mcmahon, James	Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Lawrimore, Jay	12/16/2014	2:55 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of pages 27-28.
130	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	3:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 28.
130	Mcmahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	3:21 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of pages 28-29.
131	Huang, Boyin	Lawrimore, Jay; Peterson, Thomas C.; Zhang, Huai-min; Mcmahon, James; Karl, Thomas R.; Vose, Russell; Menne, Matthew	03/06/2015	8:33 AM	SST trend experiment	(b)(5)	Partially Redacted	NOAA scientist is sharing data analysis he conducted for the paper offering his opinion of the best approach to take in the paper.
133	Huang, Boyin	Mcmahon, James; Vose, Russell; Peterson, Thomas, C.; Tanner, Michael; Karl, Thomas R.; Menne, Matthew; Arguez, Anthony; Lawrimore, Jay; Zhang, Huai-min	3/19/2015	4:02 PM	Re: Invitation: Update on Science Hiatus paper @ Fri Mar 20, 2015 11am 12pm	(b)(5)	Partially Redacted	Duplicate of page 6.

137-138	Peterson, Thomas C.	Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin; Zhang, Huai-min	3/16/2015	10:50 AM	Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 4.
139-140	Lawrimore, Jay	Peterson, Thomas C.; Huang, Boyin; Zhang, Huai-min	3/16/2015	2:47 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist sharing data analysis to be used in the paper and asking for clarification on data analysis conducted for development of the paper.
140	Peterson, Thomas C.	Lawrimore, Jay; Huang, Boyin; Zhang, Huai-min	3/16/2015	2:51 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 17.
143	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Kris	5/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17 th warmest April on record for contiguous U.S.	(b)(5)	Partially Redacted	NOAA scientist discussing agency's climate change research and developing the agency's presentation for Congress.
156	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	2:20 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37.
156	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	12:21 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37-38.
156-157	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	11:35 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 38-40.

157	Huang, Boyin	Zhang, Huai-min; Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	8:43 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 41.
157	Zhang, Huai-min	Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:27 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 41.
158	Karl, Thomas R.	Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:21 AM	Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Fully Withheld	Duplicate of page 42. Although this email was initially identified as not responsive, NOAA has determined the email to be responsive and exempt under (b)(5).
158	Zhang, Huai-min	McMahon, James; Karl, Thomas R.; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	1:56 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Fully Withheld	Duplicate of page 42. Although this email was initially identified as not responsive, NOAA has determined the email to be responsive and exempt under (b)(5).
160	Zhang, Huai-min	Lawrimore, Jay; Huang, Boyin	11/20/2014	2:47 PM	article method	(b)(5)	Partially Redacted	Duplicate of page 45.
162-163	Meehl, Gerald	Karl, Thomas R.	11/28/2014	5:45 PM	Jerry this is not finished. We have another figure to add and describe, but it will give you an idea of where we are going with this	(b)(5)	Partially Redacted	Duplicate of pages 66-67.
164	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	1:31 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 26.
164	McMahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew	12/16/2014	1:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 25-26.

164	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew	12/16/2014	1:02 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22.
164	Mcmahon, James	Zhang, Huai-min	12/16/2014	12:45 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22-23.
166	Huang, Boyin	Mcmahon, James; Vose, Russell; Peterson, Thomas, C.; Tanner, Michael; Karl, Thomas R.; Menne, Matthew; Arguez, Anthony; Lawrimore, Jay; Zhang, Huai-min	3/19/2015	4:02 PM	Re: Invitation: Update on Science Hiatus paper @ Fri Mar 20, 2015 11am 12pm	(b)(5)	Partially Redacted	Duplicate of page 6.
167	Maycock, Tom	Zhang, Huai-min	05/06/2015	12:58 PM	Re: NCEI communications: question re. uncertainty in "hiatus" paper	(b)(5)	Partially Redacted	Duplicate of page 1.
234	Huang, Boyin	Karl, Thomas R.; Lawrimore, Jay	1/15/2015	4:16 PM	Your recent paper	(b)(5)	Partially Redacted	Duplicate of page 88.
234	Karl, Thomas R.	Huang, Boyin; Lawrimore, Jay	1/15/2015	4:20 PM	Your recent paper	(b)(5)	Partially Redacted	Duplicate of page 88.
234-235	Huang, Boyin	Karl, Thomas R.; Lawrimore, Jay	1/15/2015	4:33 PM	Your recent paper	(b)(5)	Partially Redacted	Duplicate of pages 88-89.
240-241	Huang, Boyin	Karl, Thomas R.; Lawrimore, Jay	1/15/2015	4:16 PM	Your recent paper	(b)(5)	Partially Redacted	Duplicate of page 88.
242	Karl, Thomas R.	Huang, Boyin; Lawrimore, Jay	1/15/2015	4:20 PM	Your recent paper	(b)(5)	Partially Redacted	Duplicate of page 88.
242	Huang, Boyin	Karl, Thomas R.; Lawrimore, Jay	1/15/2015	4:33 PM	Your recent paper	(b)(5)	Partially Redacted	Duplicate of pages 88-89.
243	Peterson, Thomas C.	Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; Mcmahon, James; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Matthews, Jessica	03/20/2015	9:55 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	NOAA scientist sharing opinion on results of data analysis for development of the paper.

243	Huang, Boyin	Peterson, Thomas C.; Karl, Thomas R.; Arguez, Anthony; McMahon, James; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Matthews, Jessica	03/20/2015	10:03 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of 15.
245	McMahon, James	Arguez, Anthony; Zhang, Huai-min; Karl, Thomas R.	03/25/2015	10:30 AM	new comparisons	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering personal opinion on statistical error uncertainty ranges for development of the paper.
245	Zhang, Huai-min	McMahon, James; Arguez, Anthony; Karl, Thomas R.	03/25/2015	10:52 AM	new comparisons	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to question from another scientist and offering personal opinion on statistical error uncertainty ranges for development of the paper.
245-246	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin; McMahon, James; Arguez, Anthony	03/25/2015	11:17 AM	new comparisons	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering personal opinion on statistical error uncertainty ranges for development of the paper and his opinion of the best approach to take in the paper.
246	Zhang, Huai-min	Karl, Thomas R.; Huang, Boyin; McMahon, James; Arguez, Anthony	03/25/2015	11:40 AM	new comparisons	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering personal opinion on statistical error uncertainty ranges for development of the paper and his opinion of future revisions.
246	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin; McMahon, James; Arguez, Anthony	03/25/2015	11:52 AM	new comparisons	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering personal opinion on statistical error uncertainty ranges for development of the paper and his opinion of the best approach to take in the paper.

247-248	Peterson, Thomas C.	Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin; Zhang, Huai-min	03/16/2015	10:50 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the development of the paper. Scientist is also asking for opinion of another scientist.
249	Lawrimore, Jay	Peterson, Thomas C.; Huang, Boyin; Zhang, Huai-min	03/16/2015	2:47 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	NOAA scientist discussing how to interpret and apply data trends in the paper as well as plans for discussing a related issue at an upcoming call.
249	Peterson, Thomas C.	Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin; Zhang, Huai-min	03/16/2015	10:50 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of pages 247-248.
251	Zhang, Huai-min	Peterson, Thomas C.; Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin	03/19/2015	1:34 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Text of email is partially cut off but full text of email is on page 300.
251-252	Peterson, Thomas C.	Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin; Zhang, Huai-min	03/16/2015	10:50 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of pages 247-248.
254	Peterson, Thomas C.	Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; McMahon, James; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	03/20/2015	9:55 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of page 243.
257-259	Zhang, Huai-min	Menne, Matthew; McMahon, James; Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Vose, Russell	12/03/2014	10:50 AM	Trend plots	(b)(5)	Fully Withheld	NOAA scientist sharing updated and revised data analysis for the paper with another scientist and indicating what his next step will be.
262	Huang, Boyin	McMahon, James; Vose, Russell; Peterson, Thomas C.; Tanner, Michael; Karl, Thomas R.; Menne, Matthew; Arguez, Anthony; Lawrimore, Jay; Zhang, Huai-min	03/19/2015	4:02 PM	Invitation: Update on Science Hiatus paper @ Fri Mar 20, 2015 11am 12pm	(b)(5)	Fully Withheld	Duplicate of page 6.

263	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	2:20 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Fully Withheld	NOAA scientist explaining how he will analyze data for development of the paper and explaining next steps by another scientist for the same.
265	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/20/2014	7:53 AM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to question from another scientist and offering personal opinion on data for the paper.
265-266	McMahon, James	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	3:51 PM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist asking another scientist to write up a description of the draft analysis to include in the paper and sharing update on draft data analysis and draft figure for development of the paper.
266	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:47 PM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist sharing draft data analysis and explaining data analysis for the development of the paper.
266-267	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:46 PM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist sharing draft data analysis and draft figures for development of the paper. Scientist is also discussing his next steps for working on the draft paper.
270	Karl, Thomas R.	Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:21 AM	Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Fully Withheld	Text of email is partially cut off. Email is duplicate of full email found on page 42.
271	Zhang, Huai-min	Lawrimore, Jay; Karl, Thomas R.; Huang, Boyin; McMahon, James; Menne, Matthew; Vose, Russell	11/13/2014	10:42 AM	Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Fully Withheld	NOAA scientist sharing edits he made to the paper the in preparation of meeting to discuss the paper.
272	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/20/2014	7:53 AM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 265.

272	Mcmahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	3:51 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 265-266.
272	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:47 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 266.
272-273	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:46 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 266-267.
273	Karl, Thomas	Zhang, Huai-min; Mcmahon, James; Huang, Boyin; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/20/2014	7:59 AM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist discussing writing of methods section for data analysis methods to use in the paper.
273	Lawrimore, Jay	Karl, Thomas R.; Zhang, Huai-min; Mcmahon, James; Huang, Boyin; Menne, Matthew; Vose, Russell	11/20/2014	10:39 AM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist is offering his opinion of the best approach to take in the paper and sharing proposed references to use in the paper. Text of email here is partially cut off but full text can be found on page 350.
275-276	Zhang, Huai-min	Menne, Matthew; Mcmahon, James; Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Vose, Russell	12/03/2014	10:50 AM	Trend plots	(b)(5)	Fully Withheld	Duplicate of pages 257-259.
280	Zhang, Huai-min	Mcmahon, James; Arguez, Anthony; Karl, Thomas R.	03/25/2015	10:52 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of page 245.
280	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin; Mcmahon, James; Arguez, Anthony	03/25/2015	11:17 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of pages 245-246.
281	Zhang, Huai-min	Karl, Thomas R.; Huang, Boyin; Mcmahon, James; Arguez, Anthony	03/25/2015	11:40 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of page 246.
281	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin; Mcmahon, James; Arguez, Anthony	03/25/2015	11:52 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of page 246.
281	Karl, Thomas R.	Zhang, Huai-min	03/25/2015	12:05 PM	Fwd: new comparisons	(b)(5)	Fully Withheld	NOAA scientist asking another scientist about potential references to use in developing methods for data analysis for the paper.

281-282	Zhang, Huai-min	Zhang, Huai-min; Huang, Boyin	03/25/2015	12:19 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist sharing sharing potential references to use in developing methods for data analysis for the paper.
282	Karl, Thomas R.	Zhang, Huai-min	03/25/2015	12:56 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist inquiring about status of data analysis to be used in development of the paper.
282	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin	03/25/2015	12:58 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist inquiring about status of data analysis to be used in development of the paper.
282	Zhang, Huai-min	Karl, Thomas R.	03/25/2015	12:59 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist discussing sharing of draft data analysis for the development of the paper. Scientist discusses next steps he will take regarding the paper.
282	Zhang, Huai-min	Karl, Thomas R.; Huang, Boyin	03/25/2015	12:59 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist discussing sharing of draft data analysis for the development of the paper.
282	Karl, Thomas R.	Zhang, Huai-min	03/25/2015	1:03 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist asking another scientist about data analysis methods used in the development of the paper.
283	Zhang, Huai-min	Karl, Thomas R.	03/25/2015	1:15 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist responding to question about data analysis methods used in development of the paper and awaiting information on another method from another scientist.
283	Huang, Boyin	Zhang, Huai-min; Karl, Thomas R.	03/26/2015	8:56 AM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist responding to question about data analysis methods used in draft of the paper.
285	Huang, Boyin	Karl, Thomas R.; Vose, Russell	05/05/2015	8:22 AM	Reference	(b)(5)	Fully Withheld	NOAA scientist sharing draft data analysis and potential references on methods for data analysis to be conducted for the paper.
287	Tepel, Mackenzie	Karl, Thomas R.	5/21/2015	3:45 PM	Re: FYI . . . Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA affiliate discussing the agency's climate change research and developing agency's presentation for Congress.

287	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; O'Connor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	5/21/2015	2:54 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 116.
287	Sessing, Janice	Karl, Thomas R.	5/21/2015	2:41 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA affiliate discussing the agency's climate change research and developing agency's presentation for Congress.
287	Karl, Thomas R.	Sessing, Janice	5/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 143.
287	Sessing, Janice	Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Karl, Thomas R.; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	6:28 PM	Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA affiliate discussing the agency's climate change research and developing agency's presentation for Congress.
289	Vincent, Katy	Karl, Thomas R.	06/03/2015	1:26 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	NOAA affiliate discussing plan for communications and press release in preparation for publication of the paper.
289-290	Karl, Thomas R.	Vincent, Katy	06/03/2015	1:34 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	NOAA scientist discussing plan for communications with NOAA affiliate and press release in preparation for publication of the paper. Scientist is explaining data and methods in order to create public communications materials.
290	Vincent, Katy	Karl, Thomas R.	06/03/2015	2:21 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	NOAA affiliate discussing plan for communications and press release in preparation for publication of the paper.

290	Karl, Thomas R.	Vincent, Katy	06/03/2015	3:29 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	NOAA scientist discussing plan for communications and press release in preparation for publication of the paper.
290	Vincent, Katy	Karl, Thomas R.	06/03/2015	3:31 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	NOAA affiliate discussing plan for communications and press release in preparation for publication of the paper.
291	Karl, Thomas R.	Holdren, John P.	06/04/2015	10:16 AM	Acceptance of your Science Manuscript aaa5632	(b)(5)	Partially Redacted	NOAA scientist offering opinion on temperature trends assessment and potential future research needs and inquiring about the same.
292	Huang, Boyin	Cowtan, Kevin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	9:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	NOAA scientist responding to data analysis shared by outside scientist as relevant to paper. NOAA scientist is sharing his interpretations and asking for clarification on data analysis and conclusions reached by outside scientist. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.
292-293	Cowtan, Kevin	Huang, Boyin	06/02/2015	5:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Outside scientist sharing data analysis he conducted on datasets relevant to the analysis presented in the paper. Scientist is sharing his interpretations and discussing his conclusions. Scientist notes he was contacted by the Journal Science for comment on the NOAA paper. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.

294-295	Karl, Thomas R.	Huang, Boyin; Cowtan, Kevin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	9:37 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	NOAA scientist responding to data analysis shared by outside scientist and explaining how data corrections in the paper were derived. NOAA scientist is sharing his interpretations with the outside scientist and other NOAA scientists and asking for clarification on data analysis and conclusions reached by outside scientist. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.
295	Cowtan, Kevin	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	3:25 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Outside scientist is discussing interpretations and conclusions as relevant to analysis in the paper. Scientist is sharing his interpretations and asking NOAA scientists for clarification on data analysis. Scientist references additional, relevant ongoing research. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.
295-296	Karl, Thomas R.	Cowtan, Kevin; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Tanner, Michael; Privette, Jeff	06/02/2015	3:33 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	NOAA scientist acknowledges further ongoing work of outside scientist, indicates that the work would be relevant to inform future NOAA processes to update dataset methodology, and seeks thoughts from outside scientist regarding implications of other scientists' work.
296	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:36 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Outside scientist commits to continuing the conversation with NOAA scientists regarding ongoing work and noting the further analysis he plans to do relevant to the analysis in the paper in order to provide comment on the paper.

296	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:57 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Outside scientist sharing further analysis he conducted relevant to the analysis in the paper. Scientist is sharing his interpretations and discussing the conclusions he made. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.
296	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; Lawrimore, Jay; Vose, Russell; Peterson, Thomas C.; Arguez, Anthony; Menne, Matthew; McMahon, James	06/02/2015	4:04 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	NOAA scientist forwarding to other NOAA scientists the comments and explanation of further analysis from outside scientist relevant to the analysis in the paper. NOAA scientist provides translation of short-hand used by the outside scientist. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.
296-297	Cowtan, Kevin	Huang, Boyin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Ruedy, Reto	06/07/2015	3:08 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Outside scientist sharing further data analysis he conducted on specific data sets as relevant to the paper. Scientist is sharing his interpretations and discussing the conclusions he made for NOAA's consideration. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.
298-299	Peterson, Thomas C.	Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin; Zhang, Huai-min	03/16/2015	10:50 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of pages 247-248.
299-300	Lawrimore, Jay	Peterson, Thomas C.; Huang, Boyin; Zhang, Huai-min	03/16/2015	2:47 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of page 249.
300	Zhang, Huai-min	Peterson, Thomas C.; Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin	03/19/2015	1:34 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of page 6. Here email addresses are partially cut off but full email is on page 6.

302	Zhang, Huai-min	Mcmahon, James; Karl, Thomas R.; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	1:56 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 42.
302	Karl, Thomas R.	Zhang, Huai-min; Mcmahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:21 AM	Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 42.
302	Zhang, Huai-min	Karl, Thomas R.; Mcmahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:27 AM	Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Fully Withheld	Email text is partially cut off. Duplicate of full text of email found on page 41.
303-304	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:46 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 266-267.
304	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:47 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 266.
304	Mcmahon, James	Mcmahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	3:51 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 265-266.
304	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/20/2014	7:53 AM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 265.
304	Karl, Thomas	Zhang, Huai-min; Mcmahon, James; Huang, Boyin; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/20/2014	7:59 AM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 273.
307	Zhang, Huai-min	Menne, Matthew; Mcmahon, James; Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Vose, Russell	12/3/2014	10:50 AM	Re: Trend plots	(b)(5)	Fully Withheld	Email text is partially cut off. Duplicate of full text of email found on pages 257-259.

309	Huang, Boyin	Lawrimore, Jay; Peterson, Thomas C.; Zhang, Huai-min; McMahan, James; Karl, Thomas R.; Vose, Russell; Menne, Matthew	03/06/2015	8:33 AM	SST trend experiment	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is offering his interpretation of experiments conducted in development of the paper.
309-310	Peterson, Thomas C.	Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahan, James; Karl, Thomas R.; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	8:50 AM	SST trend experiment	(b)(5)	Fully Withheld	NOAA scientist sharing references in developing the paper.
310	Karl, Thomas R.	Peterson, Thomas C.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahan, James; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	9:00 AM	SST trend experiment	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is offering his opinion in developing the paper.
310-311	Peterson, Thomas C.	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahan, James; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	9:02 AM	SST trend experiment	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another NOAA scientist and offering his interpretation of data analysis used in developing the paper.
311	Karl, Thomas R.	Peterson, Thomas C.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahan, James; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	9:21 AM	SST trend experiment	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is asking other NOAA scientists for clarification regarding data analysis for development of the paper.
315	McMahon, James	Menne, Matthew	03/24/2015	12:32 PM	Science paper	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is asking other NOAA scientist for clarification regarding data analysis for development of the paper.
315	Menne, Matthew	McMahon, James	03/24/2015	12:35 PM	Science paper	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to inquiring and explaining his understanding on data analysis for development of the paper.
315	McMahon, James	Menne, Matthew	03/24/2015	12:36 PM	Science paper	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to a question from another NOAA scientists regarding data analysis for development of the paper.

317	Zhang, Huai-min	Mcmahon, James; Arguez, Anthony; Karl, Thomas R.	03/25/2015	10:52 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of page 245.
317	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin; Mcmahon, James; Arguez, Anthony	03/25/2015	11:17 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of pages 245-246.
318	Zhang, Huai-min	Karl, Thomas R.; Huang, Boyin; Mcmahon, James; Arguez, Anthony	03/25/2015	11:40 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of page 246.
318	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin; Mcmahon, James; Arguez, Anthony	03/25/2015	11:52 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of page 246.
318	Zhang, Huai-min	Zhang, Huai-min; Huang, Boyin	03/25/2015	12:19 PM	Fwd: new comparisons	(b)(5)	Fully Withheld	Duplicate of pages 281-282.
320	Huang, Boyin	Karl, Thomas R.; Vose, Russell	05/05/2015	8:22 AM	Reference	(b)(5)	Fully Withheld	Duplicate of page 285.
322	Sessing, Janice	Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Karl, Thomas R.; Vincent, Katy; Gregg, Margarita; Mcmahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	6:28 PM	Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 287.
324	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; Mcmahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 143.
324	Sessing, Janice	Karl, Thomas R.; Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; Mcmahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	6:56 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA affiliate discussing the agency's climate change research and developing the agency's presentation for Congress.

324	Vose, Russell	Karl, Thomas R.; Sessing, Janice; Hammer, Gregory; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	7:47 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA scientist discussing the agency's climate change research and developing the agency's presentation for Congress.
324	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 143.
325	Sessing, Janice	Karl, Thomas R.	5/21/2015	2:41 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 287. Here email is partially cut off, but full text can be found on page 287.
325	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 143.
325	Sessing, Janice	Gregg, Margarita; Karl, Thomas R.	5/11/2015	6:28 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 287.
330	Vincent, Katy	Karl, Thomas R.	06/03/2015	1:26 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	Duplicate of page 289.
330-331	Vincent, Katy	Karl, Thomas R.	6/3/2015	2:21 PM	Re: Outstanding items for reporters	(b)(5)	Fully Withheld	Duplicate of page 290.

331	Karl, Thomas R.	Vincent, Katy	06/03/2015	1:34 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	Duplicate of pages 290-291.
331	Vincent, Katy	Karl, Thomas R.	6/3/2015	3:31 PM	Re: Outstanding items for reporters	(b)(5)	Fully Withheld	Duplicate of page 291.
334-335	Meehl, Gerald	Karl, Thomas R.	11/28/2014	5:45 PM	Jerry this is not finished. We have another figure to add and describe, but it will give you an idea of where we are going with this	(b)(5)	Fully Withheld	Duplicate of pages 66-67.
335	Zhang, Huai-min	Karl, Thomas R.; Huang, Boyin; Menne, Matthew; Vose, Russell; McMahon, James; Lawrimore, Jay	12/1/2014	7:48 PM	Re: Our Science paper	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is discussing how to respond to reviewer feedback and is offering his opinion of the best approach to take for development of the paper.
338	Matthews, Jessica	Peterson, Thomas	3/6/2015	8:32 AM	Fwd: new confidence intervals	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is discussing data analysis methodology to be used in development of the paper.
339	Peterson, Thomas C.	Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahon, James; Karl, Thomas R.; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	8:50 AM	SST trend experiment	(b)(5)	Fully Withheld	Email addresses are partially cut off. Duplicate of full email on pages 309-310.
339	Karl, Thomas R.	Peterson, Thomas C.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahon, James; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	9:00 AM	SST trend experiment	(b)(5)	Fully Withheld	Duplicate of page 310.
340	Peterson, Thomas C.	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahon, James; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	9:02 AM	SST trend experiment	(b)(5)	Fully Withheld	Duplicate of page 310.

340	Karl, Thomas R.	Peterson, Thomas C.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahon, James; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	9:21 AM	SST trend experiment	(b)(5)	Fully Withheld	Duplicate of page 311.
341	Peterson, Thomas C.	Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; McMahon, James; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Matthews, Jessica	03/20/2015	9:55 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of page 243.
342	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; O'Connor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	5/21/2015	2:54 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 116.
342	Sessing, Janice	Karl, Thomas R.	5/21/2015	2:41 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 287.
342	Karl, Thomas R.	Sessing, Janice	5/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA scientist discussing the agency's climate change research and developing the agency's presentation for Congress.
342	Sessing, Janice	Gregg, Margarita; Karl, Thomas R.	5/11/2015	6:28 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Email is partially cut off. Duplicate of full email found on page 287.

343, 348	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; Lawrimore, Jay; Vose, Russell; Peterson, Thomas C.; Arguez, Anthony; Menne, Matthew; McMahon, James	06/02/2015	4:04 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
343	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:57 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
343	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	20:36	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
343, 347	Karl, Thomas R.	Cowtan, Kevin; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Tanner, Michael; Privette, Jeff	06/02/2015	20:33	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 295-296.
343-344	Cowtan, Kevin	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	3:25 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 295.
344, 347	Karl, Thomas R.	Huang, Boyin; Cowtan, Kevin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	14:37	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 294.
344	Huang, Boyin	Cowtan, Kevin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	9:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 295.
344-345	Cowtan, Kevin	Huang, Boyin	06/02/2015	5:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 292-293.
348	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:46 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 266-267.
350	Zhang, Huai-min	Lawrimore, Jay; Karl, Thomas, R.; McMahon, James; Huang, Boyin; Menne, Matthew; Vose, Russell	11/21/2014	9:04 AM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist sharing and discussing drafts for development of the paper, including status of the paper.

350	Lawrimore, Jay	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Huang, Boyin; Menne, Matthew; Vose, Russell	11/20/2014	10:39 AM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 273.
350	Karl, Thomas R.	Zhang, Huai-min; McMahon, James; Huang, Boyin; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/20/2014	7:59 AM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 273.
350	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/20/2014	7:53 AM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 274.
350-351	McMahon, James	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	3:51 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 265-266.
351	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:46 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 266.
351	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:47 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 266-267.
353-354	Zhang, Huai-min	Menne, Matthew; McMahon, James; Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Vose, Russell	12/3/2014	10:50 AM	Re: Trend plots	(b)(5)	Fully Withheld	Duplicate of pages 257-259.
362-363	Zhang, Huai-min	McMahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:42 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is discussing how to respond to reviewer feedback and is offering his opinion of the best approach to take in the paper as well as providing information on data for purposes of discussion.
363-364	Huang, Boyin	McMahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:48 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	NOAA scientist explaining data that he is sharing for development of the paper.

365-366	Zhang, Huai-min	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:42 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 362-363.
368	Huang, Boyin	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:48 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 363-364.
368-369	Zhang, Huai-min	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:24 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 362-363.
371	Huang, Boyin	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:48 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 363-364.
371-374	Zhang, Huai-min	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:42 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 362-363.
377-378	Zhang, Huai-min	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:42 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 362-363.
378	Huang, Boyin	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:48 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 363-364.

379	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	12:38 PM	Re: your new science paper	(b)(5)	Fully Withheld	Outside scientist contacts NOAA scientist, noting that he was contacted for comment on the paper, referencing prior work bearing on the issues reviewed in the paper, and explaining the analysis used in the outside scientist's work. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
379-380	Karl, Thomas R.	Trenberth, Kevin; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Arguez, Anthony	6/1/2015	1:19 PM	Re: your new science paper	(b)(5)	Fully Withheld	NOAA scientist explains scope of hiatus paper to outside scientist and noting relationship to existing literature. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
380	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	1:40 PM	Re: your new science paper	(b)(5)	Fully Withheld	Outside scientist provides comments in response to hiatus paper including evaluation of significance of the paper. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
380-381	Karl, Thomas R.	Trenberth, Kevin	6/1/2015	2:26 PM	Re: your new science paper	(b)(5)	Fully Withheld	NOAA scientist responds to various points made in the outside scientist's comments, including pointing to figure in paper. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
381-382	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	2:57 PM	Re: your new science paper	(b)(5)	Fully Withheld	Outside scientist clarifies data underlying prior work, clarifies one of his comments on hiatus paper, and explains that reason for sharing the comments was to help inform agency process of developing public communications relating to paper.

382	Karl, Thomas R.	Trenberth, Kevin	6/1/2015	3:14 PM	Re: your new science paper	(b)(5)	Fully Withheld	NOAA scientist compares conclusions in outside scientist's prior work with conclusions in hiatus paper. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
382	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	2:57 PM	Re: your new science paper	(b)(5)	Fully Withheld	Duplicate of pages 381-382.
382	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	3:37 PM	Re: your new science paper	(b)(5)	Fully Withheld	Outside scientist cites figure in prior work to support his position. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
382	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	3:40 PM	Re: your new science paper	(b)(5)	Fully Withheld	Outside scientist cites additional figures from another prior work to support his position. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
382-383	Karl, Thomas R.	Trenberth, Kevin	6/1/2015	3:49 PM	Re: your new science paper	(b)(5)	Fully Withheld	NOAA scientist requests clarification of finding from outside scientist's prior work and suggests potential explanation. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
383	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	3:37 PM	Re: your new science paper	(b)(5)	Fully Withheld	Duplicate of email at page 382.
383-384	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	3:57 PM	Re: your new science paper	(b)(5)	Fully Withheld	Outside scientist provides additional explanation and cites figures in prior work regarding Arctic temperatures. Outside scientist also opines on other scientists' work and notes possible interactions and questions for future research. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.

385-386	Peterson, Thomas	Kennedy, John; Huang, Boyin	3/9/2015	10:01 AM	Re: SST adjustment question	(b)(5)	Fully Withheld	NOAA scientist contacts outside scientist to request insight and clarification regarding the outside scientist's work on data corrections in sea surface temperature data set and how such corrections may relate to the alleged hiatus in order to better understand data analysis as related to the alleged hiatus for development of the paper.
389-390	Peterson, Thomas	Kennedy, John; Huang, Boyin	3/9/2015	3:41 PM	Re: SST adjustment question	(b)(5)	Partially Redacted	NOAA scientist responds to clarification and analysis from outside scientist by characterizing preliminary finding and discussing time scales.
396	Huang, Boyin	Cowtan, Kevin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	9:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 292.
396-397	Cowtan, Kevin	Huang, Boyin	06/02/2015	5:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 292-293.
398-399	Cowtan, Kevin	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	3:25 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 295.
399	Karl, Thomas R.	Huang, Boyin; Cowtan, Kevin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	14:37	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 294-295.
399	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:36 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
399-400	Karl, Thomas R.	Cowtan, Kevin; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Tanner, Michael; Privette, Jeff	06/02/2015	20:33	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 295-296.
400	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:57 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.

400	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; Lawrimore, Jay; Vose, Russell; Peterson, Thomas C.; Arguez, Anthony; Menne, Matthew; McMahan, James	06/02/2015	4:04 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
400	Cowtan, Kevin	Huang, Boyin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Ruedy, Reto	06/07/2015	3:08 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 296-297.
402	Peterson, Thomas	Kennedy, John; Huang, Boyin	3/9/2015	10:01 AM	Re: SST adjustment question	(b)(5)	Partially Redacted	Duplicate of pages 385-386.
403-404	Peterson, Thomas	Kennedy, John; Huang, Boyin	3/9/2015	3:41 PM	Re: SST adjustment question	(b)(5)	Partially Redacted	Duplicate of pages 389-390.
407, 412	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; Lawrimore, Jay; Vose, Russell; Peterson, Thomas C.; Arguez, Anthony; Menne, Matthew; McMahan, James	06/02/2015	4:04 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
407	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:57 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
407	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	20:36	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
407, 411	Karl, Thomas R.	Cowtan, Kevin; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Tanner, Michael; Privette, Jeff	06/02/2015	20:33	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 295-296.
407-408	Cowtan, Kevin	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	3:25 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 295.
408, 411	Karl, Thomas R.	Huang, Boyin; Cowtan, Kevin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	14:37	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 294.

408	Huang, Boyin	Cowtan, Kevin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	9:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 292.
408-409	Cowtan, Kevin	Huang, Boyin	06/02/2015	5:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 292-293.
413, 418	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; Lawrimore, Jay; Vose, Russell; Peterson, Thomas C.; Arguez, Anthony; Menne, Matthew; McMahon, James	06/02/2015	4:04 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
413	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:57 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
413	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	20:36	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
413, 417	Karl, Thomas R.	Cowtan, Kevin; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Tanner, Michael; Privette, Jeff	06/02/2015	20:33	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 295-296.
413-414	Cowtan, Kevin	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	3:25 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 295.
414, 417	Karl, Thomas R.	Huang, Boyin; Cowtan, Kevin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	14:37	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 294.
414	Huang, Boyin	Cowtan, Kevin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	9:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 292.
414-415	Cowtan, Kevin	Huang, Boyin	06/02/2015	5:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 292-293.

422	Karl, Thomas R.	Tepel, Mackenzie; Sessing, Janice; Vose, Russell; Vincent, Katy; Leslie, John;	5/21/2015	4:08 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA scientist discussing the agency's climate change research and developing the agency's presentation for Congress.
422	Tepel, Mackenzie	Karl, Thomas R.	5/21/2015	3:45 PM	Re: FYI . . . Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of 287.
422	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; O'Connor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	5/21/2015	2:54 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 116.
422	Sessing, Janice	Karl, Thomas R.	5/21/2015	2:41 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 287.
422	Karl, Thomas R.	Sessing, Janice	5/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 287.

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23-33	Category A	(b)(5)	
34-39	Category A	(b)(5)	
40-50	Category A	(b)(5)	
51-56	Category A	(b)(5)	
57	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
58-63	Category D	(b)(5)	
64	Category B	(b)(5)	
65-70	Category C	(b)(5)	
71-81	Category A	(b)(5)	
82-87	Category A	(b)(5)	
88-93	Category C	(b)(5)	
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111-116	Category A	(b)(5)	
117-127	Category A	(b)(5)	
128	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
129-134	Category D	(b)(5)	
135	Category B	(b)(5)	
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142 - 152	Category A	(b)(5)	
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622 - 632	Category C	(b)(5)	
633 - 634	Draft graphs of SST data created by NOAA scientists to be used in the paper.	(b)(5)	
635 - 650	Category A	(b)(5)	
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662 - 663	Draft graphs of SST data created by NOAA scientists to be used in the paper.	(b)(5)	
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1096 - 1107	Author draft graphs and slides on SST data to be used in the paper.	(b)(5)	
1108	Author notes on draft graphs and slides on SST data to be used in the paper.	(b)(5)	
1109 - 1165	Category A	(b)(5)	
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1170 - 1173	Draft graphs of land and ocean temperature data created by NOAA scientists to be used in the paper.	(b)(5)	
1174 - 1223	Category A	(b)(5)	
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1234 - 1244	Category A	(b)(5)	
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1308 - 1309	Draft graphs of SST data created by NOAA scientists to be used in the paper.	(b)(5)	
1310 - 1325	Category A	(b)(5)	
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1337 - 1338	Draft graphs of SST data created by NOAA scientists to be used in the paper.	(b)(5)	
1339 - 1355	Category A	(b)(5)	
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1413 - 1422	Category E	(b)(5)	
1423 - 1437	Category A	(b)(5)	
1439 - 1449	Category C	(b)(5)	
1450 - 1467	Category A	(b)(5)	
1468 - 1470	Author's interpretations on data analysis of ERSST for development of the paper.	(b)(5)	
1471 - 1482	Category A	(b)(5)	
1483-1488	Category A	(b)(5)	
1489-1494	Category A	(b)(5)	
1495-1500	Category A	(b)(5)	
1501 - 1502	Category C	(b)(5)	
1503-1524	Category A	(b)(5)	
1525	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
1526 - 1531	Category D	(b)(5)	
1532 - 1548	Category A	(b)(5)	
1549	Category B	(b)(5)	
1550 - 1555	Category C	(b)(5)	
1556 - 1572	Category A	(b)(5)	
1573	Category B	(b)(5)	
1574 - 1579	Category C	(b)(5)	

1580-1607	Category A	(b)(5)	
1608-1618	Category A	(b)(5)	
1619-1624	Category A	(b)(5)	
1625-1630	Category A	(b)(5)	
1631-1641	Category A	(b)(5)	
1642	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
1643-1648	Category C	(b)(5)	
1649-1658	Category A	(b)(5)	
1659-1668	Category A	(b)(5)	
1669-1672	Category A	(b)(5)	
1673-1676	Category A	(b)(5)	
1677-1680	Category A	(b)(5)	
1681-1684	Category A	(b)(5)	
1685-1689	Category A	(b)(5)	
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1695-1699	Category A	(b)(5)	
1700-1711	Category A	(b)(5)	
1712-1718	Category A	(b)(5)	
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1748-1755	Category A	(b)(5)	
1756-1763	Category A	(b)(5)	
1764-1770	Category A	(b)(5)	
1771-1775	Category A	(b)(5)	
1776-1780	Category A	(b)(5)	
1781-1785	Category A	(b)(5)	
1786-1790	Category A	(b)(5)	
1791-1797	Category A	(b)(5)	
1801-1809	Category A	(b)(5)	
1810-1818	Category A	(b)(5)	
1819-1827	Category A	(b)(5)	
1828-1837	Category A	(b)(5)	
1838-1846	Category A	(b)(5)	
1847-1855	Category A	(b)(5)	
1856-1865	Category A	(b)(5)	
1866-1875	Category A	(b)(5)	
1876-1886	Draft powerpoint by author presenting information on global temperature and presenting data analysis conducted by NOAA scientists for the paper.	(b)(5)	
1887-1897	Category A	(b)(5)	

1898-1908	Category A	(b)(5)	
1909-1919	Category A	(b)(5)	
1920-1929	Category A	(b)(5)	
1930-1941	Category A	(b)(5)	
1942-1953	Category A	(b)(5)	
1954-1966	Category A	(b)(5)	
1967-1979	Category A	(b)(5)	
1980-1991	Category A	(b)(5)	
1992-2003	Category A	(b)(5)	
2004-2016	Category A	(b)(5)	
2017-2029	Category A	(b)(5)	
2041-2057	Category A	(b)(5)	
2058-2070	Category A	(b)(5)	
2071 2076	Draft graphs and charts of SST data to be used in development of the paper.	(b)(5)	
2097-2099	Category A	(b)(5)	
2100-2108	Category A	(b)(5)	
2111-2129	Category C	(b)(5)	
2130-2138	Category E	(b)(5)	
2139-2143	Category A	(b)(5)	
2144-2153	Category A	(b)(5)	
2154-2164	Category C	(b)(5)	
2165-2176	Category A	(b)(5)	
2177-2189	Category A	(b)(5)	
2190-2195	Category A	(b)(5)	
2197-2202	Category A	(b)(5)	
2203-2212	Category A	(b)(5)	
2213-2223	Category C	(b)(5)	
2224-2235	Category A	(b)(5)	
2236-2252	Category A	(b)(5)	
2274-2284	Category C	(b)(5)	
2285-2290	Category A	(b)(5)	
2291-2301	Category A	(b)(5)	
2302-2312	Category C	(b)(5)	
2313-2329	Category A	(b)(5)	
2330-2340	Category C	(b)(5)	
2341- 2360	Category E	(b)(5)	
2361-2368	Category A	(b)(5)	
2369-2381	Category A	(b)(5)	
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2411-2414	Category A	(b)(5)	
2415-2419	Category A	(b)(5)	
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2440-2449	Category A	(b)(5)	

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2480-2489	Category A	(b)(5)	
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2531-2540	Category C	(b)(5)	
2541--2551	Category C	(b)(5)	
2552-2562	Category C	(b)(5)	
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2658-2674	Category A	(b)(5)	
2675-2691	Category A	(b)(5)	
2692-2702	Category C	(b)(5)	
2731-2736	Category C	(b)(5)	
2737-2753	Category A	(b)(5)	
2754-2762	Category C	(b)(5)	
2763-2779	Category A	(b)(5)	
2780-2786	Category C	(b)(5)	
2787-2793	Category C	(b)(5)	
2793-2809	Category A	(b)(5)	
2810-2815	Category C	(b)(5)	
2816	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
2817-2822	Category D	(b)(5)	
2823	Category B	(b)(5)	
2824-2829	Category C	(b)(5)	
2830-2840	Category A	(b)(5)	
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2863-2868	Category A	(b)(5)	
2869-2874	Category A	(b)(5)	
2875-2880	Category A	(b)(5)	
2881	Category B	(b)(5)	
2882-2887	Category C	(b)(5)	
2888-2904	Category A	(b)(5)	

2905	Category B	(b)(5)	
2906-2911	Category D	(b)(5)	
2912-2918	Category C	(b)(5)	
2919-2929	Category A	(b)(5)	
2930-2945	Category A	(b)(5)	
2946-2955	Category A	(b)(5)	
2956-2966	Category A	(b)(5)	
2967-2977	Category A	(b)(5)	
2978-2988	Category A	(b)(5)	
2989-3004	Category A	(b)(5)	
3005-3011	Category C	(b)(5)	
3012-3027	Category A	(b)(5)	
3028-3044	Category A	(b)(5)	
3045	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
3046-3061	Category D	(b)(5)	
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3095-3105	Category A	(b)(5)	
3106-3117	Category A	(b)(5)	
3118-3128	Category C	(b)(5)	
3129-3135	Category D	(b)(5)	
3152-3168	Category A	(b)(5)	
3169-3185	Category A	(b)(5)	
3186-3202	Category A	(b)(5)	
3203-3213	Category A	(b)(5)	
3231-3247	Category A	(b)(5)	
3261-3671	Category A	(b)(5)	
3272-3277	Category A	(b)(5)	
3278-3283	Category A	(b)(5)	
3296-3306	Category A	(b)(5)	
3307-3312	Category A	(b)(5)	
3313-3322	Category A	(b)(5)	
3323-3333	Category A	(b)(5)	
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3602-3610	Category A	(b)(5)	
3621-3633	Category A	(b)(5)	
3638-3643	Draft graphs and charts of SST data to be used in development of the paper.	(b)(5)	
3669-3672	Category A	(b)(5)	
3672-3688	Category A	(b)(5)	
3689-3692	Draft graphs of SST and land temperature data to be used in development of the paper.	(b)(5)	
3693-3694	Duplicates of emails processed elsewhere	(b)(5)	
3695-3703	Category E	(b)(5)	
3705-3719	Category A	(b)(5)	
3720-3730	Category C	(b)(5)	
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3735-3744	Category A	(b)(5)	
3745-3755	Category C	(b)(5)	
3756-3760	Category A	(b)(5)	
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3777-3786	Category A	(b)(5)	
3787-3797	Category A	(b)(5)	
3799-3809	Category C	(b)(5)	

3810-3820	Category A	(b)(5)	
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3858 -3868	Category C	(b)(5)	
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4009-4018	Category E	(b)(5)	
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4136-4145	Category A	(b)(5)	
4146-4155	Category A	(b)(5)	
4156-4165	Category C	(b)(5)	
4166-4175	Category C	(b)(5)	
4176-4186	Category C	(b)(5)	
4187-4196	Category C	(b)(5)	
4197-4207	Category C	(b)(5)	
4208-4218	Category C	(b)(5)	
4219-4229	Category C	(b)(5)	

4230-4234	Category A	(b)(5)	
4235-4245	Category A	(b)(5)	
4246-4256	Category A	(b)(5)	
4257-4262	Category C	(b)(5)	
4263-4273	Category A	(b)(5)	
4274-4279	Category A	(b)(5)	
4280-4285	Category C	(b)(5)	
4286-4296	Category A	(b)(5)	
4297-4301	Category A	(b)(5)	
4302-4307	Category C	(b)(5)	
4308	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
4309-4314	Category D	(b)(5)	
4315-4321	Category C	(b)(5)	
4322-4332	Category A	(b)(5)	
4333-4343	Category A	(b)(5)	
4344-4354	Category A	(b)(5)	
4355-4360	Category A	(b)(5)	
4361-4365	Category A	(b)(5)	
4366-4371	Category A	(b)(5)	
4372	Category B	(b)(5)	
4373-4409	Category C	(b)(5)	
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4421-4430	Category A	(b)(5)	
4431-4436	Category A	(b)(5)	
4437-4447	Category A	(b)(5)	
4448-4453	Category A	(b)(5)	
4454-4464	Category C	(b)(5)	
4465-4475	Category A	(b)(5)	
4476-4486	Category A	(b)(5)	
4487-4496	Category A	(b)(5)	
4497-4502	Category A	(b)(5)	
4503	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
4504-4509	Category C	(b)(5)	
4510-4519	Category A	(b)(5)	
4520-4525	Category A	(b)(5)	
4533-4543	Category A	(b)(5)	
4544-4549	Category A	(b)(5)	

4550	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
4551-4556	Category D	(b)(5)	
4557-4567	Category A	(b)(5)	
4568-4573	Category A	(b)(5)	
4574-4578	NOAA draft communications plan regarding publication of the paper.	(b)(5)	
4579-4589	Category A	(b)(5)	
4591-4599	Draft FAQs for communications plan related to release of paper.	(b)(5)	
4600-4607	Category A	(b)(5)	
4614-4619	Category C	(b)(5)	
4620-4630	Category A	(b)(5)	
4631-4636	Category A	(b)(5)	
4637-4639	Category A	(b)(5)	
4640-4650	Category C	(b)(5)	
4651-4654	Draft chart of MLOST data created by NOAA scientists to be used in development of the paper.	(b)(5)	
4655-4665	Category A	(b)(5)	
4666-4675	Category A	(b)(5)	
4676-4688	Category A	(b)(5)	
4689-4701	Category A	(b)(5)	
4702-4710	Category A	(b)(5)	
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4730-4732	Category A	(b)(5)	
4733-4736	Category E	(b)(5)	
4737-4750	Category A	(b)(5)	
4751-4761	Category E	(b)(5)	
4763-4766	Category A	(b)(5)	
4767-4770	Category A	(b)(5)	
4771-4774	Category A	(b)(5)	
4775-4778	Category A	(b)(5)	
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4784-4788	Category A	(b)(5)	
4789-4794	Category A	(b)(5)	
4795-4800	Category A	(b)(5)	
4801-4806	Category A	(b)(5)	
4807-4812	Category A	(b)(5)	
4813-4817	Category A	(b)(5)	
4818-4827	Category A	(b)(5)	
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4838-4847	Category A	(b)(5)	
4848-4857	Category A	(b)(5)	

4858-4867	Category A	(b)(5)	
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4888-4897	Category A	(b)(5)	
4898-4907	Category C	(b)(5)	
4908-4917	Category C	(b)(5)	
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4929-4938	Category C	(b)(5)	
4939-4949	Category C	(b)(5)	
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4972-4977	Category A	(b)(5)	
4978-4988	Category A	(b)(5)	
4989-4999	Category C	(b)(5)	
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5011-5016	Category A	(b)(5)	
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5034-5040	Category C	(b)(5)	
5041	Category B	(b)(5)	
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5301-5304	Category A	(b)(5)	
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5320-5330	Category A	(b)(5)	
5331-5334	Category A	(b)(5)	
5335-45	Category A	(b)(5)	
5346-5355	Category C	(b)(5)	
5356-5359	Category A	(b)(5)	
5360-70	Category C	(b)(5)	
5371-5374	Category A	(b)(5)	
5375-5385	Category C	(b)(5)	
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5390-5401	Category A	(b)(5)	
5402-5413	Category A	(b)(5)	
5414-5418	Category A	(b)(5)	
5419-5430	Category A	(b)(5)	
5431-5441	Category C	(b)(5)	
5442-5445	Category C	(b)(5)	
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5451-5460	Category A	(b)(5)	
5461-71 PR	Category C	(b)(5)	
5472-5476	Category A	(b)(5)	
5477-81	Category E	(b)(5)	
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5642-5647	Category C	(b)(5)	

5648-5658	Category A	(b)(5)	
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5665	Category B	(b)(5)	
5666-71	Category C	(b)(5)	
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5696-5706	Category A	(b)(5)	
5707-5712	Category A	(b)(5)	
5713-5723	Category A	(b)(5)	
5724-5729	Category A	(b)(5)	
5730	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
5731-36	Category C	(b)(5)	
5738-41	Draft charts of annual global temperatures for use in development of the paper.	(b)(5)	
5742-5752	Category A	(b)(5)	
5753-5758	Category A	(b)(5)	
5781-5791	Category A	(b)(5)	
5792-5797	Category A	(b)(5)	
5798-5808	Draft powerpoint by author presenting information on global temperature and presenting data analysis conducted by NOAA scientists for the paper.	(b)(5)	
5809-11	Category C	(b)(5)	
5812-5822	Category A	(b)(5)	
5823-5828	Category A	(b)(5)	
5829-5837	Category A	(b)(5)	
5840-5849	Category C	(b)(5)	
5850-5858	Category C	(b)(5)	
5859-5860	Category C	(b)(5)	
5861-5865	Category C	(b)(5)	
5866-5868	Category C	(b)(5)	
5869-5879	Category A	(b)(5)	
5880-5890	Category A	(b)(5)	
5891-5901	Category A	(b)(5)	
5902-5912	Category A	(b)(5)	
5913-5918	Category A	(b)(5)	
5919-5924	Category A	(b)(5)	
5925-45	Category C	(b)(5)	
5946-5956	Category A	(b)(5)	
5957-5962	Category A	(b)(5)	
5963-75	Category C	(b)(5)	

5976-5986	Category A	(b)(5)	
5987-5995	Category A	(b)(5)	
5998-6007	Category C	(b)(5)	
6008-6016	Category C	(b)(5)	
6017-6027	Category A	(b)(5)	
6028-6033	Category A	(b)(5)	
6034-44	Category C	(b)(5)	
6045-6055	Category A	(b)(5)	
6056-6061	Category A	(b)(5)	
6062-67	Category D	(b)(5)	
6068-6071	Category C	(b)(5)	
6072-6074	Category C	(b)(5)	
6075-6077	Category C	(b)(5)	
6078-6088	Category A	(b)(5)	
6089-6099	Category A	(b)(5)	
6100-6110	Category A	(b)(5)	
6111-6133	Category A	(b)(5)	
6134-45	Category C	(b)(5)	
6146-6151	Category D	(b)(5)	
6152-6162	Category A	(b)(5)	
6163-6168	Category A	(b)(5)	
6169-6174	Category A	(b)(5)	
6187-96	Category C	(b)(5)	
6197-6202	Category A	(b)(5)	
6203-6213	Category A	(b)(5)	
6214-15	Category C	(b)(5)	
6216-6226	Category C	(b)(5)	
6227-6228	Category C	(b)(5)	
6229-6239	Category A	(b)(5)	
6240-6249	Category A	(b)(5)	
6250-52	Category C	(b)(5)	
6253-6258	Category A	(b)(5)	
6259-6272	Category A	(b)(5)	
6270-72	Category C	(b)(5)	
6273-6278	Category A	(b)(5)	
6279-6287	Category A	(b)(5)	
6288-6296	Category C	(b)(5)	
6299-6304	Category A	(b)(5)	
6305-6315	Category A	(b)(5)	
6316-29	Category C	(b)(5)	
6330-6338	Category A	(b)(5)	
6339-57	Category C	(b)(5)	

6358	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
6359-6364	Category C	(b)(5)	
6365-6370	Category C	(b)(5)	
6371-6472	Category C	(b)(5)	
6372-6378	Category D	(b)(5)	
6379-6384	Category C	(b)(5)	
6385-6390	Category A	(b)(5)	
6391-6401	Category A	(b)(5)	
6402-6407	Category A	(b)(5)	
6408-09	Category A	(b)(5)	
6410-6420	Category A	(b)(5)	
6421-23	Category C	(b)(5)	
6424-6434	Category A	(b)(5)	
6435-6440	Category A	(b)(5)	
6441-43	Category C	(b)(5)	
6444-6454	Category A	(b)(5)	
6455-6460	Category A	(b)(5)	
6461-69	Category C	(b)(5)	
6470-6478	Category A	(b)(5)	
6479-6488	Category C	(b)(5)	
6489-6499	Draft graphs of SST data created by NOAA scientists to be used in development of the paper.	(b)(5)	
6500-6508	Category A	(b)(5)	
6509-6532	Category A	(b)(5)	
6533-6537	Category A	(b)(5)	
6538-6545	Category A	(b)(5)	
6546-6552	Category A	(b)(5)	
6553-6557	Category A	(b)(5)	
6603-6639	Category A	(b)(5)	
6640-6649	Category A	(b)(5)	
6650-6671	Category A	(b)(5)	
6672-8882	Category E	(b)(5)	
6683-6699	Category A	(b)(5)	
6700-6710	Category C	(b)(5)	
6711	Category B	(b)(5)	
6712-6720	Category C	(b)(5)	
6721-6731	Category A	(b)(5)	
6732-6742	Category A	(b)(5)	
6743-6753	Category A	(b)(5)	
6754-6759	Category A	(b)(5)	
6760-6765	Category A	(b)(5)	
6766-6761	Category A	(b)(5)	

6772	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
6773-6779	Category C	(b)(5)	
6780-6806	Category A	(b)(5)	
6807-6808	Category A	(b)(5)	
6820-6829	Category C	(b)(5)	
6830-6839	Category C	(b)(5)	
6840-6848	Category C	(b)(5)	
6849-6855	Category C	(b)(5)	
6856-6862	Category C	(b)(5)	
6863-6875	Category C	(b)(5)	
6876-6882	Category C	(b)(5)	
6883-6889	Category C	(b)(5)	
6890-6896	Category C	(b)(5)	
6897-6912	Category C	(b)(5)	
6913-6921	Category A	(b)(5)	
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6973-6983	Category A	(b)(5)	
6984-6994	Category A	(b)(5)	
6995-7005	Category A	(b)(5)	
7006-7016	Category A	(b)(5)	
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7050-7060	Category A	(b)(5)	
7061-7071	Category A	(b)(5)	
7072-7081	Category A	(b)(5)	
7082-7087	Category A	(b)(5)	
7094-7100	Category A	(b)(5)	
7101-7106	Category A	(b)(5)	
7107-7112	Category A	(b)(5)	
7113-7118	Category A	(b)(5)	
7119-7124	Category A	(b)(5)	
7125-7128	Category A	(b)(5)	
7129-7132	Category A	(b)(5)	
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7152-7157	Category A	(b)(5)	

7158-7163	Category A	(b)(5)	
7164-7169	Category A	(b)(5)	
7170-7175	Category A	(b)(5)	
7176-7181	Category A	(b)(5)	
7182-7187	Category A	(b)(5)	
7188-7193	Category A	(b)(5)	
7194-7199	Category A	(b)(5)	
7200-7205	Category A	(b)(5)	
7206-7212	Category A	(b)(5)	
7213-7216	Category A	(b)(5)	
7217-7221	Category A	(b)(5)	
7222-7232	Category A	(b)(5)	
7233-7243	Category A	(b)(5)	
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7256-7265	Category A	(b)(5)	
7266-7275	Category A	(b)(5)	
7276-7285	Category A	(b)(5)	
7286-7295	Category A	(b)(5)	
7296-7306	Category A	(b)(5)	
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7402-7412	Category C	(b)(5)	
7413-7423	Category C	(b)(5)	
7424-7434	Category C	(b)(5)	
7435-7445	Category C	(b)(5)	
7446-7450	Draft FAQs for communications plan related to publication of paper.	(b)(5)	
7451-7454	Category A	(b)(5)	
7455-7497	Category A	(b)(5)	
7498-7506	Category A	(b)(5)	
7507-7513	Category A	(b)(5)	
7514-7521	Category A	(b)(5)	
7522-7535	Category A	(b)(5)	
7536-7551	Category A	(b)(5)	
7552-7559	Category A	(b)(5)	
7560-7567	Category A	(b)(5)	
7568-7573	Category A	(b)(5)	
7574-7582	Category A	(b)(5)	
7583-7593	Category A	(b)(5)	
7594-7604	Category A	(b)(5)	

7605-7613	Category A	(b)(5)	
7614-7623	Category A	(b)(5)	
7624-7633	Category A	(b)(5)	
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7644-7653	Category A	(b)(5)	
7654-7664	Category A	(b)(5)	
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7701-7712	Category A	(b)(5)	
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7833-7842	Category A	(b)(5)	
7843-7848	Category A	(b)(5)	
7849-7854	Category A	(b)(5)	
7855-7860	Category A	(b)(5)	
7861-7866	Category A	(b)(5)	
7867-7873	Category A	(b)(5)	
7874-7877	Category A	(b)(5)	

Categories	Descriptions
A	Draft of paper "Possible artifacts of data biases in the recent global surface warming hiatus" by Thomas Karl, et al. as well as the drafts of the "supplementary materials" that accompanied the paper and were made available for download by Science upon publication of the paper. Non-final, pre-decisional draft contains opinions and recommendations of one or more NOAA authors; draft language, data, and data interpretation for consideration by other NOAA authors; comments on previous drafts of the paper, and/or responses to other NOAA authors' or
B	Drafts of cover letter exchanged between authors, from Tom Karl to Science magazine, in response to peer review comments.

C	Draft responses to external peer review. Draft responses exchanged among NOAA authors to determine how best to respond to comments provided by external peer reviewers. Pre-decisional discussions that reflect proposed responses to peer review comments. Drafts contain opinions and recommendations of one or more NOAA authors; draft language, data, and data interpretation for consideration by other authors; comments on previous drafts of the responses to peer reviewers; and/or responses to other authors' comments on earlier drafts of the responses to peer reviewers.
D	Responses to external peer reviews. NOAA's Responses to constructive criticism and advice submitted by scientific experts as part of the confidential peer review process for papers submitted to scientific journals. Responses were submitted as part of process to assist in authors' deliberations whether and in what form to publish the paper.
E	Questions for discussion and draft graphs circulated by one author and created for author discussions during development of the paper.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

Exhibit 2 to Declaration of Mark Graff



May 27, 2016

Mr. Bill Marshall
425 Third St., SW
Suite 800
Washington, DC 20024

Re: FOIA Request No. DOC-NOAA-2016-000351

Dear Mr. Marshall:

This letter is in response to your Freedom of Information Act (FOIA) request entered into FOIAOnline on December 15, 2015, for certain records of the National Oceanic and Atmospheric Administration (NOAA). Pursuant to the Joint Status Report filed on March 22, 2016 in *Judicial Watch v. U.S. Department of Commerce*, 1:15-cv-2088-CRC (D.D.C.), and the Court's March 24, 2016 Minute Order in that action, on April 15, 2016, we released in their entirety 122 pages of records that are responsive to item 4 of your FOIA request, as modified by the March 1, 2016 Joint Status Report.


Pursuant to the March 22, 2016 Status Report and the Court's March 24, 2016 Minute Order, this letter responds to items 1-3 of your request, as modified by the March 1, 2016 Joint Status Report. We are providing 242 pages, including:

- 102 pages of records that we are releasing in their entirety.
- 57 pages of records that have been partially redacted under FOIA Exemption (b)(5), 5 U.S.C. 552(b)(5), which exempts from disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." The redacted material is protected by the deliberative process privilege.
- 13 pages of records that contain redactions of non-responsive material.
- 17 pages of records that have been partially redacted under FOIA Exemption (b)(5) (deliberative process) and also contain redactions of non-responsive material.
- 3 pages of records that are partially redacted under FOIA Exemption (b)(5) and FOIA Exemption (b)(6), 5 U.S.C. 552(b)(6), which protects "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

In this release, we have also noted, on 50 separate pages, where pages of email chains have been withheld in their entirety as non-responsive or under a FOIA exemption. We are withholding in their entirety 8,013 pages of records under FOIA Exemption (b)(5) that are pre-decisional and deliberative, and protected under the deliberative process privilege. 7,877 of these pages are drafts and other documents. 136 of these pages are deliberative email communications. Because the request sought records of multiple custodians, there is a significant amount of duplicative material in the responsive records.

If you have any questions, your attorney may contact Kevin Snell, Trial Attorney, at 202-305-0924. Please be sure to refer to the civil action number, 1:15-cv-2088-CRC, and the FOIA Request Number, DOC-NOAA-2016-00351, in all correspondence regarding this case.

Sincerely,

A handwritten signature in blue ink that reads "Mark S. Paese". The signature is fluid and cursive, with the first name "Mark" being the most prominent part.

Mark S. Paese
Deputy Assistant Administrator
NOAA Satellite and Information Service

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,)	
425 Third Street, SW, Suite 800)	
Washington, D.C. 20024)	
)	
Plaintiff,)	
)	
v.	)	Civil Action No. 15-2088 (CRC)
)	
U.S. DEPARTMENT OF)	
COMMERCE,)	
1401 Constitution Avenue, NW)	
Washington, D.C. 20230)	
)	
Defendant.)	
_____)	

DECLARATION OF DR. RICHARD W. SPINRAD

1. I am Dr. Richard W. Spinrad, and I have been the Chief Scientist of the National Oceanic and Atmospheric Administration (NOAA) since May 9, 2014. As Chief Scientist, I provide policy and program direction for the agency’s science and technology priorities. I have 30 years of scientific and executive experience. At different points in my career, I have worked as a research scientist, including for the Navy; held faculty appointments at three universities; directed a national non-profit organization; and presided over a private company.

2. I am aware that the pending litigation regards NOAA’s decision to withhold certain substantive communications among scientists from its response to a request under the Freedom of Information Act (FOIA), in light of the exception from disclosure under FOIA that applies to material generated in connection with a “deliberative process.” At issue are email

discussions among NOAA scientists at the National Centers for Environmental Information (NCEI) who authored a report published in June 2015 addressing climate trends, as well as communications between those NOAA scientists and scientists located outside the federal government. I am, further, aware that a separate declaration from the NOAA FOIA Officer (Mark H. Graff) will address the particular facts of the specific report and specific communications at issue in this litigation.

3. I submit this declaration to describe more generally the harm that would result to our agency and to federal scientists if the deliberative communications among NOAA's scientists, or between NOAA's scientists and outside experts providing input to the agency's processes, were to be released. Such harm would result from release of either deliberative communications among federal scientists, or of deliberative communications between federal scientists and scientists outside the federal government (whom I refer to as "outside scientists"). Such outside scientists may work, for example, in academia, international data-collecting organizations, non-governmental research organizations, state agencies, or private industry.

4. My education includes a Bachelor of Arts degree (1975) in Earth and Planetary Sciences from The Johns Hopkins University in Baltimore, Maryland, and Master of Science (1978) and Doctoral degrees (1982) in oceanography from Oregon State University.

5. Prior to joining NOAA, I served as a Program Manager and Division Director with the United States Navy Office of Naval Research (1987 - 1994); the Executive Director for the Consortium for Oceanographic Research and Education, a non-profit research advocacy organization (1994 - 1999); and Technical Director (senior civilian) at the United States Navy Office of the Oceanographer of the Navy (1999 - 2003). In connection with my service, I was

awarded the U.S. Navy Distinguished Civilian Service Award, which is the highest civilian award given by the Navy.

6. From 2003 to 2010, I served as Assistant Administrator at NOAA in two sequential capacities, as head of the National Ocean Service and as head of NOAA's Office of Oceanic and Atmospheric Research.

7. I then served as Vice President for Research at Oregon State University in Corvallis, Oregon (2010 - 2014) before being appointed as NOAA's Chief Scientist.

8. Among my other duties during my career at NOAA, I have served as co-lead of the White House committee that developed the first national set of ocean research priorities and as the representative from the Department of Commerce to the White House Office of Science and Technology Policy (OSTP) committee addressing scientific integrity, culminating in guidance from OSTP in December 2010.

9. As NOAA's Assistant Administrator for Oceanic and Atmospheric Research (2005 - 2010), I directed the agency's programs in oceanography, atmospheric science, and climate science. I directly supervised significant research efforts including those relating to ocean exploration, the National Sea Grant College Program, and the Climate Program Office. I also supervised seven NOAA laboratories around the United States.

10. As NOAA's Assistant Administrator for Ocean Services and Coastal Zone Management (2003 - 2005), I directed the agency's navigation and coastal services, including the National Geodetic Survey, the Office of National Marine Sanctuaries, and the Office of Coastal Resource Management. As part of my duties, I represented the interests of the United States in

the establishment of a global tsunami warning system. I also served as the United States permanent representative to the United Nations' Intergovernmental Oceanographic Commission.

11. I have received several high honors during my tenure at NOAA, including Presidential Rank Awards from Presidents George W. Bush and Barack H. Obama.

12. During my career, I have belonged to several professional societies designed to advance research and education and to promote communication among the scientific community. Such organizations bring together scientists from different settings, including government, academia, and industry, recognizing their shared goals. I am a fellow of the American Meteorological Society, the Marine Technology Society, and the Institute of Marine Engineering, Science and Technology. I am the past president of the Oceanography Society and president-elect of the Marine Technology Society.

13. Because I have worked as a scientist in multiple settings, including NOAA, the Navy and in academia, I have a broad perspective on the key importance of collaboration to the scientific community. My experiences have included a broad array of types and intensities of collaboration. I have worked alongside researchers in the field and at sea, and have co-authored dozens of peer-reviewed publications with collaborators from all of the sectors identified above.

14. The heart of the scientific method is the formulation, refining, and testing of hypotheses using available facts, which must be gathered through research and then analyzed. Scientists pursuing a research objective may begin with only rough ideas or ideas that are not yet fully formed. Those ideas are then developed, tested, and revised as data are collected and interpreted. The possible interpretations are generated and tested in part through exchanges and

candid debates with peers inside and outside the federal government. The set of available information, and our understanding of it, evolves through this process.

15. Focusing on the work we do at NOAA, I would point to the exchange and debate among peers as the mechanism that allows us to ensure that the scientific products we develop and release to the public are robustly developed and accurately tested. Such rigorous vetting is critical to developing and releasing scientific information of the highest possible quality to inform the public and decision-makers.

16. When we are developing and refining hypotheses, then, we value input and feedback from the community of scientists who have expertise in the field relating to a particular project. The relevant expertise will likely not be located in just one organization, but most often will be shared among several different scientists, each of whom may have a specialized focus.

17. In seeking out expert feedback and input, scientists generally do not distinguish between colleagues who work within federal agencies and scientists who work in other settings. Rather, our scientific peers who have expertise to offer are generally considered as belonging to one scientific community that shares the overall goal of advancing scientific understanding in their fields. Sometimes experts located outside the federal government have a specialized area of expertise that the agency lacks, or they may be respected peers who can offer a second opinion.

18. Indeed, in some scientific fields (including climate science) there are only a limited number of scientists with the relevant, specialized expertise. Many of them are federal employees, and having a strong scientific team in-house enables our agencies to produce very high quality scientific products. Integrating the perspectives and information from outside scientists allows us to produce even more robust scientific products.

19. It is therefore commonplace, as a research project proceeds, for federal scientists to reach out to request feedback and input from colleagues both inside and outside the federal government who have relevant knowledge and expertise. As I noted above (¶ 3), these colleagues may be located in such settings as academia, international data-collecting organizations, non-governmental organizations, or private industry, and may have a common history of collaborating with federal scientists on working groups and panels. These requests for input often lead to candid discussions and debates that can be thought of as a type of informal peer review that fulfills a valuable role in developing scientific thought and promoting scientific understanding. In an earlier era, such discussions were limited to conversations among scientists at irregular intervals, such as at professional society gatherings. The advent of electronic communications has facilitated more frequent and regular discussions, to the great advancement of science.

20. There is a general and well-established presumption, often implied rather than explicit, that such discussions are not intended to be, and will not be, shared with a wider audience. Confidentiality is essential to ensuring the participants are free to propose new ideas or explanations without fear of misinterpretation or being taken out of context, and without slowing down the exchange of ideas. Sometimes the communications are very informal and are developed quickly, which is helpful particularly at the initial stages of project development when it is important to generate new ideas.

21. By allowing for the testing and refinement of ideas, such confidential discussions help ensure that scientific products are more well-developed and robust. If such discussions

could not take place, the exchange of scientific understanding would be hampered and the pace of scientific progress would slow.

22. I believe several types of harm would likely result to the agency, to federal scientists, and ultimately to the public if federal scientists could not engage in the type of confidential, candid discussions with each other or with outside experts that I have described. Federal scientists should be permitted the same opportunities for collegial collaboration that is the standard for scientists in other settings. This collaboration is particularly productive as new facts become available and we seek consensus in the scientific community on the appropriate interpretation and understanding of these facts.

23. First, there is the risk of chilling candid, informal exchanges and debates among scientists in the community of experts, leading to a less robust scientific process overall. This would adversely affect the agency's ability to produce high quality scientific products. Federal scientists obviously must communicate with one another in developing their agencies' products, and should have confidence that their preliminary views and suggestions will be treated as confidential. They should also feel free to reach out and express their ideas to qualified outside scientists for their feedback. If there is uncertainty as to whether their communications will be kept from public view, federal scientists would likely be less candid about expressing their views and seeking important feedback. They may be concerned, for example, about potential damage to their reputation from a statement being misconstrued or taken out of context or about the risk of harassment. In certain contexts, such as climate research and analysis, the potential for a chilling effect is particularly high because developments in this area typically generate a high

level of interest or controversy. The quality of our scientific products would greatly suffer if our scientists were unable to freely suggest, explore and test their ideas due to such considerations.

24. Similarly, outside scientists should have confidence that input they provide to their peers at federal agencies will be treated as confidential. If an outside scientist believed that their communications with federal scientists may become public, he or she may change the way they engage with federal colleagues in a way that slows the exchange of ideas, or they may choose not to engage in this type of valuable, informal peer review at all. This would narrow the range of perspectives taken into account in generating our scientific products and therefore reduce the overall robustness of the scientific process.

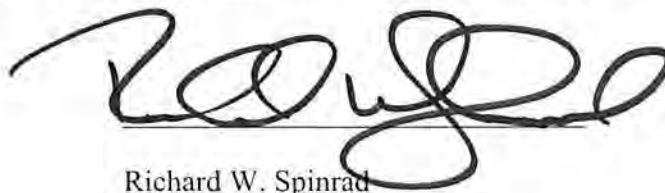
25. Second, there is a risk that the public may become confused by preliminary or incomplete information contained in the communications among scientists, or by information that is misinterpreted or taken out of context. Here also, the climate science context is one in which the risks of misinterpretation or confusion are somewhat elevated, in light of the degree of interest by various groups and the complex nature of the interpretations at issue. For example, because the community of experts is already familiar with the context of their communications and the current state of the science, they tend to use shorthand and informal language in sharing ideas that are actually highly technical and complex. I note, for example, that the use of the term "theory" has a very specific definition in scientific circles, but is interpreted in a vastly different manner by the lay public. While use of informal or short-hand language is useful and appropriate to expedite discussions among peers, more formal explanations and, in many cases, caveats, would be necessary for products that are intended to be shared with a public audience.

26. Third, there is the risk that federal agencies would be unable to attract and retain the best scientists if these scientists were unable to communicate in confidence with peers inside their agencies or with experts in the community outside the federal government. This was demonstrated dramatically as we improved the OSTP guidance on scientific integrity over the last several years; I have had many discussions with academic scientists who indicated that the scientific freedom reflected in the government's policies on scientific integrity have encouraged them to consider applying for and accepting positions in government laboratories. If instead federal scientists believed they must wall themselves off from confidential discussions with each other or with outside scientists, depriving their projects of valuable, informal input and expertise, they may conclude they can perform their work better in another setting.

27. In conclusion, upholding the expectations of confidentiality of scientists – whether employed in the federal government or outside of it – who have participated in candid exchanges and debates in the development of the agency's scientific products is critical to fostering a vigorous scientific process. This, in turn, is critical to ensuring the public receives the highest quality information from federal agencies.

Pursuant to 28 U.S.C. § 1746, I hereby affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 15 day of December, 2016, Washington, D.C.

A handwritten signature in black ink, appearing to read "R. Spinrad", written over a horizontal line.

Richard W. Spinrad

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

[PROPOSED] ORDER

Upon consideration of the U.S. Department of Commerce’s (“the Department’s”) motion for summary judgment, and any response and reply thereto, and the entire record here, and for good cause shown, it is hereby

ORDERED that, for the reasons set forth in the Department’s motion:

- 1. The Department’s motion is hereby **GRANTED**; and
- 2. Summary judgment is hereby **ENTERED** for the Department.

Dated: _____

CHRISTOPHER R. COOPER
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

MOTION FOR SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56, Defendant U.S. Department of Commerce hereby moves for summary judgment on all of Plaintiff's claims. This motion is supported by a statement of material facts as to which there is no genuine issue, a memorandum of points and authorities, the Declarations of Mark Graff and Dr. Richard Spinrad, and a *Vaughn* index. A proposed order is attached.

Dated: December 15, 2016

Respectfully submitted,

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

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U.S. DEPARTMENT OF COMMERCE,

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Civil Docket No. 15-cv-2088 (CRC)

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

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INTRODUCTION

In this Freedom of Information Act (“FOIA”), Plaintiff Judicial Watch requested from the National Oceanographic and Atmospheric Administration (“NOAA”), a component of the Department of Commerce, records relating to different temperature metrics and datasets.¹ The parties conferred and reached an agreement regarding the scope of the request and relevant search parameters. Using those agreed-upon parameters, NOAA conducted a search and ultimately produced responsive, non-exempt material.

Plaintiff now challenges the adequacy of NOAA’s search and all of its redactions and withholdings. But as discussed more fully herein, NOAA conducted a search that was reasonably calculated to locate all non-duplicative records in its possession responsive to Plaintiff’s request. Moreover, all of the challenged information and records that NOAA withheld were properly exempt from production. The Court should therefore grant summary judgment in favor of the Department of Commerce.

FACTUAL BACKGROUND

I. The Hiatus Paper

The FOIA request at issue centers around a June 4, 2015 study authored by NOAA scientists and published in the journal *Science* entitled *Possible Artifacts of Data Biases in the Recent Global Surface Warming Hiatus* (“Hiatus Paper” or “the Paper”). Between September 2013 and November 2014, the Intergovernmental Panel on Climate Change (“IPCC”) released a report in stages that concluded that the upward global surface temperature trend from 1998-2012

¹ The FOIA request also sought communications between NOAA and the House of Representatives Committee on Science, Space, and Technology. The agency made a separate production of these records, which Plaintiff’s counsel indicated in writing that Plaintiff did not intend to challenge. Therefore, this motion for summary judgment and accompanying documents do not address the agency’s response to that aspect of the request.

was lower than that from 1951-2012. Declaration of Mark Graff (“Graff Decl.”) Decl. ¶ 9 (attached herein as Exhibit A). The apparent observed slowing of the global surface temperatures was dubbed the “hiatus.” *Id.* The Hiatus Paper, drafted after that report by a team of NOAA scientists, sought to properly account for the alleged “hiatus.”

NOAA’s National Centers for Environmental Information (“NCEI”) produces and maintains datasets for global ocean areas and global land areas. *Id.* ¶ 6. Scientists throughout the government, including scientists at agencies other than NOAA, and outside of the government, use the sea surface temperature and land surface temperature datasets for a variety of purposes, including for climatic research and climate assessments. *Id.* NCEI scientists continually work to improve the datasets to provide the public the most up-to-date and accurate information. *Id.* There were two significant developments related to the “hiatus” after the IPCC’s report. In particular, 2013 and 2014 were two of the five warmest years on record for the globe. *Id.* ¶ 10. Also, NOAA scientists made significant improvements to its sea surface temperature dataset, one of largest being a correction that accounted for the difference in data collected from ships and buoys. *Id.* Buoys have been increasingly used since the 1970s to measure sea surface temperatures, and scientists developed a method to correct for the difference between these two observing systems and incorporated those corrections into the dataset. *Id.*

NCEI scientists regularly interpret and analyze datasets and release to the public the most up-to-date climate science, often through publication in scientific journals. *Id.* ¶ 7. The Hiatus Paper is an example of analysis and interpretation of the updated underlying data. *Id.* ¶ 8.

Around late October 2014, Tom Karl, then the Director of NCEI, circulated a draft paper to a group of NOAA scientists that developed an idea for properly accounting for the alleged “hiatus” based on the additional two years of global temperature data and the improvements to

NOAA's sea surface temperature dataset. *Id.* ¶ 11. Karl sought feedback on the draft paper, and a team of scientists at NOAA worked to develop a manuscript. *See id.* ¶¶ 11-13. Many drafts and revisions were exchanged among these scientists, along with emails discussing various aspects of the paper or its content, including suggestions on how best to describe the data, opinions on statistical error uncertainty ranges, thoughts on the implications of other researchers' work, and so on. *Id.* ¶ 13. Such collaboration via discussions and drafts is standard practice at NCEI. *Id.* ¶ 13.

In December 2014, the authors submitted the draft paper to the journal *Science*. *Id.* ¶ 14. Once there, the draft paper went through the journal's peer review process, in which five anonymous peer reviewers weighed in on the manuscript. *Id.* ¶ 20. When the authors received feedback, they discussed internally how to respond in writing to the comments they received, and also revised the manuscript to address the questions and concerns raised. *See id.* ¶ 21. After a second round of peer review, NOAA received word that the article would be published, and *Science* published the Paper on its website on June 4, 2015. *Id.* ¶ 23.

II. The FOIA Request and NOAA's Response

Plaintiff's FOIA request, dated October 30, 2015, sought in relevant part:

1. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the methodology and utilization of Night Marine Air Temperatures to adjust ship and buoy temperature data.
2. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the use of other global temperature datasets for both NOAA's in-house dataset improvements and monthly press releases conveying information to the public about global temperatures.
3. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the

utilization and consideration of satellite bulk atmospheric temperature readings for use in global temperature datasets.

Graff Decl. ¶ 24; *see also* Answer, ECF No. 8-1.

Upon review of the request, NOAA officials determined that it did not reasonably describe the records requested. Graff Decl. ¶ 25. Through counsel, NOAA conferred with Plaintiff to negotiate a clear description of the material sought. *Id.* During the course of those discussions, NOAA indicated to Plaintiff that it understood the request to reflect an interest in the Hiatus Paper and accordingly suggested modifying the request to call for a search for all documents and communications referring to the Hiatus Paper from its nine authors. *Id.* ¶ 26. Plaintiff confirmed its interest in that study, but indicated that it sought only records referring to the topics listed in its initial FOIA request. *Id.*

The parties ultimately “reached an agreement regarding the scope of the request and relevant search parameters.” Second Joint Status Report, ECF No. 10 at 2. For Plaintiff’s FOIA request, NOAA agreed to search the records of the nine authors of the Hiatus Paper for records referring to that paper and that contain one of the following search terms: “NMAT,” “Night Marine Air Temperatures,” “ISTI,” “ICOADS,” “sea ice,” “satellite,” “Advanced Very High Resolution Radiometer,” “AVHRR,” “Advanced Microwave Scanning Radiometer,” and “AMSR.” *Id.*; Graff Decl. ¶ 27.

After NOAA directed those custodians to run the agreed-upon searches, it made a production on May 27, 2016 of 102 pages of material in its entirety and 90 partially redacted pages. *See* Graff Decl. ¶ 29; Fourth Joint Status Report, ECF No. 12 at 2. NOAA withheld in their entirety 8,013 pages of records, and informed Plaintiff that because it sought records from nine separate custodians, a significant amount of duplicative material existed in the responsive records. *See* Graff Decl. ¶ 29; Fourth Joint Status Report, ECF No. 12. The parties then

discussed the details of potential challenges to NOAA's production, and NOAA agreed to provide Plaintiff a draft *Vaughn* index in an attempt to narrow the issues in dispute. *See* Fifth & Sixth Joint Status Report, ECF Nos. 13 & 14. Upon further review of the withheld information, on September 16, 2016, NOAA released to Plaintiff an additional 44 pages of material (7 of those pages were partially redacted to exclude Mr. Karl's cell phone number), Graff Decl. ¶ 30, and contemporaneous with this filing on December 15, 2016, NOAA released an additional 62 records, Graff Decl. ¶ 31.

STANDARD OF REVIEW

A court reviews an agency's response to a FOIA request *de novo*. 5 U.S.C. § 552(a)(4)(B). "FOIA cases are typically and appropriately decided on motions for summary judgment." *Moore v. Bush*, 601 F. Supp. 2d 6, 12 (D.D.C. 2009). In deciding at the summary judgment stage whether an agency has fully discharged its obligations under FOIA, "the agency must show, viewing the facts in the light most favorable to the requester, that there is no genuine issue of material fact." *Steinberg v. U.S. Dep't of Justice*, 23 F.3d 548, 551 (D.C. Cir. 1994).

ARGUMENT

I. NOAA's Search Was Reasonable, Adequate, and Satisfies Its Obligation Under the FOIA

A. The Standard for an Adequate Search

The touchstone for determining whether an agency should prevail on a motion for summary judgment in FOIA litigation is whether the agency demonstrates that its "search for documents was adequate." *Larson v. Dep't of State*, 565 F.3d 857, 869 (D.C. Cir. 2009). An agency's search is adequate if "it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." *Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). The adequacy of a FOIA

search is thus gauged “not by the fruits of the search, but by the appropriateness of the methods used to carry out the search.” *Ancient Coin Collectors Guild v. U.S. Dep’t of State*, 641 F.3d 504, 514 (D.C. Cir. 2011) (quoting *Iturralde v. Comptroller of Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003)). In short, “[t]he adequacy of the search . . . is judged by a standard of reasonableness.” *Steinberg*, 23 F.3d at 551; *see also DiBacco v. U.S. Army*, 795 F.3d 178, 194 95 (D.C. Cir. 2015) (“A search need not be perfect, only adequate, and adequacy is measured by the reasonableness of the effort in light of the specific request.” (quoting *Meeropol v. Meese*, 790 F.2d 942, 956 (D.C. Cir. 1986))).

“In demonstrating the adequacy of the search, the agency may rely upon reasonably detailed, nonconclusory affidavits submitted in good faith.” *Id.* (quoting *Weisberg v. Dep’t of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984)). Such affidavits are sufficient if they “set[] forth the search terms and the type of search performed, and aver[] that all files likely to contain responsive materials (if such records exist) were searched.” *Chambers v. U.S. Dep’t of Interior*, 568 F.3d 998, 1003 (D.C. Cir. 2009) (quoting *McCready v. Nicholson*, 465 F.3d 1, 7 (D.C. Cir. 2006)). This standard does not require that “the affidavits of the responding agency set forth with meticulous documentation the details of an epic search for the requested records.” *Perry v. Block*, 684 F.2d 121, 127 (D.C. Cir. 1982). “Rather, in the absence of countervailing evidence or apparent inconsistency of proof, affidavits that explain in reasonable detail the scope and method of the search conducted by the agency will suffice” *Id.* Moreover, “[s]uch agency affidavits attesting to a reasonable search ‘are afforded a presumption of good faith,’ and ‘can be rebutted only with evidence that the agency’s search was not made in good faith.’” *Riccardi v. US Dep’t of Justice*, 32 F. Supp. 3d 59, 63 (D.D.C. 2014) (quoting *Def. of Wildlife v. U.S. Dep’t of Interior*, 314 F. Supp.2d 1, 8 (D.D.C. 2004)).

Finally, courts in this circuit recognize the “well-worn rule . . . that the adequacy of a FOIA search is not to be judged by its results.” *Rosenberg v. United States Dep’t of Immigration & Customs Enf’t*, 13 F. Supp. 3d 92, 104 (D.D.C. 2014). “The question is not ‘whether there might exist any other documents possibly responsive to the request, but rather whether the search for those documents was *adequate*.’” *Steinberg*, 23 F.3d at 551 (quoting *Weisberg v. Dep’t of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984)) (emphases in original). Thus, courts have rejected challenges to the adequacy of a search, even when a “slim yield may be intuitively unlikely” and a “reasonable observer would find th[e] result[s] unexpected.” *Ancient Coin Collectors Guild*, 641 F.3d at 514. Moreover, “mere speculation that as yet uncovered documents might exist[] does not undermine the determination that the agency conducted an adequate search for the requested records.” *Wilbur v. CIA*, 355 F.3d 675, 678 (D.C. Cir. 2004); *see also Sheffield v. Holder*, 951 F. Supp. 2d 98, 101 (D.D.C. 2013) (noting that a requester “cannot rest . . . on mere conjecture or ‘purely speculative claims about the existence and discoverability of other documents’” (quoting *Elec. Privacy Info. Ctr. v. Dep’t of Homeland Sec.*, 384 F. Supp. 2d 100, 107 (D.D.C. 2005))).

B. NOAA Conducted an Adequate Search

As set forth in Mark Graff’s Declaration, NOAA’s search for records responsive to Plaintiff’s FOIA request was more than adequate. *See Perry*, 684 F.2d at 127. Judicial Watch and NOAA reached an agreement as to how the search would be carried out. The agency would search the records of the nine Hiatus Paper authors for any record referring to that study and containing the term “NMAT,” “night marine air temperatures,” “ISTI,” “ICOADS,” “sea ice,” “satellite,” “advanced very high resolution radiometer,” “AVHRR,” “advanced microwave scanning radiometer,” and “AMSR.” Graff Decl. ¶ 27; Second Joint Status Report at 2, ECF No.

10. The timeframe for the search would be October 1, 2014 to June 4, 2015. *Id.* NOAA determined that the records requested resided within one office, NCEI, because all of the agreed-upon custodians work or had worked there during the time frame in which responsive records were created. *Id.* ¶ 33. NOAA then directed those custodians to search their email, electronic, and paper files for records referring to the Karl Study and containing the agreed-upon search terms. *Id.* ¶ 35. Those scientists searched their electronic files (including email) and non-electronic files, collected any potentially responsive material, and forwarded that material for responsiveness and exemption review. *Id.* ¶¶ 36-38.² There were no common areas at NCEI for NOAA to search. *Id.* ¶ 37. Thus, all files determined to be reasonably likely to contain responsive, non-duplicative material were searched. *Id.* ¶ 44.

On this record, NOAA's search should be upheld under FOIA. NOAA has provided "a reasonably detailed [declaration], setting forth the search terms and the type of search performed," and averred that all files likely to contain responsive, non-duplicative materials were searched. *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 326 (D.C. Cir. 1999) (quoting *Oglesby*, 920 F.2d at 68). NOAA has "made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." *Oglesby*, 920 F.2d at 68.

II. NOAA Properly Withheld Information Under Exemption 5

FOIA does not require disclosure of "matters that are . . . inter-agency or intra-agency memorandums or letters [which] would not be available by law to a party other than an agency in

² One custodian had retired from NCEI by the time the search was conducted and so that former employee's archived email was searched by another custodian. *See* Graff Decl. ¶ 36 n.1. No additional records responsive to this request from that author are known to have existed following his retirement. *See id.*

litigation with the agency.” 5 U.S.C. § 552(b)(5). “Exemption 5 . . . exempt[s] those documents, and only those documents, normally privileged in the civil discovery context.” *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975). Exemption 5 thus protects the attorney-client privilege, the attorney work product privilege, and the deliberative process privilege. *Id.*; see also *Rockwell Int’l Corp. v. Dep’t of Justice*, 235 F.3d 598, 601 (D.C. Cir. 2001).

The deliberative process privilege “allows the government to withhold documents and other materials that would reveal advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.” *In re Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997). According to the D.C. Circuit,

There are essentially three policy bases for this privilege. First, it protects creative debate and candid consideration of alternatives within an agency, and, thereby, improves the quality of agency policy decisions. Second, it protects the public from the confusion that would result from premature exposure to discussions occurring before the policies affecting it had actually been settled upon. And third, it protects the integrity of the decision-making process itself by confirming that officials should be judged by what they decided, not for matters they considered before making up their minds.

Russell v. Dep’t of the Air Force, 682 F.2d 1045, 1048 (D.C. Cir. 1982) (quoting *Jordan v. Dep’t of Justice*, 591 F.2d 753, 772-73 (D.C. Cir. 1978)).

The privilege is necessary because “those who expect public dissemination of their remarks may well temper candor with a concern for appearances . . . to the detriment of the decisionmaking process.” *Sears*, 421 U.S. at 150-51. “[E]fficiency of Government would be greatly hampered if, with respect to legal and policy matters, all Government agencies were prematurely forced to ‘operate in a fishbowl.’” *EPA v. Mink*, 410 U.S. 73, 87 (1973), *abrogated on other grounds*, Pub. L. No. 93-502, 88 Stat. 1561 (1974). There are “[t]wo requirements [that] are essential to the deliberative process privilege: the material must be predecisional and it must be deliberative.” *In re Sealed Case*, 121 F.3d at 737.

The agency is best situated “to know what confidentiality is needed ‘to prevent injury to the quality of agency decisions.’” *Chem. Mfrs. Ass’n v. Consumer Prod. Safety Comm’n*, 600 F. Supp. 114, 118 (D.D.C. 1984) (quoting *Sears*, 421 U.S. at 151). NOAA’s justification for asserting Exemption 5 is “sufficient if it appears ‘logical’ or ‘plausible.’” *Wolf v. CIA*, 473 F.3d 370, 374-75 (D.C. Cir. 2007).

Here, NOAA properly withheld information under Exemption 5 that is protected by the deliberative process privilege because the information withheld reflects deliberations in preparation for decisions of how to analyze and present data and theory, as well as decisions about how to respond to peer review comments and deliberations on developing public communications and congressional presentations. *See* Graff Decl. ¶¶ 50-63. Disclosure of such information, which is predecisional and deliberative, and contains selected factual material intertwined with opinion, would inhibit candid internal discussions and the expression of recommendations and judgments. *Id.* ¶ 64. Disclosure of the details of these confidential discussions and drafts could reasonably be expected to chill the open and frank exchange of comments and opinions that NOAA officials engage in, as well as inhibit candid internal discussions and recommendations regarding preferred courses of action for agency personnel. *Id.*

The documents withheld in full or in part under the deliberative process privilege fall generally into three categories: (1) drafts of the Hiatus Paper; (2) internal deliberations, including email exchanges; and (3) peer review materials, both formal and informal. As explained below and in the attached *Vaughn*, each redacted or withheld document contains both predecisional and deliberative information. Accordingly, NOAA properly asserted Exemption 5 based on the deliberative process privilege.

1. Drafts of the Hiatus Paper

NOAA withheld pursuant to Exemption 5 inter- or intra-agency, predecisional, and deliberative draft versions of the Hiatus Paper (including drafts of its accompanying figures and “supplementary materials”) that were produced while NOAA scientists were developing the Paper. Graff Decl. ¶ 51.³ “[D]raft documents by their very nature, are typically predecisional and deliberative, because they reflect only the tentative view of their authors; views that might be altered or rejected upon further deliberation either by their authors or by superiors.” *In re Apollo Grp., Inc. Sec. Litig.*, 251 F.R.D. 12, 31 (D.D.C. 2008) (non-FOIA case) (citation omitted). Accordingly, “drafts are commonly found exempt under the deliberative process exemption.” *People for the Am. Way Found. v. Nat’l Park Serv.*, 503 F. Supp. 2d 284, 303 (D.D.C. 2007). Among other reasons for this, disclosure of “decisions to insert or delete material or to change a draft’s focus or emphasis . . . would stifle the creative thinking and candid exchange of ideas necessary to produce good historical work.” *Dudman Commc’ns Corp. v. Dep’t of Air Force*, 815 F.2d 1565, 1569 (D.C. Cir. 1987). Indeed, drafts are ordinarily exempt regardless of whether or to what extent segments of the draft made their way into the final product: “If the segment appeared in the final version, it is already on the public record and need not be disclosed. If the segment did not appear in the final version, its omission reveals an agency deliberative process: for some reason, the agency decided not to rely on that fact or argument after having been invited to do so.” *Exxon Corp. v. Dep’t of Energy*, 585 F. Supp. 690, 698 (D.D.C. 1983) (quoting *Lead Industries Ass’n v. OSHA.*, 610 F.2d 70, 86 (2d Cir. 1979)); see *ViroPharma Inc. v. HHS*, 839 F. Supp. 2d 184, 193 (D.D.C. 2012) (“The choice of what factual

³ The fact that some draft versions were shared for peer review purposes outside of the federal government does not affect those drafts’ status as inter- or intra-agency. See *infra* at Section II.3.

material . . . to include or remove during the drafting process is itself often part of the deliberative process, and thus is properly exempt under Exemption 5.”); *cf. Marzen v. HHS*, 825 F.2d 1148, 1155 (7th Cir. 1987) (noting that privilege “protects not only the opinions, comments and recommendations in the draft, but also the process itself”).

These drafts are predecisional inasmuch as they were generated to assist the agency in preparing the final version of the Hiatus Paper. *See Quarles v. Dep’t of the Navy*, 893 F.2d 390, 392 (D.C. Cir. 1990) (explaining that materials are predecisional when “prepared in order to assist an agency decisionmaker in arriving at . . . decisions”). And they are deliberative in that they reflect the development of the final paper; these non-final, predecisional drafts contain opinions and recommendations of the NOAA authors; draft language, data, and data interpretation for consideration by other NOAA authors; comments on previous drafts of the paper; and/or responses to other NOAA authors’ or peer reviewers’ comments on earlier drafts of the paper. *See* Graff Decl. ¶ 51; *Vaughn* part 2 Category A. Withholding this material under Exemption 5 was proper, and the release of such drafts would inhibit agency scientists from expressing their views and deter NOAA scientists from participating candidly in the development of scientific products in the future. *See* Graff Decl. ¶ 51.⁴

2. Communications Among NOAA Personnel

Also integral to the drafting of the Hiatus Paper, the authors frequently communicated and exchanged ideas with one another via email during the Paper’s development. Here, NOAA

⁴ Equally appropriate, NOAA’s *Vaughn* also shows that the agency withheld draft documents that aided in or related to the development of the Paper, such as “[d]raft graphs of land and ocean temperature data created by NOAA scientists to be used in the paper,” *Vaughn* part 2 at bates pages 1170-73, “[d]raft graphs and charts of SST data to be used in [the] development of the paper,” *Vaughn* part 2 at bates pages 2071-76, and a “[d]raft powerpoint by [an] author presenting information on global temperature and presenting data analysis done by NOAA scientists for the paper,” *Vaughn* part 2 at bates pages 1876-86.

withheld inter- or intra-agency, predecisional, and deliberative communications. *See* Graff Decl. ¶ 50. In pursuing a research objective, scientists may begin with only a rough idea, and then develop, test, and revise that idea as data is collected and interpreted. Declaration of Richard W. Spinrad (“Spinrad Decl.”) ¶ 14 (attached herein as Exhibit B). Possible interpretations are generated and tested in part through candid debates and exchanges among peers. *Id.* ¶ 15. Indeed, the exchange and debate among peers is the mechanism that allows NOAA to ensure its scientific products are robustly developed and accurately tested. *Id.* ¶ 16. And there is a general and well-established presumption that such discussions are not intended to be, and will not be, shared with a wider audience, as confidentiality is essential to ensuring participants feel free to propose new ideas or explanations without fear of misinterpretation or being taken out of context. *Id.* ¶ 20. It is critical that this type of information be protected so as not to chill candid exchanges and debates, as well as to avoid the risk of confusing the public with preliminary or incomplete information. *See id.* ¶¶ 23-25.

NOAA’s *Vaughn* index reinforces that these types of predecisional and deliberative communications occurred here, were integral to the development of the Hiatus Paper, and were appropriately withheld or redacted. *See Abteu v. U.S. Dep’t of Homeland Sec.*, 808 F.3d 895, 898 (D.C. Cir. 2015) (“[O]fficials should be judged by what they decided, not for matters they considered before making up their minds” (citation and internal quotation mark omitted)). For example, NOAA is redacting or withholding communications between scientists in which authors asked for clarification on data analysis conducted for developing the Paper, *Vaughn* part 1 at bates pages 22-23, shared opinions on the results of a draft data analysis for developing the Paper, *Vaughn* part 1 at bates page 15, offered opinions as to the best approach to take in the Paper, *Vaughn* part 1 at bates pages 300, 335, 362-63, and provided opinions on statistical error

uncertainty ranges for development of the Paper, *Vaughn* part 1 at bates page 245. Moreover, NOAA withheld a document that presented questions and draft graphs to spur discussion among the NOAA scientists. This document was created and circulated for the purpose of author discussions during the development of the Hiatus Paper, and shows NOAA scientists considering what constitutes the best data analysis and presentation for the Paper. *See Vaughn* part 2 Category E; Graff Decl. ¶ 52.⁵

In addition to withholding communications concerning the development of the Hiatus Paper, NOAA also withheld communications and information reflecting the development of a plan by its officials for communications and press release in preparation for publication of the paper, *e.g. Vaughn* part 1 at bates page 289-90, *Vaughn* part 2 at bates page 7446-50, as well as the agency's development of a presentation to Congress, *e.g., Vaughn* part 1 at bates pages 143, 324 (explaining that redacted email reflected "NOAA scientist discussing climate change research and developing the agency's presentation for Congress"). This withheld information, which reflects NOAA's development of how to brief Congress and the public, is predecisional and deliberative and falls squarely within Exemption 5. *E.g., Judicial Watch, Inc. v. U.S. Dep't of the Treasury*, 796 F. Supp. 2d 13, 31 (D.D.C. 2011) (noting email discussing response to press inquiry protected under deliberative process privilege).

All of this material is precisely the sort of information that the deliberative process privilege is designed to protect. *See Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854,

⁵ Similarly, NOAA withheld information reflecting discussions among scientists concerning potential scientific inquiries. *See, e.g., Vaughn* part 1 at bates page 75 (discussing future climate research and asking for opinion on this research and on possible role of NOAA scientists in this research). Again, such material is predecisional and deliberative, and therefore is exempt from disclosure. *E.g., Sears*, 421 U.S. at 151 n.18 (explaining that protection extends to records that are part of decisionmaking process even where process does not produce actual decision by agency).

866 (D.C. Cir. 1980) (document is “predecisional” if it is “generated before the adoption of an agency policy” and “deliberative” if it “reflects the give-and-take of the consultative process”); *Dep’t of Interior v. Klamath Water Users Protective Ass’n*, 532 U.S. 1, 9 (2001) (explaining that deliberative process privilege’s “object is to enhance the quality of agency decisions by protecting open and frank discussion among those who make them within the Government”) (citation omitted); *Russell*, 682 F.2d at 1048 (“[T]he exemption protects not only communications which are themselves deliberative in nature, but all communications which, if revealed, would expose to public view the deliberative process of an agency.”). Moreover, any factual material in the withheld documents reflect the authors’ selection and presentation of factual material, Graff Decl. ¶ 65, and as such it too is covered by the deliberative process privilege. *See, e.g., Ancient Coin Collectors Guild*, 641 F.3d at 513 (explaining that factual material can be withheld where it reflects “an exercise of discretion and judgment calls” and that the “legitimacy of [the] withholding” turns on “whether the selection or organization of facts is part of an agency’s deliberative process”).

Because all of the redacted and withheld information is inter- or intra-agency, predecisional, and deliberative in nature, NOAA properly applied Exemption 5.

3. Peer Review Material

NOAA also withheld inter- or intra-agency material reflecting the different peer review processes its analyses and drafts underwent prior to publication of the Hiatus Paper. *Science* follows a formal peer review process in which subject matter experts evaluate the rigor and merit of the paper, and provide feedback on an array of issues. Graff Decl. ¶ 15. Those anonymous, impartial reviewers share their reviews with the authors, *Science*’s board, and potentially other reviewers (for cross-comment). *Id.* ¶ 17.

Here, *Science* sent the manuscript to five anonymous peer reviewers, and the scientists received two rounds of comments. Upon receiving these reviewers' comments, the NOAA scientists deliberated internally as to how to respond in writing to every comment received. NOAA properly withheld peer reviewer comments, the agency's internal draft responses to these peer reviewer comments, draft cover letters NOAA's scientists wrote to accompany their response, as well as the agency's final responses to peer reviewer comments. *See* Graff Decl. ¶¶ 53-54; *Vaughn* part 2 Category B, C, D.

The D.C. Circuit has specifically held that comments provided by peer reviewers during the peer review process for publication of scientific articles in scientific journals are covered by Exemption 5 because they are both "pre-decisional because it preceded the agency's decision whether and in what form to publish" the paper and were part of the agency's deliberative process "because the agency secured review commentary in order to make that decision." *See Formaldehyde Inst. v. U.S. Dep't of Health and Human Servs.*, 889 F.2d 1118, 1123-25 (D.C. Cir. 1989). As that Court recognized, agency scientists "must regularly rely on the comments of expert scientists to help them evaluate the readiness of agency work for publication [and i]n that sense they must rely on the opinions and recommendations of temporary consultants." *Id.* at 1125.

The scientists' draft responses to the peer reviewer comments are also covered by Exemption 5 since these materials, including personal opinions and recommendations, draft language, data, and data interpretation for consideration, as well as comments on previous drafts of the responses, reflect predecisional and deliberative discussions. *See Vaughn* part 2 Category C; Graff Decl. ¶ 54. Similarly, the final responses to peer review comments that NOAA submitted to *Science* during the peer review process reflect the agency's response to constructive

criticism and advice, and were part of the process to assist in the authors' deliberation as to whether and in what form to publish the paper. *See Vaughn* part 2 Category D; Graff Decl. ¶ 55. These final responses, then, fit comfortably within Exemption 5. *See Petroleum Info. Corp.*, 976 F.2d at 1434 (agency documents that were "prepared in order to assist an agency decisionmaker in arriving at his decision" are "predecisional" (citation omitted)); *Coastal States Gas Corp.*, 617 F.2d at 866. Finally, the draft cover letters to *Science* accompanying the scientists' responses to the peer review comments contain edits or otherwise do not include the final wording of the letter, reflecting that the scientists' final approach had not been finalized at that point. *Vaughn* part 2 Category B; Graff Decl. ¶ 53. Withholding such draft material was appropriate.

The fact that the peer review comments were sent by *Science*, and the responses to those peer reviewer comments were sent back to *Science*, does not affect their status as "intra-agency" materials that may be protected by Exemption 5. "Recognizing that the purpose of the exemption was to promote the quality of agency policy decisions and that often these policy decisions were best made by incorporating the advice of outside experts, [the D.C. Circuit] developed a 'consultant corollary' whereby communications with temporary consultants would be considered 'intra-agency' for the purposes of Exemption 5." *Judicial Watch v. U.S. Dep't of Transp.*, 950 F. Supp. 2d 213, 216 (D.D.C. 2013) (citing cases). "When communications between an agency and a non-agency aid the agency's decision-making process and the non-agency did not have an outside interest in obtaining a benefit that is at the expense of competitors, the communication must be considered an intra-agency communication for the purposes of FOIA Exemption 5." *Judicial Watch*, 950 F. Supp. 2d at 218-19 (citing *Nat'l Inst. of Military Justice v. U.S. Dep't of Defense*, 512 F.3d 677 680-85 (D.C. Cir. 2008) ("*NIMJ*"); *Lardner v. U.S. Dep't of Justice*, No. 03-0180, 2005 WL 758267, at *1 (D.D.C. Mar. 31, 2015);

see also, e.g., Hooker v. HHS, 887 F. Supp. 2d 40, 55 (D.D.C. 2012) (upholding agency’s withholding of predecisional and deliberative letter from former employee where he “played the same role in the agency’s process of deliberation after his departure that he would have played had he remained”), *aff’d*, No. 13-5280, 2014 WL 3014213 (D.C. Cir. May 13, 2014); *see also Elec. Privacy Info. Ctr. v. DHS*, 892 F. Supp. 2d 28, 46 (D.D.C. 2012) (“In order to be excluded from the exemption, the contractors must assume a position that is ‘necessarily adverse’ to the government.”).⁶

Moreover, maintaining the confidentiality of these communications is important, as disclosure would discourage the sharing of candid thoughts of the reviewers and scientists. Graff Decl. ¶ 55, 64; *see also* Spinrad Decl. ¶¶ 20-21 (explaining importance of confidentiality in developing scientific products). Here, as in *Formaldehyde*, it is “indisputable” that both “reviewers’ comments are expected to be confidential” and “disclosure of reviewers’ comments would seriously harm the deliberative process.” 889 F.2d at 1124 (internal citations and quotations omitted).

Outside of *Science*’s formal peer review process, NOAA scientists welcomed the informal peer review from a limited number of consultants in evaluating the underlying datasets

⁶ *Department of the Interior v. Klamath Water Users Protective Association*, 532 U.S. 1 (2001), holding that Exemption 5 did not protect documents submitted by American Indian Tribes to the Interior Department addressing tribal interests that were then the subject of state and federal water allocation proceedings, does not prevent the application of the consultant corollary here. Rather, the D.C. Circuit “has allowed any communication that aids the agency’s deliberative process to be protected as ‘intra-agency,’” and “*Klamath* only modifies this by requiring that we not protect communications with interested parties seeking a government benefit that is adverse to others seeking that benefit.” *Judicial Watch*, 950 F. Supp. 2d at 218 (footnote omitted).

Also, to fall within the consultant corollary, there is no requirement that an individual must possess a contractual relationship with the agency in question. *See, e.g., NIMJ*, 512 F.3d at 679-87 (deliberative process privilege exempted from disclosure comments received by Department of Defense, in the course of issuing regulations, from non-governmental lawyers who were former high ranking governmental officials or academics or both).

and developing the Hiatus Paper. Graff Decl. ¶ 56; *see also Formaldehyde Inst.*, 889 F.2d at 1125. In the field of climate science, only a small number of scientists have the relevant, specialized expertise, *see* Spinrad ¶ 17, and it is common for scientists to seek input from colleagues both inside and outside the federal government, *id.* ¶ 19. Sometimes experts that are located outside of the federal government have an expertise that can aid the agency. *See id.* ¶ 17. The consultants here, each of whom is highly regarded in his specialized field, Graff Decl. ¶ 58, share the common goal with NOAA of advancing scientific inquiry and developing accurate information on climate science, *see id.* ¶ 56; *see also Formaldehyde*, 889 F.2d at 1122, quoting *Ryan v. Dep't of Defense*, 617 F.2d 781, 789-90 (D.C. Cir. 1980) (“In the course of its day-to-day activities, an agency often needs to rely on the opinions and recommendations of temporary consultants, as well as its own employees. Such consultations are an integral part of its deliberative process; to conduct this process in public view would inhibit frank discussion of policy matters and likely impair the quality of decisions.”).

As the *Vaughn* and Mark Graff’s declaration make clear, withholding this informal peer review was also appropriate, as their input was used by NOAA to ensure that only the highest quality scientific product would be released. Tom Karl, for example, asked a scientist affiliated with the National Center for Atmospheric Research to comment on a draft while the paper was in development, and that scientist provided insights and feedback in response. Graff Decl. ¶ 59; *Vaughn* part 1 bates 66-67 (explaining redacted information contained feedback and review of a data analysis for the paper and raises issue for further discussion). Other climate science experts responded to the authors upon learning from *Science* of the pending publication, as commonly occurs after an author submits a high-profile scientific paper for publication. *See* Graff Decl. ¶ 60. Two other experts provided feedback on the Paper, discussed implications of the Hiatus

Paper's conclusion, or provided and discussed data analyses, Graff Decl. ¶¶ 62-63, *Vaughn* part 1 at bates 292-93, which helped provide important feedback about the agency's product and informed the agency's continuous, ongoing work of updating agency datasets and trend analyses, Graff Decl. ¶¶ 62-63; *see Vaughn* part 1 at bates 295-96 (noting that expert's work may be incorporated into a future NOAA analysis). With respect to these types of communications, a general and well-established presumption exists that these communications will not be shared with a wider audience, which is essential to scientific exchanges and the testing and refinement of ideas that help ensure that the agency's scientific products are well developed and robust. *See Spinrad* Decl. ¶ 20. Disclosing this material could inhibit candid discussions and exchanges and chill the open and frank exchanges upon which NOAA scientists rely. *See Graff* Decl. ¶ 64.

In sum, NOAA's *Vaughn* and declarations make plain that the agency appropriately applied Exemption 5 to redact and withhold information protected by the deliberative process privilege.

III. NOAA Properly Withheld Information Under Exemption 6

Exemption 6 protects the privacy of individuals from unwarranted invasion. Exemption 6 allows the withholding of information about individuals in "personnel and medical files and similar files" when the disclosure of such information would constitute a "clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). Exemption 6 requires the agency to balance the individual's right to privacy against the public's interest in disclosure. *See U.S. Dep't of the Air Force v. Rose*, 425 U.S. 352, 372 (1976); *Reed v. NLRB*, 927 F.2d 1249, 1251 (D.C. Cir. 1991). When weighing the public interest involved in disclosure, the court considers: (1) whether disclosure would serve the "core purpose" for which Congress enacted the FOIA. *i.e.*, to show "what the government is up to," and (2) the public interest in general, not particular interests of

the person or group seeking the information. *U.S. Dep't of Justice v. Reporters Comm. For Freedom of the Press*, 489 U.S. 749, 750, 775 (1989).

Here, Exemption 6 has been applied to protect information in which individuals have a recognized privacy interest, specifically, the phone numbers of NOAA scientists. *See, e.g., Vaughn* part 1 at bates 23. Because this information can be identified as applying to a specific individual, the information withheld under Exemption 6 constitutes “similar files” within the meaning of statute; courts have routinely held that phone numbers meet this threshold test. *See, e.g., Judicial Watch, Inc. v. U.S. Dep't of State*, 875 F. Supp. 2d 37, 47 (D.D.C. 2012); *Smith v. Dep't of Labor*, 798 F. Supp. 2d 274, 283 (D.D.C. 2011); *Lowy v. IRS*, No. C 10-767, 2011 WL 1211479, at *16 (N.D. Cal. Mar. 30, 2011).

This threshold test having been met, the next step is to compare the privacy interest at stake with the benefit disclosure would provide toward the public’s understanding of how government operates. *Dep't of Def. v. Fed. Labor Relations Auth.*, 510 U.S. 487, 495 (1994). Here, there is a substantial privacy interest at stake in preventing the burden of unsolicited phone calls and harassment. *See Moore v. Bush*, 601 F. Supp. 2d 6, 14 (D.D.C. 2009); *United Am. Fin., Inc. v. Potter*, 667 F. Supp. 2d 49, 65-66 (D.D.C. 2009); *cf. Shurtleff v. EPA*, 991 F. Supp. 2d 1, 18 (D.D.C. 2013) (protecting email address). By contrast, an individual’s phone number sheds no light on the operations and activities of the agency. NOAA balances the individual’s strong privacy interests against the fact that release of this information would fail to shed any light on the conduct of governmental business, and reasonably concluded that, with regard to the information withheld pursuant to Exemption 6, the individual privacy interests outweighed any public interest in disclosure. Graff Decl. ¶ 66. *See FLRA*, 510 U.S. at 497 (“We must weigh the privacy interest . . . in nondisclosure . . . against the only relevant public interest in the FOIA

balancing analysis the extent to which disclosure of the information sought would she[d] light on an agency's performance of its statutory duties' or otherwise let citizens know what their government is up to."). Accordingly, Exemption 6 was properly applied.

IV. NOAA Has Produced All Reasonably Segregable Information

The FOIA requires that, if a record contains information that is exempt from disclosure, any "reasonably segregable" information must be disclosed after deletion of the exempt information, 5 U.S.C. § 552(b), unless the non-exempt portions are "inextricably intertwined with exempt portions." *Mead Data Ctr. v. U.S. Dep't of Air Force*, 566 F.2d 242, 260 (D.C. Cir. 1977); *Kurdyukov v. U.S. Coast Guard*, 578 F. Supp. 2d 114, 128 (D.D.C. 2008). This provision does not, however, require disclosure of records in which the non-exempt information that remains is meaningless. *See Nat'l Sec. Archive Fund v. CIA*, 402 F. Supp. 2d 211, 221 (D.D.C. 2005) (concluding that no reasonably segregable information existed because "the non-exempt information would produce only incomplete, fragmented, unintelligible sentences composed of isolated, meaningless words"). Consistent with this obligation, NOAA has reviewed each of the documents redacted or withheld and has concluded that there is no additional non-exempt information that may reasonably be segregated and released. *See Graff Decl.* ¶ 67. Accordingly, no further non-exempt material is subject to release.

CONCLUSION

NOAA has conducted an adequate search for documents responsive to Plaintiff's request, and properly withheld information exempt from disclosure under Exemptions 5 and 6. Furthermore, all reasonably segregable information has been released to Plaintiff. For these reasons, the Department of Commerce respectfully requests that summary judgment be entered in its favor.

Dated: December 15, 2016

Respectfully submitted,

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

**STATEMENT OF MATERIAL FACTS IN SUPPORT OF UNITED STATES
DEPARTMENT OF COMMERCE’S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local Civil Rule 7(h)(1), the following is a statement of material facts as to which the movant, the United States Department of Commerce (“the Department”), contends there is no genuine issue:

1. Between September 2013 and November 2014, the Intergovernmental Panel on Climate Change released a report in stages that concluded that the upward global surface temperature trend from 1998-2012 was lower than that from 1951-2012. Declaration of Mark Graff (“Graff Decl.”) ¶ 9.
2. The apparent observed slowing of the global surface temperatures was dubbed the “hiatus.” Graff Decl. ¶ 9.
3. The National Centers for Environmental Information (“NCEI”) at NOAA produces and maintains datasets for global ocean areas and global land areas. Graff Decl. ¶ 6.
4. NCEI scientists continually work to improve the datasets to provide the public the most up-to-date and accurate information. Graff Decl. ¶ 5.

5. NCEI scientists regularly interpret and analyze datasets and release to the public the most up-to-date climate science, often through publication in scientific journals. Graff Decl. ¶ 7.
6. On June 4, 2015, a study authored by NOAA scientists was published in *Science* entitled *Possible Artifacts of Data Biases in the Recent Global Surface Warming Hiatus* (“Hiatus Paper” or “the Paper”). Graff Decl. ¶ 23.
7. The Hiatus Paper is an example of analysis and interpretation of the updated underlying data. Graff Decl. ¶ 10.
8. Around late October 2014, Tom Karl, then the Director of NCEI, circulated a draft paper to a group of NOAA scientists that developed an idea for properly accounting for the alleged “hiatus” based on the additional two years of global temperature data and the improvements to NOAA’s sea surface temperature dataset. Graff Decl. ¶ 11.
9. Karl sought feedback on the draft paper, and a team of scientists at NOAA formed to develop a manuscript. *See* Graff Decl. ¶¶ 11-13.
10. Many drafts and revisions were exchanged among these scientists, along with emails discussing various aspects of the paper or its content, including suggestions on how best to describe the data, opinions on statistical error uncertainty ranges, thoughts on implications of other researchers’ work, and so on. Graff Decl. ¶ 13.
11. Such collaboration via discussions and drafts is standard practice at NCEI. Graff Decl. ¶ 13.
12. In December 2014, the authors submitted the draft paper to the journal *Science*. Graff Decl. ¶ 14.

13. Once there, the draft paper went through the journal's peer review process, in which five anonymous peer reviewers weighed in on the manuscript. Graff Decl. ¶ 20.
14. When the authors received feedback, they discussed internally how to respond in writing to the comments they received, and also revised the manuscript to address the questions and concerns raised. *See* Graff Decl. ¶ 21.
15. After a second round of peer review, NOAA received word that the article would be published, and *Science* published the Paper on its website on June 4, 2015. Graff Decl. ¶ 23.
16. Plaintiffs' FOIA request, dated October 30, 2015, sought in relevant part:
 1. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the methodology and utilization of Night Marine Air Temperatures to adjust ship and buoy temperature data.
 2. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the use of other global temperature datasets for both NOAA's in-house dataset improvements and monthly press releases conveying information to the public about global temperatures.
 3. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the utilization and consideration of satellite bulk atmospheric temperature readings for use in global temperature datasets.Graff Decl. ¶ 24; *see also* ECF No. 8-1.
17. Upon review of the request, NOAA officials determined that it did not reasonably describe the records requested. Graff Decl. ¶ 25.
18. Through counsel, NOAA conferred with Plaintiff to negotiate a clear description of the material sought. Graff Decl. ¶ 25.

19. During the course of those discussions, NOAA indicated to Plaintiff that it understood the request to reflect an interest in the Hiatus Paper and accordingly suggested modifying the request to call for a search for all documents and communications referring to the Hiatus Paper from its nine authors. Graff Decl. ¶ 26.
20. Plaintiff confirmed its interest in that study, but indicated that it sought only records referring to the topics listed in its initial FOIA request. Graff Decl. ¶ 26.
21. The parties ultimately “reached an agreement regarding the scope of the request and relevant search parameters.” Second Joint Status Report, ECF No. 10 at 2.
22. For Plaintiff’s FOIA request, NOAA agreed to search the records of the nine authors of the Hiatus Paper for records referring to that paper and that contain one of the following search terms: “NMAT,” “Night Marine Air Temperatures,” “ISTI,” “ICOADS,” “sea ice,” “satellite,” “Advanced Very High Resolution Radiometer,” “AVHRR,” “Advanced Microwave Scanning Radiometer,” and “AMSR.” Second Joint Status Report, ECF No. 10 at 2; Graff Decl. ¶ 27.
23. NOAA determined that the records requested resided within one office, NCEI, because all of the agreed-upon custodians work or had worked there during the time frame in which responsive records were created. Graff Decl. ¶ 33.
24. NOAA then directed those custodians to search their email, electronic, and paper files for records referring to the Karl Study and containing the agreed-upon search terms. Graff Decl. ¶ 35.
25. Those scientists searched their electronic files (including email) and non-electronic files, collected any potentially responsive material, and forwarded that material for responsiveness and exemption review. Graff Decl. ¶¶ 36-38.

26. One custodian had retired from NCEI by the time the search was conducted and so that former employee's archived email was searched by another custodian. No additional records responsive to this request from that author are known to have existed following his retirement. *See* Graff Decl. ¶ 36 n.1.
27. There were no common areas at NCEI for NOAA to search. Graff Decl. ¶ 37.
28. Thus, all files determined to be reasonably likely to contain responsive, non-duplicative material were searched. Graff Decl. ¶ 44.
29. On May 27, 2016, NOAA produced 102 pages of material in its entirety and 90 partially redacted pages. Graff Decl. ¶ 29; Fourth Joint Status Report, ECF No. 12 at 2. NOAA withheld in their entirety 8,013 pages of records. Graff Decl. ¶ 29; Fourth Joint Status Report, ECF No. 12 at 2
30. NOAA informed Plaintiff at that time that because it sought records from nine separate custodians, a significant amount of duplicative material existed in the responsive records. *See* Graff Decl. ¶ 29
31. Upon further review of the withheld information, NOAA made two supplemental productions. *See* Graff Decl. ¶¶ 30-31.
32. On September 16, 2016, NOAA released to Plaintiff an additional 44 pages of material (7 of those pages were partially redacted to exclude Mr. Karl's phone number), Graff Decl. ¶ 30.
33. Contemporaneously with this filing (on December 15), NOAA is releasing an additional 62 records. Graff Decl. ¶ 31.
34. NOAA withheld information pursuant to FOIA Exemption 5 and the deliberative process privilege. *See Vaughn Index.*

35. NOAA withheld information pursuant to FOIA Exemption 6. *See Vaughn* Index.

Dated: December 15, 2016

Respectfully submitted,

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

ELIZABETH J. SHAPIRO
Deputy Director, Federal Programs Branch

/s/ Kevin M. Snell
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Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2016, I filed the attached electronically with the Clerk of the United States District Court for the District of Columbia through the CM/ECF system, which caused the following counsel of record to be served by electronic means:

Lauren Burke
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Washington, DC 20024
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Lburke@judicialwatch.org

Attorney for Plaintiff

/s/ Kevin M. Snell

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

)	
JUDICIAL WATCH, INC.,)	
425 Third Street, SW, Suite 800)	
Washington, D.C. 20024)	
)	
Plaintiff,)	
)	
v.	)	Civil Action No. 15-2088 (CRC)
)	
U.S. DEPARTMENT OF)	
COMMERCE,)	
1401 Constitution Avenue, NW)	
Washington, D.C. 20230)	
)	
Defendant.)	
_____)	

DECLARATION OF MARK H. GRAFF

Pursuant to 28 U.S.C. § 1746, I, Mark H. Graff, declare and state as follows:

1. I am currently the Freedom of Information Act (FOIA) Officer for the National Oceanic and Atmospheric Administration (NOAA), which is a part of the United States Department of Commerce (DOC). I have occupied this position since September 6, 2015. My primary duties include management of requests submitted to NOAA for records made under both the FOIA, 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a (PA). In that capacity, I oversee NOAA's receipt and log-in of in-coming FOIA requests, the tasking and coordination of searches for responsive records, and review of out-going responses.

2. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, upon conclusions and determinations reached and made in accordance therewith, and upon my personal examination of

the withheld and redacted documents. Additionally, this declaration includes the search terms, locations and parameters agreed upon with the plaintiffs and utilized by those who conducted the search. I am personally familiar with Plaintiff Judicial Watch's FOIA request, which is at issue in this civil action. I submit this declaration in support of a motion for summary judgment filed by the Department of Commerce in the above-captioned lawsuit.

3. This declaration provides background information on the development of a paper entitled *Possible Artifacts of Data Biases in the Recent Global Surface Warming Hiatus* ("Hiatus Paper" or "the Paper"), which was published in June 2015 in the journal *Science* and is the focus of the FOIA request at issue in this case. It also explains NOAA's search for records responsive to Plaintiff's FOIA request and the FOIA exemptions applied in processing the responsive records. A *Vaughn* index (Exhibit 1) provides a detailed description of information withheld by NOAA and challenged by Plaintiff, as well as NOAA's basis for those withholdings.

I. BACKGROUND

4. The National Centers for Environmental Information (NCEI), located within the NOAA's National Environmental Satellite, Data, and Information Service (NESDIS), develops use-inspired datasets, products and reports that describe average weather conditions (and changes therein) over the United States and the globe. NCEI acts as the "Nation's Scorekeeper" regarding the trends and anomalies of weather and climate, focusing on essential climatic elements such as temperature and rainfall, as well as extreme events such as hurricanes and droughts.

5. NCEI produces and maintains datasets for global ocean areas and global land areas. Changes in surface temperature over long periods are studied using several datasets that are continuously maintained and updated. There are separate datasets for the ocean and the land, which are then merged to create a global dataset.

6. Scientists throughout the government, including at agencies other than NOAA and researchers outside of the government, use NOAA's temperature datasets for a variety of purposes, including for climatic research and climate assessments. NCEI scientists are continually working on improving these datasets to provide scientists and the public with the most up-to-date and accurate information.

7. NCEI scientists periodically interpret and analyze global datasets and release to the public the most up-to-date climate science, often through publication in scientific journals. NCEI scientists use the most recent information from these datasets to propose new scientific theories and also re-evaluate earlier conclusions reached within the scientific community in light of new or updated data.

8. The Hiatus Paper is an example of analysis and interpretation of the updated underlying data, work which is consistent with the mission of NOAA. Nine NOAA scientists contributed to this paper: Thomas Karl (the lead author), Dr. Anthony Arguez, Dr. Boyin Huang, Mr. Jay Lawrimore, Mr. James McMahon, Dr. Matthew Menne, Dr. Thomas Peterson, Dr. Russell Vose, and Dr. Huai-min Zhang. Thomas Karl is the former Director of NCEI. Jay Lawrimore, Dr. Russell Vose, and Dr. Huai-min Zhang are supervisory scientists at NCEI. Dr. Anthony Arguez and Dr. Matthew Menne are climate scientists at NCEI. Since the publication

of the paper, Dr. Thomas Karl and Dr. Thomas Peterson have retired, and Mr. James McMahon no longer works at NCEI.

9. The Intergovernmental Panel on Climate Change (IPCC) released a report in stages between September 2013 and November 2014 that concluded that the upward global surface temperature trend from 1998-2012 was lower than the upward global surface temperature trend from 1951-2012. This apparent observed slowing was dubbed the “hiatus.”

10. There were significant developments related to the alleged “hiatus” in the two years immediately following the release of the IPCC report. In particular, both 2013 and 2014 were among the top-five warmest years on record for the globe. In addition, NOAA scientists made significant improvements to its sea surface temperature dataset, one of the largest being a correction that accounted for the difference in data collected from buoys and ships. (Until the mid-1970s, ships were used to measure sea surface temperatures; since then, buoys have increasingly been used.) Scientists developed a method to correct for the difference between these two observing systems, and incorporated those corrections into its dataset and subsequently the paper that is the subject of this request.

11. On or about October 31, 2014, Director Karl shared with a group of NOAA scientists a draft of a paper that he had worked on himself, inspired by some of the papers exchanged previously by the NCEI scientists. The draft developed an idea for properly accounting for the “hiatus,” based on the additional two years of global temperature data and the improvements to NOAA’s sea surface temperature dataset. Director Karl asked the scientists to provide feedback to his draft.

12. The scientists who received the draft responded with feedback in various forms, including exchanging drafts of the paper with edits done via track changes and sending emails providing feedback.

13. Until the paper was submitted to *Science*, many drafts and revisions were exchanged along with emails and one-on-one discussions about various aspects of the paper, including: suggestions on how best to describe the data, opinions on statistical error uncertainty ranges, thoughts on implications of other researchers' work, and so on. Such collaboration via drafts and discussions in emails and orally is standard practice at NCEI.

14. On or about December 23, 2014, a NOAA author submitted the draft paper to *Science* via an online portal.

15. *Science* follows a formal peer review process that is described on their public website. See <http://www.sciencemag.org/authors/peer-review-science-publications>. Peer reviewers are subject matter experts in the topic of the submitted paper who are able to use their expertise to evaluate the scientific rigor and merit of the paper.

16. Peer reviewers provide feedback on an array of issues, including making an overall recommendation as to whether the paper should be published, in view of *Science*'s mission and also providing more detailed critique on a range of issues. These issues include the technical rigor of the data and methods used and whether the conclusions of the report are novel or similar to work already published. See <http://www.sciencemag.org/sites/default/files/REinstr13.pdf>.

17. According to *Science*, their peer review process is anonymous. The identities of reviewers are never revealed to authors, and reviewers are instructed not to identify themselves to any entity, including the press. Reviews are shared only with the author, potentially other reviewers (for cross-comment), and the Board of the journal. See <http://www.sciencemag.org/authors/peer-review-science-publications>.

18. Reviewers are expressly instructed to treat the submitted manuscript as privileged and confidential:

The submitted manuscript is a privileged communication and must be treated as a confidential document. Please destroy all copies of the manuscript after review. Please do not share the manuscript with any colleagues without the explicit permission of the editor. Reviewers should not make personal or professional use of the data or interpretations before publication without the authors' specific permission (unless you are writing an editorial or commentary to accompany the article).

<http://www.sciencemag.org/authors/peer-review-science-publications>.

19. This is reinforced in the journal's Instructions to Peer Reviewers of reports, which states:

Confidentiality: We expect reviewers to protect the confidentiality of the manuscript and ensure that it is not disseminated or exploited. Please destroy your copy of the manuscript when you are done. Only discuss the paper with a colleague with permission from the editor. We do not disclose the identity of our reviewers.

<http://www.sciencemag.org/sites/default/files/REinstr13.pdf>.

20. The authors received via email the first round of reviews from *Science* on or about February 26, 2015. In this case, *Science* sent the manuscript to five peer reviewers. These reviewers provided their comments anonymously to NOAA through *Science*, as is standard in the peer review process for *Science*.

21. After determining the best response to all of the peer reviewer comments, the authors submitted the revised manuscript and a response to reviewer comments to *Science* via the online submission portal on or about March 27, 2015. See Categories C and D of part 2 of the *Vaughn* Index.

22. On or about April 22, 2015, the authors received the second round of reviews from *Science* via email. The authors developed responses to this second round of comments, made revisions accordingly, and submitted the revised manuscript and response to reviewer comments to *Science* via the online portal on or about May 5, 2015. *See id.*

23. After submitting the revised manuscript, the authors received notice that it would be published, received galley proofs, and approved them. On June 4, 2015, the paper was published online on the *Science* website. This was followed up by publication in the printed volume of *Science* on June 26, 2015 (Volume 348, Issue 6242, at 1469).

II. ADMINISTRATIVE PROCESSING OF PLAINTIFF'S REQUEST

24. Plaintiff's FOIA request was addressed to NOAA, which is located within the Department of Commerce ("the Department"). The request sought, in relevant part:

1. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the methodology and utilization of Night Marine Air Temperatures to adjust ship and buoy temperature data.
2. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the use of other global temperature datasets for both NOAA's in-house dataset improvements and monthly press releases conveying information to the public about global temperatures.

3. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the utilization and consideration of satellite bulk atmospheric temperature readings for use in global temperature datasets.

25. When NOAA officials first reviewed the request, they determined that it did not reasonably describe the records sought. NOAA and the Department, through counsel, conferred with Plaintiff's counsel to negotiate a clear description of the materials sought.

26. During the course of those discussions, NOAA indicated to Plaintiff that it understood Plaintiff's request to reflect an interest in the Hiatus Paper. Defendant suggested Plaintiff modify the FOIA request to call for a search for all documents and communications referring to the Hiatus Paper from October 1, 2014 through June 4, 2015. Defendant offered to search the files of the nine authors of the Study. Plaintiff confirmed its interest in the Hiatus Paper, but indicated that it sought only records referring to the topics listed in its initial FOIA request.

27. The parties ultimately "reached an agreement regarding the scope of the request and the relevant search parameters," which was memorialized in the Second Joint Status Report, submitted to this Court on March 1, 2016. Regarding the documents at issue in this litigation, the parties agreed that:

"Defendant will search the records of the nine authors of the June 4, 2015 study entitled Possible Artifacts of Data Biases in the Recent Global Surface Warming Hiatus published in Science ("Karl Study") for records referring to the Karl Study and that contain the following search terms:

(1) "NMAT" and "Night Marine Air Temperatures";

(2) "ISTU", "ICOADS", and "sea ice";

(3) "satellite", "Advanced Very High Resolution Radiometer", "AVHRR", "Advanced Microwave Scanning Radiometer", and "AMSR".

For items 1, 2, and 3 of Plaintiff's FOIA request, the timeframe for the searches will be October 1, 2014 to June 4, 2015."

See Second Joint Status Report, ECF No. 10.

28. In the Third Joint Status Report, submitted to this Court on March 22, 2016, the parties agreed that NOAA, through the Department, would produce responsive, non-exempt records, as described above, to Plaintiff by May 27, 2016. *See* ECF No. 11.

29. On May 27, 2016, the Department released 102 pages of material in its entirety and 90 partially redacted pages. Defendant withheld in their entirety 8,013 pages of records. *See* May 27 Cover Letter (Exhibit 2); *see also* Fourth Joint Status Report, ECF No. 12. In that letter, NOAA informed Plaintiff that "[b]ecause the request sought records of multiple custodians, there is a significant amount of duplicative material in the responsive records." Exhibit 2.

30. NOAA made a supplemental release of records on September 16, 2016, providing Plaintiff with an additional 44 pages of released material after further review the records identified and described in the letter accompanying the May 27, 2016, production, 7 of which were partially redacted because they included Tom Karl's personal telephone number.

31. After the September release, NOAA continued to evaluate the responsiveness and exemption status of the records that had been identified. Contemporaneously with this filing (on December 15), NOAA is releasing another 62 records providing Plaintiff with additional records that were previously withheld.

32. Because of the further segregation and responsiveness review NOAA conducted that led to the release of additional material to the Plaintiff, the page counts in the May 27 cover letter (and also the Fourth Joint Status Report) originally provided to Plaintiff are no longer accurate. A complete listing of all records withheld in full or in part pursuant to an exemption is reflected in the attached *Vaughn* Index.

II. THE SEARCH PROCESS

33. After NOAA and Plaintiffs, through counsel, reached an agreement as to the terms of the search for this FOIA request, it was determined that the records requested resided within one office: NCEI. NCEI's headquarters is located in Asheville, North Carolina. This determination was based on the fact that all of the agreed-upon custodians work or had worked within NCEI during the time in which responsive records were created.

34. The nine authors of the Hiatus Paper were Thomas R. Karl, Anthony Arguez, Boyin Huang, Jay H. Lawrimore, James R. McMahon, Matthew J. Menne, Thomas C. Peterson, Russell S. Vose, and Huai-Min Zhang.

35. NOAA instructed eight of the nine authors (record custodians) that were still within NCEI to conduct a search in accordance with the parameters agreed to by the parties and memorialized in the Second Joint Status Report. NOAA specified that custodians must search their email, electronic, and paper records.

36. Each records custodian still at NCEI¹ searched his own records in accordance with these instructions. As such, all search terms and parameters of the search as agreed upon by the Plaintiff were utilized by NOAA in the search of the files where responsive records were likely to be filed.

37. There were no common areas to be searched at NCEI because the authors all kept their own files separate.

38. After the custodians collected their records, they were forwarded for responsiveness and exemption review.

39. The search conducted was reasonably calculated to uncover all relevant, non-duplicative documents.

40. The Department compiled two sets of bates-numbered files, which included, in addition to the partially redacted and fully withheld email records, placeholder pages, which are discussed further in Paragraph 49. One bates-numbered file reflects the email records, and the other bates-numbered file reflects documents, as contained on parts 1 and 2 of the *Vaughn*.

41. Each record was evaluated separately for responsiveness, and each email was deemed to be one record.

42. In the case of an email with attachment(s), responsiveness determinations were made independently for that email and any attachment(s) to that email.

43. For email records that were joined with other emails in a chain, NOAA deemed responsive any email that related to the Paper and contained an agreed-upon search term as well

¹ One custodian (Thomas Peterson) had retired by the time of the search. His archived email inbox and outbox were searched by another author who was still with NOAA at the time. No additional, non-duplicative records created by Mr. Peterson that are responsive to this request are known to have existed following the retirement of Mr. Peterson.

as other, surrounding emails that were related to or provided important context for the email that contained the search term. If an email appeared to directly relate to the subject matter of the request in an email containing the search term, a case-by-case determination was made in good faith and in the effort to maximize transparency as to whether that record was responsive even though not technically within the search terms outlined in the Second Joint Status Report.

44. The search was reasonably calculated to uncover all relevant documents and there are no known locations where additional, non-duplicative, responsive material is likely to be found. Accordingly, all files determined to be reasonably likely to contain responsive, non-duplicative material were searched.

III. The Vaughn Index

45. I have read the *Vaughn* index attached as Exhibit 1 and reviewed the documents referenced in that index. Based on my review of the documents and on information provided me in the course of my official duties, I have determined that the material redacted from the referenced documents falls within the enumerated FOIA exemptions identified in the index.

46. The *Vaughn* index is divided into two parts. The first part covers responsive emails that were withheld or redacted. It identifies each record by Bates stamp numbers (which correspond to the numbering on records provided to Plaintiff), the originator, the recipient(s), the date of the record, the title of the email, the exemption invoked, and the basis for withholding.

47. Due to how the email records are stored in and were printed from the user's email accounts, some email records are duplicative but certain copies truncate the metadata for that record email (e.g., the sender, recipient, subject line, who was cc'd on the records). Sometimes

NOAA was able to reconstruct the information by looking to duplicate instances that were printed differently, or by going to the original files. We have generally inferred that the subject line that prints at the top of the printed email chain carried through for individual email records connected to that string of emails.

48. The second part of the *Vaughn* index covers non-email documents that were withheld in their entirety, except for a relatively small number of documents that were released to Plaintiffs upon further review. These documents consist almost exclusively of five categories of records. Records that fell into one of the five categories are labeled in the *Vaughn* index by a letter that corresponds to a category. The few exceptions that do not fall into one of the five categories have a more detailed description.

49. The *Vaughn* index reflects occasional “gaps” in the Bates stamp numbering. For example, *Vaughn* part one reflects an entry for bates page 1, and the next entry is for bates page 4. Such “gaps” exist for three reasons. First, not all pages had redacted information. Only pages with redacted information are accounted for on the *Vaughn*. Second, NOAA, in an effort to be transparent during production, included pages that served as “placeholders” for records in email chains that were removed because those records were either non-responsive or were fully withheld under Exemption 5. For example, if one page with responsive records was produced with redactions, followed by four fully withheld pages of records, the four fully withheld pages were represented in the production by a placeholder page that indicated four pages of material had been withheld as either not responsive or as exempt under Exemption 5. That placeholder page was bates stamped during the initial production, but NOAA has not listed it in the *Vaughn*

index. And third, NOAA removed bates-marked documents that were non-responsive that had been inadvertently bates stamped during the initial production. The withheld records, if responsive, are represented elsewhere in the *Vaughn* index.

50. As reflected in the first part of the *Vaughn* index, NOAA withheld or redacted emails under Exemption 5 because they are protected by the deliberative process privilege. *See, generally, Vaughn* part 1. These records are inter-agency or intra-agency communications. The bulk of this information reflects the predecisional and deliberative exchange of ideas and recommendations among scientists within and outside NOAA as NOAA scientists developed and edited the Hiatus Paper or discussed the underlying analysis of the datasets for purposes of developing the paper. The information also includes communications among NOAA personnel carrying out related agency deliberations such as development of public communications and presentations to Congress. The communications are, unless otherwise indicated, among NOAA personnel and reflect agency deliberations or input to agency determinations. These deliberations were in preparation for agency decisions, including how to analyze and present the data and interpretation. A relatively small number of the deliberative communications reflect input from non-federal scientists who were contacted either by one of the authors or by the journal *Science* to provide feedback and input on the Paper. These non-federal scientists provided NOAA's scientists input for the agency's ongoing processes of developing the Hiatus Paper, as well as providing input for the agency's potential updating of underlying datasets and analysis based on those datasets. Additionally, one scientist provided input to inform the agency's development of a communications plan for the paper.

51. In addition to the emails redacted or withheld, NOAA withheld drafts of the Hiatus Paper. *See Vaughn* part two Category A. These documents are inter-agency or intra-agency drafts. This category includes the drafts of the “supplementary materials” that accompanied the Hiatus Paper and were made available for download by *Science* upon publication of the Paper. Category A in the *Vaughn* Index sometimes lists the draft paper text, figures and supplementary materials as one entry and sometimes separately. These were pre-decisional drafts that contained the opinions and recommendations of one or more NOAA authors; draft language, data, and data interpretation for consideration by other NOAA authors; comments on previous drafts of the paper; and/or responses to other NOAA authors’ or expert reviewers’ comments on earlier drafts of the paper. Disclosure of deliberative draft documents that were not ultimately finalized or adopted by NOAA risks confusing the public concerning NOAA’s position and also risks data or statements being taken out of context. Disclosure of these deliberative draft materials would also seriously undermine the quality and integrity of NOAA’s decisionmaking process, by deterring NOAA staff or experts outside the agency who are collaborating in development of the agency’s work from expressing their candid views on the development of data analysis and presentation.

52. NOAA also withheld documents that contain questions for discussion and draft graphs that were circulated by an author and created for author discussions during the development of the Hiatus Paper. *See Vaughn* part two Category E. These records are inter-agency or intra-agency documents. These documents are deliberative and pre-decisional, as they

reflect NOAA scientists' deliberations as to what constitutes the best data analysis and presentation for the Hiatus Paper.

53. NOAA also withheld drafts of a cover letter from Tom Karl to *Science* magazine in response to peer review comments. *See Vaughn* part two Category B. These records are inter-agency or intra-agency drafts. These drafts are predecisional and deliberative in that they include discussions and exchanges among authors in determining what to include, and how to present, their formal letter to accompany their peer review responses. The draft cover letters to *Science* contain edits or otherwise do not include the final wording of the letter, reflecting that the scientists' approach had not been finalized at that point.

54. NOAA also withheld draft responses to peer reviewers enlisted by *Science* as part of that journal's peer review process. *See Vaughn* Index part two Category C. These records are inter-agency or intra-agency drafts. These drafts reflect pre-decisional discussions and proposed responses to peer review comments. The drafts contain opinions and recommendations of one or more NOAA authors; draft language, data, and data interpretation for consideration by other authors; comments on previous drafts of the responses to peer reviewers; and/or responses to other authors' comments on earlier drafts of the responses to peer reviewers. These drafts helped the NOAA authors determine how best to respond to comments provided during the peer review process initiated by the submission of the Hiatus Paper to *Science* for potential publication. These documents are internal, pre-decisional drafts that reflect the view of NOAA authors as to how to present their response to peer review feedback.

55. NOAA also withheld the final responses to peer reviewers enlisted by *Science* as part of that journal's peer review process. See *Vaughn* Index Part 2 Category D. These records are inter-agency or intra-agency documents. These documents are predecisional and deliberative because they are responses to constructive criticism and advice submitted by scientific experts as part of the confidential peer review process for papers submitted to scientific journals. The responses were submitted as part of a process to assist in the authors' deliberations regarding whether and in what form to publish the paper. Confidentiality is important to the peer review process, and disclosure of the responses to peer reviews would discourage the sharing of candid thoughts of both the reviewers and of the scientists.

56. In addition to this formal peer review, NOAA's authors also welcomed the assistance of informal peer review from a limited group of scientific experts in evaluating the underlying datasets and developing the Hiatus Paper. It is common for NOAA scientists to seek input from other qualified experts to get a second opinion on a working hypothesis or to provide expertise that an author's affiliated organization may lack. Sometimes those scientists are employed outside the federal government, but they share the common goal with NOAA of advancing scientific inquiry and developing accurate information on climate science.

57. This collegial relationship and shared goals lays the groundwork for an author to reach out for the kind of honest, confidential feedback necessary to formulate a sustainable, justified scientific conclusion.

58. Each of these scientists who offered their assistance is highly regarded in their specialized fields. Their prior work represents a portion of the prior published literature on the

alleged hiatus. Some of those works were consulted by the team in developing the “hiatus” paper and were cited as references in it.

59. One of the outside scientists who contributed (and is listed in the “Acknowledgements” section of the Hiatus Paper) is Dr. Gerald (Jerry) A. Meehl, an affiliate with the National Center for Atmospheric Research (NCAR), which is a National Science Foundation Federally Funded Research and Development Center. *See* <https://www2.ucar.edu/about-us/quick-facts>. In November 2014, Director Karl emailed Dr. Meehl and invited him to comment on drafts of the paper, and he provided insights and feedback in response. *See* Bates 66 (11/27/14) (released).

60. If a paper is expected to get an unusual amount of attention, a journal may seek pre-publication reactions from experts in the field outside of that journal’s formal peer review process. On occasion, those experts who are contacted by the journal will then directly communicate with the author(s) of the article and share their thoughts on the article.

61. These communications provide important feedback to the authors on the Hiatus Paper and often provide information, relied upon by NOAA, about the external expert’s own related recent or ongoing work. These communications provide input to the continuous, ongoing work to update and improve datasets and trend analyses, as described in Paragraphs 5 through 7.

62. One outside scientist who provided input (and is cited in the references for the Hiatus Paper) is Dr. Kevin E. Trenberth, who (like Dr. Meehl) is also affiliated with the NCAR. Dr. Trenberth was contacted for his expertise by a journalist prior to publication of the Hiatus Paper and asked to provide comment on the paper. Dr. Trenberth then contacted Director Karl

by email to provide feedback and discuss implications of the conclusion in light of other literature. *See* Bates 379 (6/1/15). As discussed in paragraph 61, above, this type of input provides important feedback and also helps inform the continuous, ongoing work to update and improve datasets and trend analyses. In part, this information was also provided to inform NOAA in its deliberations as it formulated its public communications messaging for the Hiatus Paper. *See* Bates 381-382 (6/1/15).

63. Last, Dr. Kevin Cowtan, who is affiliated with the University of York in the United Kingdom, is an outside scientist who contacted Dr. Boyin and Director Karl, after being contacted by a writer at *Science* who was seeking comment on the paper before publication, during the embargo period. *See* Bates 292-293 (6/2/15). Those emails indicate that all participants understood and respected that there was an embargo on publicly disseminating or discussing the work until it was officially released on June 4. *See, e.g.*, Bates 295 (6/2/15). Director Karl indicated in an email that he would like to continue to review and incorporate Dr. Cowtan's work in NOAA's ongoing work. *See* Bates 295-296 (6/2/15). As discussed in paragraph 61, above, this type of input provides important feedback and also helps inform the continuous, ongoing work to update and improve our datasets and trend analyses.

64. Disclosure of any of this information that is pre-decisional and deliberative would inhibit candid internal discussions and expressions of ideas, recommendations, criticism, and judgments regarding the development of scientific theories and presentations of information to the public and to Congress. Disclosure of the details of these confidential discussions, drafts, and responses, could reasonably be expected to chill the open and frank exchange of comments

and opinions that occurs between NOAA scientists and a limited group of qualified outside experts at such times. It would also inhibit candid internal discussions and the expression of recommendations and judgments regarding preferred courses of action for agency personnel.

65. To the extent the redacted or withheld information contains some factual material, the authors' selection and presentation of that factual material reflects the agency's deliberative process and is therefore protected from disclosure. Singling out a particular data point in the course of a deliberative discussion reflects a preliminary judgment or argument rather than an assertion of scientific fact. There is a risk of misconstruing or taking out of context an instance where one piece of information has been singled out for purposes of an informal discussion.

66. With regard to information withheld pursuant to exemption (b)(6), NOAA has determined that the individual privacy interests outweighed the public interest in disclosure.

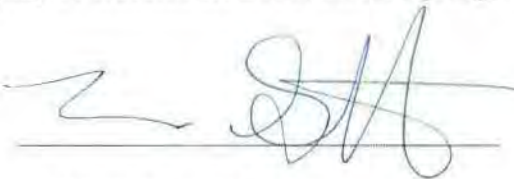
67. I am further satisfied that NOAA has reasonably concluded that there was no additional non-exempt, responsive information that could be reasonably segregated and released to the plaintiff.

IV. CONCLUSION

In summary, the Department conducted thorough searches of all components that were reasonably likely to maintain responsive records and withheld only reasonably segregable information under exemption (b)(5) and (b)(6). Additionally, the search was reasonably calculated to uncover all relevant documents, and there are no known locations where additional, non-duplicative, responsive material is likely to be found.

Pursuant to 28 U.S.C. § 1746, I hereby affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 14th day of December, 2016, Silver Spring, Maryland.

A handwritten signature in blue ink, consisting of a stylized 'M' followed by a large, looped 'G' and 'A', positioned above a horizontal line.

Mark H. Graff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

Exhibit 1 to Declaration of Mark Graff

Vaughn Index Part 1: Emails

Bates Page	Originator	Addressee	Date	Time	Title	Exemption	Released Status	Basis
1	Maycock, Tom	Zhang, Huai-min	05/06/2015	9:30 AM	Re: NCEI communications: question re. uncertainty in "hiatus" paper	(b)(5)	Partially Redacted	NOAA affiliate asking NOAA scientist for clarification on data results from the paper prior to publication for development of communications materials related to the paper.
4	Peterson, Thomas C.	Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin; Zhang, Huai-min	3/16/2015	10:50 AM	Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper. Scientist is also asking for opinion of another scientist.
6	Huang, Boyin	Mcmahon, James; Vose, Russell; Peterson, Thomas C.; Tanner, Michael; Karl, Thomas R.; Menne, Matthew; Arguez, Anthony; Lawrimore, Jay; Zhang, Huai-min	3/19/2015	4:02 PM	Re: Invitation: Update on Science Hiatus paper @ Fri Mar 20, 2015 11am 12pm	(b)(5)	Partially Redacted	NOAA scientist sharing draft data analysis, based on scientist discussions, for development of the paper with other scientists.
14	Vose, Russell	Peterson, Thomas C.; McMahon, James; Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Lawrimore, Jay; Matthews, Jessica	3/23/2015	9:12 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist sharing drafts of the paper and discussing edits made to the paper. Email is duplicate of email found on page 102.
14	Peterson, Thomas C.	Mcmahon, James; Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	4:03 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist sharing drafts of supplemental materials for the paper and discussing edits made to the paper.
14-15	Mcmahon, James	Huang, Boyin; Peterson, Thomas C.; Karl, Thomas R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	2:15 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist sharing drafts of the paper and discussing edits made for the development the paper.

15	Huang, Boyin	Peterson, Thomas C.; Karl, Thomas R.; Arguez, Anthony; McMahan, James; Huai-min, Zhang; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	10:03 AM	Re: Science-hiatus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist sharing opinion on results of draft data analysis for development of the paper.
15	Peterson, Thomas C.	Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; McMahan, James; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	9:55 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist sharing opinion on results of draft data analysis for development of the paper.
17	Peterson, Thomas C.	Lawrimore, Jay; Huang, Boyin; Zhang, Huai-min	3/16/2015	2:51 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist discussing edits to be made for development of the paper. Asking another NOAA scientist about work to be done for the paper.
19	Peterson, Thomas C.	McMahon, James; Huang, Boyin; Karl, Thomas, R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	4:03 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 14.
22	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew	12/16/2014	1:02 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
22-23	McMahon, James	Zhang, Huai-min	12/16/2014	12:45 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist asking another scientist for clarification on data analysis conducted for the development of the paper.
23	Zhang, Huai-min	McMahon, James	12/16/2014	11:17 AM	Interpolation of LSAT over the arctic and antarctic	(b)(6)	Partially Redacted	Personal cell phone number of scientist.
25-26	McMahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew	12/16/2014	1:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper. Scientist is also asking for opinion of another scientist.

26	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	1:31 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper. Scientist is also asking for opinion of another scientist.
27	Huang, Boyin	Zhang, Huai-min; Mcmahon, James; Menne, Matthew; Lawrimore, Jay	12/16/2014	2:26 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
27-28	Mcmahon, James	Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Lawrimore, Jay	12/16/2014	2:55 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper. Scientist is also asking for opinion of another scientist.
28	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	3:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
28-29	Mcmahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	3:21 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
33	Maycock, Tom	Zhang, Huai-min	05/06/2015	9:30 AM	Re: NCEI communications: question re. uncertainty in "hiatus" paper	(b)(5)	Partially Redacted	Duplicate of page 1.
37	Huang, Boyin	Karl, Thomas R.; Zhang, Hai-min; Mcmahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	2:20 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist discussing proposed data analysis and potential research methods to be conducted for the development of the paper.

37-38	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	12:21 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist discussing proposed data analysis and potential research methods to be conducted for the development of the paper.
38-40	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	11:35 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper (the scientist's responses are inserted into text of earlier email).
41	Huang, Boyin	Zhang, Huai-min; Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	8:43 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
41	Zhang, Huai-min	Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:27 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
42	Karl, Thomas R.	Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:21 AM	Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to question from another scientist and offering personal opinion on data analysis and graphics for the paper.
42	Zhang, Huai-min	McMahon, James; Karl, Thomas R.; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	1:56 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist sharing data analysis and graphics for development of the paper with other scientists.
45	Zhang, Huai-min	Lawrimore, Jay; Huang, Boyin	11/20/2014	2:47 PM	article method	(b)(5)	Partially Redacted	NOAA scientist sharing drafts of the paper and asking about edits to be made to the paper.

48	Karl, Thomas R.	Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:21 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Email text is cut off but text is duplicate of full text on page 42.
48	Zhang, Huai-min	Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:27 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 41.
48	Huang, Boyin	Zhang, Huai-min; Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	8:43 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 41.
48-49	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	8:49 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist is responding to question from another scientist and offering personal opinion on draft data analysis for development of the paper.
49	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	10:39 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist is responding to question from another scientist and offering personal opinion on draft data analysis for development of the paper.
49-50	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	11:35 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of pages 38-40.
50	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	12:21 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37-38.

50-51	Huang, Boyin	Karl, Thomas R.; Zhang, Hai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	2:20 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37.
51	Menne, Matthew	Lawrimore, Jay; Karl, Thomas R.; Huang, Boyin; Zhang, Hai-min; McMahon, James; Vose, Russell	11/06/2014	10:55 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist sharing proposed language for the paper as well as draft data analysis and graphics for development of the paper. Although this email was initially identified as not responsive, NOAA has determined the email to be responsive and exempt under (b)(5).
53	Huang, Boyin	Karl, Thomas R.; Zhang, Hai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	2:20 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37.
53	Karl, Thomas R.	Huang, Boyin; Zhang, Hai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	12:21 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37-38.
53	Huang, Boyin	Karl, Thomas R.; Zhang, Hai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	11:35 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of pages 38-40.
66-67	Meehl, Gerald	Karl, Thomas R.	11/28/2014	5:45 PM	Jerry this is not finished. We have another figure to add and describe, but it will give you an idea of where we are going with this	(b)(5)	Partially Redacted	Outside scientist is providing feedback and review of data analysis for the paper in response to request for feedback from Tom Karl (via email that was Released). The outside scientist is providing observations regarding the climatic data used in the paper and raising issues for further discussion and clarification.

67-68	Karl, Thomas R.	Meehl, Gerald	11/29/2014	9:41 AM	Jerry this is not finished. We have another figure to add and describe, but it will give you an idea of where we are going with this	(b)(5)	Fully Withheld	NOAA scientist is responding to feedback on the hiatus paper provided by outside scientist and discussing data analysis conducted for the development of the paper. Although this email was initially identified as not responsive, NOAA has determined the email to be responsive and exempt under (b)(5).
69	Huang, Boyin	Mcmahon, James; Vose, Russell; Peterson, Thomas, C.; Tanner, Michael; Karl, Thomas R.; Menne, Matthew; Arguez, Anthony; Lawrimore, Jay; Zhang, Huai-min	3/19/2015	4:02 PM	Re: Invitation: Update on Science Hiatus paper @ Fri Mar 20, 2015 11am 12pm	(b)(5)	Partially Redacted	Duplicate of page 6.
70	Kossin, James P.	Karl, Thomas R.	5/21/2015	11:44 AM	Science paper	(b)(5)	Partially Redacted	NOAA scientist asking paper author offering personal opinion and inquiring about potential data analysis for the paper.
70	Karl, Thomas R.	Kossin, James P.	5/21/2015	11:55 AM	Science paper	(b)(5)	Partially Redacted	Paper author responding to personal opinion of NOAA scientist and sharing his personal opinion on draft data analysis for the paper. Asking if NOAA scientist about involvement future research and data analysis.
75	Karl, Thomas R.	Holdren, John P.	3/26/2015	4:35 PM	Acceptance of your Science Manuscript aaa5632	(b)(5)	Partially Redacted	NOAA scientist sharing release date for paper. NOAA scientist is also discussing future climate research for the agency and asking for opinion of John Holdren on this research and on the possible role of NOAA scientists in this research.
88	Huang, Boyin	Karl, Thomas R.; Lawrimore, Jay	1/15/2015	4:16 PM	Your recent paper	(b)(5)	Partially Redacted	NOAA scientist is responding to question from another scientist and sharing results of data analysis he conducted for the paper and personal opinion on future research.
88	Karl, Thomas R.	Huang, Boyin; Lawrimore, Jay	1/15/2015	16:20	Your recent paper	(b)(5)	Partially Redacted	NOAA scientist asking other scientists about data to potentially be used in further research study.

88-89	Huang, Boyin	Karl, Thomas R.; Lawrimore, Jay	1/15/2015	4:33 PM	Your recent paper	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to question from another scientist and offering personal opinion on data analysis for the paper and personal opinion on future research.
100	Huang, Boyin	Peterson, Thomas C.; Karl, Thomas R.; Arguez, Anthony; McMahon, James; Huai-min, Zhang; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	10:03 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 15.
100-101	Peterson, Thomas C.	Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; McMahon, James; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	9:55 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 15.
101	Mcmahon, James	Huang, Boyin; Peterson, Thomas C.; Karl, Thomas R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	2:15 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 15.
101-102	Peterson, Thomas C.	Mcmahon, James; Huang, Boyin; Karl, Thomas, R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	4:03 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 14.
102	Vose, Russell	Peterson, Thomas C.; McMahon, James; Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Lawrimore, Jay; Matthews, Jessica	3/23/2015	9:12 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 14.
104	Zhang, Huai-min	Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:27 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Email text is partially cut off. Duplicate of full email found on page 41.

104	Huang, Boyin	Zhang, Huai-min; Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	8:43 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 41.
104	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	8:49 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of pages 48-49.
104-105	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	10:39 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 49.
105-106	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	11:35 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of pages 38-40.
106	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	12:21 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37-38.
106	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	2:20 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37.

108-109	Meehl, Gerald	Karl, Thomas R.	11/28/2014	5:45 PM	Jerry this is not finished. We have another figure to add and describe, but it will give you an idea of where we are going with this	(b)(5)	Partially Redacted	Email addresses are cut off. Duplicate of full email found on pages 66-67.
112	Zhang, Huai-min	Mcmahon, James	12/16/2014	11:17 AM	Interpolation of LSAT over the arctic and antarctic	(b)(6)	Partially Redacted	Duplicate of page 23.
112	Mcmahon, James	Zhang, Huai-min	12/16/2014	12:45 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22-23.
112	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew	12/16/2014	1:02 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22.
112-113	Mcmahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew	12/16/2014	1:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 25-26.
113	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	1:31 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 26.
113	Huang, Boyin	Zhang, Huai-min; Mcmahon, James; Menne, Matthew; Lawrimore, Jay	12/16/2014	2:26 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 27.
113-114	Mcmahon, James	Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Lawrimore, Jay	12/16/2014	2:55 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of pages 27-28.
114	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	3:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 28.
114	Mcmahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	3:21 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 28-29.
116	Karl, Thomas R.	Sessing, Janice; Vose, Russell; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; Mcmahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/21/2015	2:54 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Partially Redacted	NOAA scientist sharing with other NOAA affiliates his thoughts on presenting the agency's climate change research to Congress.

128	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew	12/16/2014	1:02 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22.
128	Mcmahon, James	Zhang, Huai-min	12/16/2014	12:45 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22-23.
128	Zhang, Huai-min	Mcmahon, James	12/16/2014	11:17 AM	Interpolation of LSAT over the arctic and antarctic	(b)(6)	Partially Redacted	Duplicate of 23.
128-129	Mcmahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew	12/16/2014	1:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22-23.
129	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	1:31 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 26.
129	Huang, Boyin	Zhang, Huai-min; Mcmahon, James; Menne, Matthew; Lawrimore, Jay	12/16/2014	2:26 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 27.
130	Mcmahon, James	Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Lawrimore, Jay	12/16/2014	2:55 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of pages 27-28.
130	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	3:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 28.
130	Mcmahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	3:21 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of pages 28-29.
131	Huang, Boyin	Lawrimore, Jay; Peterson, Thomas C.; Zhang, Huai-min; Mcmahon, James; Karl, Thomas R.; Vose, Russell; Menne, Matthew	03/06/2015	8:33 AM	SST trend experiment	(b)(5)	Partially Redacted	NOAA scientist is sharing data analysis he conducted for the paper offering his opinion of the best approach to take in the paper.
133	Huang, Boyin	Mcmahon, James; Vose, Russell; Peterson, Thomas, C.; Tanner, Michael; Karl, Thomas R.; Menne, Matthew; Arguez, Anthony; Lawrimore, Jay; Zhang, Huai-min	3/19/2015	4:02 PM	Re: Invitation: Update on Science Hiatus paper @ Fri Mar 20, 2015 11am 12pm	(b)(5)	Partially Redacted	Duplicate of page 6.

137-138	Peterson, Thomas C.	Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin; Zhang, Huai-min	3/16/2015	10:50 AM	Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 4.
139-140	Lawrimore, Jay	Peterson, Thomas C.; Huang, Boyin; Zhang, Huai-min	3/16/2015	2:47 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist sharing data analysis to be used in the paper and asking for clarification on data analysis conducted for development of the paper.
140	Peterson, Thomas C.	Lawrimore, Jay; Huang, Boyin; Zhang, Huai-min	3/16/2015	2:51 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 17.
143	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Kris	5/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17 th warmest April on record for contiguous U.S.	(b)(5)	Partially Redacted	NOAA scientist discussing agency's climate change research and developing the agency's presentation for Congress.
156	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	2:20 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37.
156	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	12:21 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37-38.
156-157	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	11:35 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 38-40.

157	Huang, Boyin	Zhang, Huai-min; Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	8:43 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 41.
157	Zhang, Huai-min	Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:27 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 41.
158	Karl, Thomas R.	Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:21 AM	Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Fully Withheld	Duplicate of page 42. Although this email was initially identified as not responsive, NOAA has determined the email to be responsive and exempt under (b)(5).
158	Zhang, Huai-min	McMahon, James; Karl, Thomas R.; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	1:56 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Fully Withheld	Duplicate of page 42. Although this email was initially identified as not responsive, NOAA has determined the email to be responsive and exempt under (b)(5).
160	Zhang, Huai-min	Lawrimore, Jay; Huang, Boyin	11/20/2014	2:47 PM	article method	(b)(5)	Partially Redacted	Duplicate of page 45.
162-163	Meehl, Gerald	Karl, Thomas R.	11/28/2014	5:45 PM	Jerry this is not finished. We have another figure to add and describe, but it will give you an idea of where we are going with this	(b)(5)	Partially Redacted	Duplicate of pages 66-67.
164	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	1:31 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 26.
164	McMahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew	12/16/2014	1:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 25-26.

164	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew	12/16/2014	1:02 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22.
164	Mcmahon, James	Zhang, Huai-min	12/16/2014	12:45 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22-23.
166	Huang, Boyin	Mcmahon, James; Vose, Russell; Peterson, Thomas, C.; Tanner, Michael; Karl, Thomas R.; Menne, Matthew; Arguez, Anthony; Lawrimore, Jay; Zhang, Huai-min	3/19/2015	4:02 PM	Re: Invitation: Update on Science Hiatus paper @ Fri Mar 20, 2015 11am 12pm	(b)(5)	Partially Redacted	Duplicate of page 6.
167	Maycock, Tom	Zhang, Huai-min	05/06/2015	12:58 PM	Re: NCEI communications: question re. uncertainty in "hiatus" paper	(b)(5)	Partially Redacted	Duplicate of page 1.
234	Huang, Boyin	Karl, Thomas R.; Lawrimore, Jay	1/15/2015	4:16 PM	Your recent paper	(b)(5)	Partially Redacted	Duplicate of page 88.
234	Karl, Thomas R.	Huang, Boyin; Lawrimore, Jay	1/15/2015	4:20 PM	Your recent paper	(b)(5)	Partially Redacted	Duplicate of page 88.
234-235	Huang, Boyin	Karl, Thomas R.; Lawrimore, Jay	1/15/2015	4:33 PM	Your recent paper	(b)(5)	Partially Redacted	Duplicate of pages 88-89.
240-241	Huang, Boyin	Karl, Thomas R.; Lawrimore, Jay	1/15/2015	4:16 PM	Your recent paper	(b)(5)	Partially Redacted	Duplicate of page 88.
242	Karl, Thomas R.	Huang, Boyin; Lawrimore, Jay	1/15/2015	4:20 PM	Your recent paper	(b)(5)	Partially Redacted	Duplicate of page 88.
242	Huang, Boyin	Karl, Thomas R.; Lawrimore, Jay	1/15/2015	4:33 PM	Your recent paper	(b)(5)	Partially Redacted	Duplicate of pages 88-89.
243	Peterson, Thomas C.	Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; Mcmahon, James; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Matthews, Jessica	03/20/2015	9:55 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	NOAA scientist sharing opinion on results of data analysis for development of the paper.

243	Huang, Boyin	Peterson, Thomas C.; Karl, Thomas R.; Arguez, Anthony; McMahon, James; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Matthews, Jessica	03/20/2015	10:03 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of 15.
245	McMahon, James	Arguez, Anthony; Zhang, Huai-min; Karl, Thomas R.	03/25/2015	10:30 AM	new comparisons	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering personal opinion on statistical error uncertainty ranges for development of the paper.
245	Zhang, Huai-min	McMahon, James; Arguez, Anthony; Karl, Thomas R.	03/25/2015	10:52 AM	new comparisons	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to question from another scientist and offering personal opinion on statistical error uncertainty ranges for development of the paper.
245-246	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin; McMahon, James; Arguez, Anthony	03/25/2015	11:17 AM	new comparisons	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering personal opinion on statistical error uncertainty ranges for development of the paper and his opinion of the best approach to take in the paper.
246	Zhang, Huai-min	Karl, Thomas R.; Huang, Boyin; McMahon, James; Arguez, Anthony	03/25/2015	11:40 AM	new comparisons	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering personal opinion on statistical error uncertainty ranges for development of the paper and his opinion of future revisions.
246	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin; McMahon, James; Arguez, Anthony	03/25/2015	11:52 AM	new comparisons	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering personal opinion on statistical error uncertainty ranges for development of the paper and his opinion of the best approach to take in the paper.

247-248	Peterson, Thomas C.	Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin; Zhang, Huai-min	03/16/2015	10:50 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the development of the paper. Scientist is also asking for opinion of another scientist.
249	Lawrimore, Jay	Peterson, Thomas C.; Huang, Boyin; Zhang, Huai-min	03/16/2015	2:47 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	NOAA scientist discussing how to interpret and apply data trends in the paper as well as plans for discussing a related issue at an upcoming call.
249	Peterson, Thomas C.	Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin; Zhang, Huai-min	03/16/2015	10:50 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of pages 247-248.
251	Zhang, Huai-min	Peterson, Thomas C.; Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin	03/19/2015	1:34 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Text of email is partially cut off but full text of email is on page 300.
251-252	Peterson, Thomas C.	Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin; Zhang, Huai-min	03/16/2015	10:50 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of pages 247-248.
254	Peterson, Thomas C.	Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; McMahon, James; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	03/20/2015	9:55 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of page 243.
257-259	Zhang, Huai-min	Menne, Matthew; McMahon, James; Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Vose, Russell	12/03/2014	10:50 AM	Trend plots	(b)(5)	Fully Withheld	NOAA scientist sharing updated and revised data analysis for the paper with another scientist and indicating what his next step will be.
262	Huang, Boyin	McMahon, James; Vose, Russell; Peterson, Thomas C.; Tanner, Michael; Karl, Thomas R.; Menne, Matthew; Arguez, Anthony; Lawrimore, Jay; Zhang, Huai-min	03/19/2015	4:02 PM	Invitation: Update on Science Hiatus paper @ Fri Mar 20, 2015 11am 12pm	(b)(5)	Fully Withheld	Duplicate of page 6.

263	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	2:20 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Fully Withheld	NOAA scientist explaining how he will analyze data for development of the paper and explaining next steps by another scientist for the same.
265	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/20/2014	7:53 AM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to question from another scientist and offering personal opinion on data for the paper.
265-266	McMahon, James	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	3:51 PM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist asking another scientist to write up a description of the draft analysis to include in the paper and sharing update on draft data analysis and draft figure for development of the paper.
266	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:47 PM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist sharing draft data analysis and explaining data analysis for the development of the paper.
266-267	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:46 PM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist sharing draft data analysis and draft figures for development of the paper. Scientist is also discussing his next steps for working on the draft paper.
270	Karl, Thomas R.	Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:21 AM	Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Fully Withheld	Text of email is partially cut off. Email is duplicate of full email found on page 42.
271	Zhang, Huai-min	Lawrimore, Jay; Karl, Thomas R.; Huang, Boyin; McMahon, James; Menne, Matthew; Vose, Russell	11/13/2014	10:42 AM	Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Fully Withheld	NOAA scientist sharing edits he made to the paper the in preparation of meeting to discuss the paper.
272	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/20/2014	7:53 AM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 265.

272	Mcmahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	3:51 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 265-266.
272	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:47 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 266.
272-273	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:46 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 266-267.
273	Karl, Thomas	Zhang, Huai-min; Mcmahon, James; Huang, Boyin; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/20/2014	7:59 AM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist discussing writing of methods section for data analysis methods to use in the paper.
273	Lawrimore, Jay	Karl, Thomas R.; Zhang, Huai-min; Mcmahon, James; Huang, Boyin; Menne, Matthew; Vose, Russell	11/20/2014	10:39 AM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist is offering his opinion of the best approach to take in the paper and sharing proposed references to use in the paper. Text of email here is partially cut off but full text can be found on page 350.
275-276	Zhang, Huai-min	Menne, Matthew; Mcmahon, James; Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Vose, Russell	12/03/2014	10:50 AM	Trend plots	(b)(5)	Fully Withheld	Duplicate of pages 257-259.
280	Zhang, Huai-min	Mcmahon, James; Arguez, Anthony; Karl, Thomas R.	03/25/2015	10:52 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of page 245.
280	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin; Mcmahon, James; Arguez, Anthony	03/25/2015	11:17 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of pages 245-246.
281	Zhang, Huai-min	Karl, Thomas R.; Huang, Boyin; Mcmahon, James; Arguez, Anthony	03/25/2015	11:40 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of page 246.
281	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin; Mcmahon, James; Arguez, Anthony	03/25/2015	11:52 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of page 246.
281	Karl, Thomas R.	Zhang, Huai-min	03/25/2015	12:05 PM	Fwd: new comparisons	(b)(5)	Fully Withheld	NOAA scientist asking another scientist about potential references to use in developing methods for data analysis for the paper.

281-282	Zhang, Huai-min	Zhang, Huai-min; Huang, Boyin	03/25/2015	12:19 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist sharing sharing potential references to use in developing methods for data analysis for the paper.
282	Karl, Thomas R.	Zhang, Huai-min	03/25/2015	12:56 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist inquiring about status of data analysis to be used in development of the paper.
282	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin	03/25/2015	12:58 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist inquiring about status of data analysis to be used in development of the paper.
282	Zhang, Huai-min	Karl, Thomas R.	03/25/2015	12:59 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist discussing sharing of draft data analysis for the development of the paper. Scientist discusses next steps he will take regarding the paper.
282	Zhang, Huai-min	Karl, Thomas R.; Huang, Boyin	03/25/2015	12:59 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist discussing sharing of draft data analysis for the development of the paper.
282	Karl, Thomas R.	Zhang, Huai-min	03/25/2015	1:03 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist asking another scientist about data analysis methods used in the development of the paper.
283	Zhang, Huai-min	Karl, Thomas R.	03/25/2015	1:15 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist responding to question about data analysis methods used in development of the paper and awaiting information on another method from another scientist.
283	Huang, Boyin	Zhang, Huai-min; Karl, Thomas R.	03/26/2015	8:56 AM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist responding to question about data analysis methods used in draft of the paper.
285	Huang, Boyin	Karl, Thomas R.; Vose, Russell	05/05/2015	8:22 AM	Reference	(b)(5)	Fully Withheld	NOAA scientist sharing draft data analysis and potential references on methods for data analysis to be conducted for the paper.
287	Tepel, Mackenzie	Karl, Thomas R.	5/21/2015	3:45 PM	Re: FYI . . . Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA affiliate discussing the agency's climate change research and developing agency's presentation for Congress.

287	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; O'Connor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	5/21/2015	2:54 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 116.
287	Sessing, Janice	Karl, Thomas R.	5/21/2015	2:41 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA affiliate discussing the agency's climate change research and developing agency's presentation for Congress.
287	Karl, Thomas R.	Sessing, Janice	5/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 143.
287	Sessing, Janice	Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Karl, Thomas R.; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	6:28 PM	Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA affiliate discussing the agency's climate change research and developing agency's presentation for Congress.
289	Vincent, Katy	Karl, Thomas R.	06/03/2015	1:26 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	NOAA affiliate discussing plan for communications and press release in preparation for publication of the paper.
289-290	Karl, Thomas R.	Vincent, Katy	06/03/2015	1:34 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	NOAA scientist discussing plan for communications with NOAA affiliate and press release in preparation for publication of the paper. Scientist is explaining data and methods in order to create public communications materials.
290	Vincent, Katy	Karl, Thomas R.	06/03/2015	2:21 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	NOAA affiliate discussing plan for communications and press release in preparation for publication of the paper.

290	Karl, Thomas R.	Vincent, Katy	06/03/2015	3:29 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	NOAA scientist discussing plan for communications and press release in preparation for publication of the paper.
290	Vincent, Katy	Karl, Thomas R.	06/03/2015	3:31 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	NOAA affiliate discussing plan for communications and press release in preparation for publication of the paper.
291	Karl, Thomas R.	Holdren, John P.	06/04/2015	10:16 AM	Acceptance of your Science Manuscript aaa5632	(b)(5)	Partially Redacted	NOAA scientist offering opinion on temperature trends assessment and potential future research needs and inquiring about the same.
292	Huang, Boyin	Cowtan, Kevin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	9:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	NOAA scientist responding to data analysis shared by outside scientist as relevant to paper. NOAA scientist is sharing his interpretations and asking for clarification on data analysis and conclusions reached by outside scientist. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.
292-293	Cowtan, Kevin	Huang, Boyin	06/02/2015	5:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Outside scientist sharing data analysis he conducted on datasets relevant to the analysis presented in the paper. Scientist is sharing his interpretations and discussing his conclusions. Scientist notes he was contacted by the Journal Science for comment on the NOAA paper. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.

294-295	Karl, Thomas R.	Huang, Boyin; Cowtan, Kevin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	9:37 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	NOAA scientist responding to data analysis shared by outside scientist and explaining how data corrections in the paper were derived. NOAA scientist is sharing his interpretations with the outside scientist and other NOAA scientists and asking for clarification on data analysis and conclusions reached by outside scientist. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.
295	Cowtan, Kevin	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	3:25 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Outside scientist is discussing interpretations and conclusions as relevant to analysis in the paper. Scientist is sharing his interpretations and asking NOAA scientists for clarification on data analysis. Scientist references additional, relevant ongoing research. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.
295-296	Karl, Thomas R.	Cowtan, Kevin; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Tanner, Michael; Privette, Jeff	06/02/2015	3:33 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	NOAA scientist acknowledges further ongoing work of outside scientist, indicates that the work would be relevant to inform future NOAA processes to update dataset methodology, and seeks thoughts from outside scientist regarding implications of other scientists' work.
296	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:36 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Outside scientist commits to continuing the conversation with NOAA scientists regarding ongoing work and noting the further analysis he plans to do relevant to the analysis in the paper in order to provide comment on the paper.

296	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:57 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Outside scientist sharing further analysis he conducted relevant to the analysis in the paper. Scientist is sharing his interpretations and discussing the conclusions he made. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.
296	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; Lawrimore, Jay; Vose, Russell; Peterson, Thomas C.; Arguez, Anthony; Menne, Matthew; McMahon, James	06/02/2015	4:04 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	NOAA scientist forwarding to other NOAA scientists the comments and explanation of further analysis from outside scientist relevant to the analysis in the paper. NOAA scientist provides translation of short-hand used by the outside scientist. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.
296-297	Cowtan, Kevin	Huang, Boyin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Ruedy, Reto	06/07/2015	3:08 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Outside scientist sharing further data analysis he conducted on specific data sets as relevant to the paper. Scientist is sharing his interpretations and discussing the conclusions he made for NOAA's consideration. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.
298-299	Peterson, Thomas C.	Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin; Zhang, Huai-min	03/16/2015	10:50 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of pages 247-248.
299-300	Lawrimore, Jay	Peterson, Thomas C.; Huang, Boyin; Zhang, Huai-min	03/16/2015	2:47 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of page 249.
300	Zhang, Huai-min	Peterson, Thomas C.; Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin	03/19/2015	1:34 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of page 6. Here email addresses are partially cut off but full email is on page 6.

302	Zhang, Huai-min	Mcmahon, James; Karl, Thomas R.; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	1:56 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 42.
302	Karl, Thomas R.	Zhang, Huai-min; Mcmahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:21 AM	Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 42.
302	Zhang, Huai-min	Karl, Thomas R.; Mcmahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:27 AM	Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Fully Withheld	Email text is partially cut off. Duplicate of full text of email found on page 41.
303-304	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:46 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 266-267.
304	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:47 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 266.
304	Mcmahon, James	Mcmahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	3:51 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 265-266.
304	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/20/2014	7:53 AM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 265.
304	Karl, Thomas	Zhang, Huai-min; Mcmahon, James; Huang, Boyin; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/20/2014	7:59 AM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 273.
307	Zhang, Huai-min	Menne, Matthew; Mcmahon, James; Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Vose, Russell	12/3/2014	10:50 AM	Re: Trend plots	(b)(5)	Fully Withheld	Email text is partially cut off. Duplicate of full text of email found on pages 257-259.

309	Huang, Boyin	Lawrimore, Jay; Peterson, Thomas C.; Zhang, Huai-min; McMahon, James; Karl, Thomas R.; Vose, Russell; Menne, Matthew	03/06/2015	8:33 AM	SST trend experiment	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is offering his interpretation of experiments conducted in development of the paper.
309-310	Peterson, Thomas C.	Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahon, James; Karl, Thomas R.; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	8:50 AM	SST trend experiment	(b)(5)	Fully Withheld	NOAA scientist sharing references in developing the paper.
310	Karl, Thomas R.	Peterson, Thomas C.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahon, James; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	9:00 AM	SST trend experiment	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is offering his opinion in developing the paper.
310-311	Peterson, Thomas C.	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahon, James; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	9:02 AM	SST trend experiment	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another NOAA scientist and offering his interpretation of data analysis used in developing the paper.
311	Karl, Thomas R.	Peterson, Thomas C.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahon, James; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	9:21 AM	SST trend experiment	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is asking other NOAA scientists for clarification regarding data analysis for development of the paper.
315	McMahon, James	Menne, Matthew	03/24/2015	12:32 PM	Science paper	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is asking other NOAA scientist for clarification regarding data analysis for development of the paper.
315	Menne, Matthew	McMahon, James	03/24/2015	12:35 PM	Science paper	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to inquiring and explaining his understanding on data analysis for development of the paper.
315	McMahon, James	Menne, Matthew	03/24/2015	12:36 PM	Science paper	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to a question from another NOAA scientists regarding data analysis for development of the paper.

317	Zhang, Huai-min	Mcmahon, James; Arguez, Anthony; Karl, Thomas R.	03/25/2015	10:52 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of page 245.
317	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin; Mcmahon, James; Arguez, Anthony	03/25/2015	11:17 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of pages 245-246.
318	Zhang, Huai-min	Karl, Thomas R.; Huang, Boyin; Mcmahon, James; Arguez, Anthony	03/25/2015	11:40 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of page 246.
318	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin; Mcmahon, James; Arguez, Anthony	03/25/2015	11:52 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of page 246.
318	Zhang, Huai-min	Zhang, Huai-min; Huang, Boyin	03/25/2015	12:19 PM	Fwd: new comparisons	(b)(5)	Fully Withheld	Duplicate of pages 281-282.
320	Huang, Boyin	Karl, Thomas R.; Vose, Russell	05/05/2015	8:22 AM	Reference	(b)(5)	Fully Withheld	Duplicate of page 285.
322	Sessing, Janice	Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Karl, Thomas R.; Vincent, Katy; Gregg, Margarita; Mcmahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	6:28 PM	Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 287.
324	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; Mcmahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 143.
324	Sessing, Janice	Karl, Thomas R.; Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; Mcmahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	6:56 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA affiliate discussing the agency's climate change research and developing the agency's presentation for Congress.

324	Vose, Russell	Karl, Thomas R.; Sessing, Janice; Hammer, Gregory; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	7:47 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA scientist discussing the agency's climate change research and developing the agency's presentation for Congress.
324	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 143.
325	Sessing, Janice	Karl, Thomas R.	5/21/2015	2:41 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 287. Here email is partially cut off, but full text can be found on page 287.
325	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 143.
325	Sessing, Janice	Gregg, Margarita; Karl, Thomas R.	5/11/2015	6:28 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 287.
330	Vincent, Katy	Karl, Thomas R.	06/03/2015	1:26 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	Duplicate of page 289.
330-331	Vincent, Katy	Karl, Thomas R.	6/3/2015	2:21 PM	Re: Outstanding items for reporters	(b)(5)	Fully Withheld	Duplicate of page 290.

331	Karl, Thomas R.	Vincent, Katy	06/03/2015	1:34 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	Duplicate of pages 290-291.
331	Vincent, Katy	Karl, Thomas R.	6/3/2015	3:31 PM	Re: Outstanding items for reporters	(b)(5)	Fully Withheld	Duplicate of page 291.
334-335	Meehl, Gerald	Karl, Thomas R.	11/28/2014	5:45 PM	Jerry this is not finished. We have another figure to add and describe, but it will give you an idea of where we are going with this	(b)(5)	Fully Withheld	Duplicate of pages 66-67.
335	Zhang, Huai-min	Karl, Thomas R.; Huang, Boyin; Menne, Matthew; Vose, Russell; McMahon, James; Lawrimore, Jay	12/1/2014	7:48 PM	Re: Our Science paper	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is discussing how to respond to reviewer feedback and is offering his opinion of the best approach to take for development of the paper.
338	Matthews, Jessica	Peterson, Thomas	3/6/2015	8:32 AM	Fwd: new confidence intervals	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is discussing data analysis methodology to be used in development of the paper.
339	Peterson, Thomas C.	Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahon, James; Karl, Thomas R.; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	8:50 AM	SST trend experiment	(b)(5)	Fully Withheld	Email addresses are partially cut off. Duplicate of full email on pages 309-310.
339	Karl, Thomas R.	Peterson, Thomas C.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahon, James; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	9:00 AM	SST trend experiment	(b)(5)	Fully Withheld	Duplicate of page 310.
340	Peterson, Thomas C.	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahon, James; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	9:02 AM	SST trend experiment	(b)(5)	Fully Withheld	Duplicate of page 310.

340	Karl, Thomas R.	Peterson, Thomas C.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahon, James; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	9:21 AM	SST trend experiment	(b)(5)	Fully Withheld	Duplicate of page 311.
341	Peterson, Thomas C.	Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; McMahon, James; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Matthews, Jessica	03/20/2015	9:55 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of page 243.
342	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; O'Connor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	5/21/2015	2:54 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 116.
342	Sessing, Janice	Karl, Thomas R.	5/21/2015	2:41 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 287.
342	Karl, Thomas R.	Sessing, Janice	5/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA scientist discussing the agency's climate change research and developing the agency's presentation for Congress.
342	Sessing, Janice	Gregg, Margarita; Karl, Thomas R.	5/11/2015	6:28 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Email is partially cut off. Duplicate of full email found on page 287.

343, 348	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; Lawrimore, Jay; Vose, Russell; Peterson, Thomas C.; Arguez, Anthony; Menne, Matthew; McMahon, James	06/02/2015	4:04 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
343	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:57 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
343	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	20:36	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
343, 347	Karl, Thomas R.	Cowtan, Kevin; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Tanner, Michael; Privette, Jeff	06/02/2015	20:33	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 295-296.
343-344	Cowtan, Kevin	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	3:25 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 295.
344, 347	Karl, Thomas R.	Huang, Boyin; Cowtan, Kevin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	14:37	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 294.
344	Huang, Boyin	Cowtan, Kevin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	9:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 295.
344-345	Cowtan, Kevin	Huang, Boyin	06/02/2015	5:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 292-293.
348	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:46 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 266-267.
350	Zhang, Huai-min	Lawrimore, Jay; Karl, Thomas, R.; McMahon, James; Huang, Boyin; Menne, Matthew; Vose, Russell	11/21/2014	9:04 AM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist sharing and discussing drafts for development of the paper, including status of the paper.

350	Lawrimore, Jay	Karl, Thomas R.; Zhang, Huai-min; McMahan, James; Huang, Boyin; Menne, Matthew; Vose, Russell	11/20/2014	10:39 AM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 273.
350	Karl, Thomas R.	Zhang, Huai-min; McMahan, James; Huang, Boyin; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/20/2014	7:59 AM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 273.
350	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/20/2014	7:53 AM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 274.
350-351	McMahon, James	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	3:51 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 265-266.
351	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:46 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 266.
351	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:47 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 266-267.
353-354	Zhang, Huai-min	Menne, Matthew; McMahon, James; Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Vose, Russell	12/3/2014	10:50 AM	Re: Trend plots	(b)(5)	Fully Withheld	Duplicate of pages 257-259.
362-363	Zhang, Huai-min	McMahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:42 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is discussing how to respond to reviewer feedback and is offering his opinion of the best approach to take in the paper as well as providing information on data for purposes of discussion.
363-364	Huang, Boyin	McMahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:48 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	NOAA scientist explaining data that he is sharing for development of the paper.

365-366	Zhang, Huai-min	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:42 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 362-363.
368	Huang, Boyin	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:48 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 363-364.
368-369	Zhang, Huai-min	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:24 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 362-363.
371	Huang, Boyin	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:48 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 363-364.
371-374	Zhang, Huai-min	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:42 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 362-363.
377-378	Zhang, Huai-min	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:42 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 362-363.
378	Huang, Boyin	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:48 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 363-364.

379	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	12:38 PM	Re: your new science paper	(b)(5)	Fully Withheld	Outside scientist contacts NOAA scientist, noting that he was contacted for comment on the paper, referencing prior work bearing on the issues reviewed in the paper, and explaining the analysis used in the outside scientist's work. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
379-380	Karl, Thomas R.	Trenberth, Kevin; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Arguez, Anthony	6/1/2015	1:19 PM	Re: your new science paper	(b)(5)	Fully Withheld	NOAA scientist explains scope of hiatus paper to outside scientist and noting relationship to existing literature. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
380	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	1:40 PM	Re: your new science paper	(b)(5)	Fully Withheld	Outside scientist provides comments in response to hiatus paper including evaluation of significance of the paper. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
380-381	Karl, Thomas R.	Trenberth, Kevin	6/1/2015	2:26 PM	Re: your new science paper	(b)(5)	Fully Withheld	NOAA scientist responds to various points made in the outside scientist's comments, including pointing to figure in paper. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
381-382	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	2:57 PM	Re: your new science paper	(b)(5)	Fully Withheld	Outside scientist clarifies data underlying prior work, clarifies one of his comments on hiatus paper, and explains that reason for sharing the comments was to help inform agency process of developing public communications relating to paper.

382	Karl, Thomas R.	Trenberth, Kevin	6/1/2015	3:14 PM	Re: your new science paper	(b)(5)	Fully Withheld	NOAA scientist compares conclusions in outside scientist's prior work with conclusions in hiatus paper. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
382	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	2:57 PM	Re: your new science paper	(b)(5)	Fully Withheld	Duplicate of pages 381-382.
382	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	3:37 PM	Re: your new science paper	(b)(5)	Fully Withheld	Outside scientist cites figure in prior work to support his position. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
382	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	3:40 PM	Re: your new science paper	(b)(5)	Fully Withheld	Outside scientist cites additional figures from another prior work to support his position. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
382-383	Karl, Thomas R.	Trenberth, Kevin	6/1/2015	3:49 PM	Re: your new science paper	(b)(5)	Fully Withheld	NOAA scientist requests clarification of finding from outside scientist's prior work and suggests potential explanation. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
383	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	3:37 PM	Re: your new science paper	(b)(5)	Fully Withheld	Duplicate of email at page 382.
383-384	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	3:57 PM	Re: your new science paper	(b)(5)	Fully Withheld	Outside scientist provides additional explanation and cites figures in prior work regarding Arctic temperatures. Outside scientist also opines on other scientists' work and notes possible interactions and questions for future research. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.

385-386	Peterson, Thomas	Kennedy, John; Huang, Boyin	3/9/2015	10:01 AM	Re: SST adjustment question	(b)(5)	Fully Withheld	NOAA scientist contacts outside scientist to request insight and clarification regarding the outside scientist's work on data corrections in sea surface temperature data set and how such corrections may relate to the alleged hiatus in order to better understand data analysis as related to the alleged hiatus for development of the paper.
389-390	Peterson, Thomas	Kennedy, John; Huang, Boyin	3/9/2015	3:41 PM	Re: SST adjustment question	(b)(5)	Partially Redacted	NOAA scientist responds to clarification and analysis from outside scientist by characterizing preliminary finding and discussing time scales.
396	Huang, Boyin	Cowtan, Kevin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	9:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 292.
396-397	Cowtan, Kevin	Huang, Boyin	06/02/2015	5:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 292-293.
398-399	Cowtan, Kevin	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	3:25 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 295.
399	Karl, Thomas R.	Huang, Boyin; Cowtan, Kevin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	14:37	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 294-295.
399	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:36 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
399-400	Karl, Thomas R.	Cowtan, Kevin; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Tanner, Michael; Privette, Jeff	06/02/2015	20:33	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 295-296.
400	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:57 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.

400	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; Lawrimore, Jay; Vose, Russell; Peterson, Thomas C.; Arguez, Anthony; Menne, Matthew; McMahan, James	06/02/2015	4:04 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
400	Cowtan, Kevin	Huang, Boyin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Ruedy, Reto	06/07/2015	3:08 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 296-297.
402	Peterson, Thomas	Kennedy, John; Huang, Boyin	3/9/2015	10:01 AM	Re: SST adjustment question	(b)(5)	Partially Redacted	Duplicate of pages 385-386.
403-404	Peterson, Thomas	Kennedy, John; Huang, Boyin	3/9/2015	3:41 PM	Re: SST adjustment question	(b)(5)	Partially Redacted	Duplicate of pages 389-390.
407, 412	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; Lawrimore, Jay; Vose, Russell; Peterson, Thomas C.; Arguez, Anthony; Menne, Matthew; McMahan, James	06/02/2015	4:04 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
407	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:57 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
407	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	20:36	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
407, 411	Karl, Thomas R.	Cowtan, Kevin; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Tanner, Michael; Privette, Jeff	06/02/2015	20:33	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 295-296.
407-408	Cowtan, Kevin	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	3:25 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 295.
408, 411	Karl, Thomas R.	Huang, Boyin; Cowtan, Kevin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	14:37	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 294.

408	Huang, Boyin	Cowtan, Kevin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	9:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 292.
408-409	Cowtan, Kevin	Huang, Boyin	06/02/2015	5:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 292-293.
413, 418	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; Lawrimore, Jay; Vose, Russell; Peterson, Thomas C.; Arguez, Anthony; Menne, Matthew; McMahon, James	06/02/2015	4:04 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
413	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:57 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
413	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	20:36	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
413, 417	Karl, Thomas R.	Cowtan, Kevin; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Tanner, Michael; Privette, Jeff	06/02/2015	20:33	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 295-296.
413-414	Cowtan, Kevin	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	3:25 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 295.
414, 417	Karl, Thomas R.	Huang, Boyin; Cowtan, Kevin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	14:37	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 294.
414	Huang, Boyin	Cowtan, Kevin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	9:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 292.
414-415	Cowtan, Kevin	Huang, Boyin	06/02/2015	5:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 292-293.

422	Karl, Thomas R.	Tepel, Mackenzie; Sessing, Janice; Vose, Russell; Vincent, Katy; Leslie, John;	5/21/2015	4:08 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA scientist discussing the agency's climate change research and developing the agency's presentation for Congress.
422	Tepel, Mackenzie	Karl, Thomas R.	5/21/2015	3:45 PM	Re: FYI . . . Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of 287.
422	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; O'Connor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	5/21/2015	2:54 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 116.
422	Sessing, Janice	Karl, Thomas R.	5/21/2015	2:41 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 287.
422	Karl, Thomas R.	Sessing, Janice	5/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 287.

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3045	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
3046-3061	Category D	(b)(5)	
3062-3072	Category A	(b)(5)	
3073-3083	Category A	(b)(5)	
3084-3094	Category A	(b)(5)	
3095-3105	Category A	(b)(5)	
3106-3117	Category A	(b)(5)	
3118-3128	Category C	(b)(5)	
3129-3135	Category D	(b)(5)	
3152-3168	Category A	(b)(5)	
3169-3185	Category A	(b)(5)	
3186-3202	Category A	(b)(5)	
3203-3213	Category A	(b)(5)	
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3323-3333	Category A	(b)(5)	
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3354-3359	Category A	(b)(5)	
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3376-3381	Category A	(b)(5)	

3383-3388	Category A	(b)(5)	
3390-3395	Category A	(b)(5)	
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3479-3487	Category A	(b)(5)	
3488-3497	Category A	(b)(5)	
3498-3507	Category A	(b)(5)	
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3518-3529	Category A	(b)(5)	
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3564-3576	Category A	(b)(5)	
3577-3588	Category A	(b)(5)	
3589-3601	Category A	(b)(5)	
3602-3610	Category A	(b)(5)	
3621-3633	Category A	(b)(5)	
3638-3643	Draft graphs and charts of SST data to be used in development of the paper.	(b)(5)	
3669-3672	Category A	(b)(5)	
3672-3688	Category A	(b)(5)	
3689-3692	Draft graphs of SST and land temperature data to be used in development of the paper.	(b)(5)	
3693-3694	Duplicates of emails processed elsewhere	(b)(5)	
3695-3703	Category E	(b)(5)	
3705-3719	Category A	(b)(5)	
3720-3730	Category C	(b)(5)	
3731-3734	Category A	(b)(5)	
3735-3744	Category A	(b)(5)	
3745-3755	Category C	(b)(5)	
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3799-3809	Category C	(b)(5)	

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3847-3857	Category A	(b)(5)	
3858 -3868	Category C	(b)(5)	
3869-3873	Category A	(b)(5)	
3874-3878	Category A	(b)(5)	
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3971-3981	Category C	(b)(5)	
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3998-4008	Category C	(b)(5)	
4009-4018	Category E	(b)(5)	
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4166-4175	Category C	(b)(5)	
4176-4186	Category C	(b)(5)	
4187-4196	Category C	(b)(5)	
4197-4207	Category C	(b)(5)	
4208-4218	Category C	(b)(5)	
4219-4229	Category C	(b)(5)	

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4246-4256	Category A	(b)(5)	
4257-4262	Category C	(b)(5)	
4263-4273	Category A	(b)(5)	
4274-4279	Category A	(b)(5)	
4280-4285	Category C	(b)(5)	
4286-4296	Category A	(b)(5)	
4297-4301	Category A	(b)(5)	
4302-4307	Category C	(b)(5)	
4308	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
4309-4314	Category D	(b)(5)	
4315-4321	Category C	(b)(5)	
4322-4332	Category A	(b)(5)	
4333-4343	Category A	(b)(5)	
4344-4354	Category A	(b)(5)	
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4361-4365	Category A	(b)(5)	
4366-4371	Category A	(b)(5)	
4372	Category B	(b)(5)	
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4421-4430	Category A	(b)(5)	
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4437-4447	Category A	(b)(5)	
4448-4453	Category A	(b)(5)	
4454-4464	Category C	(b)(5)	
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4476-4486	Category A	(b)(5)	
4487-4496	Category A	(b)(5)	
4497-4502	Category A	(b)(5)	
4503	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
4504-4509	Category C	(b)(5)	
4510-4519	Category A	(b)(5)	
4520-4525	Category A	(b)(5)	
4533-4543	Category A	(b)(5)	
4544-4549	Category A	(b)(5)	

4550	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
4551-4556	Category D	(b)(5)	
4557-4567	Category A	(b)(5)	
4568-4573	Category A	(b)(5)	
4574-4578	NOAA draft communications plan regarding publication of the paper.	(b)(5)	
4579-4589	Category A	(b)(5)	
4591-4599	Draft FAQs for communications plan related to release of paper.	(b)(5)	
4600-4607	Category A	(b)(5)	
4614-4619	Category C	(b)(5)	
4620-4630	Category A	(b)(5)	
4631-4636	Category A	(b)(5)	
4637-4639	Category A	(b)(5)	
4640-4650	Category C	(b)(5)	
4651-4654	Draft chart of MLOST data created by NOAA scientists to be used in development of the paper.	(b)(5)	
4655-4665	Category A	(b)(5)	
4666-4675	Category A	(b)(5)	
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4737-4750	Category A	(b)(5)	
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4767-4770	Category A	(b)(5)	
4771-4774	Category A	(b)(5)	
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5301-5304	Category A	(b)(5)	
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5346-5355	Category C	(b)(5)	
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5360-70	Category C	(b)(5)	
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5375-5385	Category C	(b)(5)	
5386-5389	Category A	(b)(5)	
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5402-5413	Category A	(b)(5)	
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5442-5445	Category C	(b)(5)	
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5451-5460	Category A	(b)(5)	
5461-71 PR	Category C	(b)(5)	
5472-5476	Category A	(b)(5)	
5477-81	Category E	(b)(5)	
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5535-45 PR	Category C	(b)(5)	
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5648-5658	Category A	(b)(5)	
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5666-71	Category C	(b)(5)	
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5681-5688	Category A	(b)(5)	
5689	Category B	(b)(5)	
5690-95	Category C	(b)(5)	
5696-5706	Category A	(b)(5)	
5707-5712	Category A	(b)(5)	
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5724-5729	Category A	(b)(5)	
5730	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
5731-36	Category C	(b)(5)	
5738-41	Draft charts of annual global temperatures for use in development of the paper.	(b)(5)	
5742-5752	Category A	(b)(5)	
5753-5758	Category A	(b)(5)	
5781-5791	Category A	(b)(5)	
5792-5797	Category A	(b)(5)	
5798-5808	Draft powerpoint by author presenting information on global temperature and presenting data analysis conducted by NOAA scientists for the paper.	(b)(5)	
5809-11	Category C	(b)(5)	
5812-5822	Category A	(b)(5)	
5823-5828	Category A	(b)(5)	
5829-5837	Category A	(b)(5)	
5840-5849	Category C	(b)(5)	
5850-5858	Category C	(b)(5)	
5859-5860	Category C	(b)(5)	
5861-5865	Category C	(b)(5)	
5866-5868	Category C	(b)(5)	
5869-5879	Category A	(b)(5)	
5880-5890	Category A	(b)(5)	
5891-5901	Category A	(b)(5)	
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5919-5924	Category A	(b)(5)	
5925-45	Category C	(b)(5)	
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5957-5962	Category A	(b)(5)	
5963-75	Category C	(b)(5)	

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6008-6016	Category C	(b)(5)	
6017-6027	Category A	(b)(5)	
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6034-44	Category C	(b)(5)	
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6072-6074	Category C	(b)(5)	
6075-6077	Category C	(b)(5)	
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6214-15	Category C	(b)(5)	
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6240-6249	Category A	(b)(5)	
6250-52	Category C	(b)(5)	
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6270-72	Category C	(b)(5)	
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6279-6287	Category A	(b)(5)	
6288-6296	Category C	(b)(5)	
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6305-6315	Category A	(b)(5)	
6316-29	Category C	(b)(5)	
6330-6338	Category A	(b)(5)	
6339-57	Category C	(b)(5)	

6358	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
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6365-6370	Category C	(b)(5)	
6371-6472	Category C	(b)(5)	
6372-6378	Category D	(b)(5)	
6379-6384	Category C	(b)(5)	
6385-6390	Category A	(b)(5)	
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6402-6407	Category A	(b)(5)	
6408-09	Category A	(b)(5)	
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6441-43	Category C	(b)(5)	
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6461-69	Category C	(b)(5)	
6470-6478	Category A	(b)(5)	
6479-6488	Category C	(b)(5)	
6489-6499	Draft graphs of SST data created by NOAA scientists to be used in development of the paper.	(b)(5)	
6500-6508	Category A	(b)(5)	
6509-6532	Category A	(b)(5)	
6533-6537	Category A	(b)(5)	
6538-6545	Category A	(b)(5)	
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6603-6639	Category A	(b)(5)	
6640-6649	Category A	(b)(5)	
6650-6671	Category A	(b)(5)	
6672-8882	Category E	(b)(5)	
6683-6699	Category A	(b)(5)	
6700-6710	Category C	(b)(5)	
6711	Category B	(b)(5)	
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6732-6742	Category A	(b)(5)	
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6754-6759	Category A	(b)(5)	
6760-6765	Category A	(b)(5)	
6766-6761	Category A	(b)(5)	

6772	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
6773-6779	Category C	(b)(5)	
6780-6806	Category A	(b)(5)	
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6830-6839	Category C	(b)(5)	
6840-6848	Category C	(b)(5)	
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7213-7216	Category A	(b)(5)	
7217-7221	Category A	(b)(5)	
7222-7232	Category A	(b)(5)	
7233-7243	Category A	(b)(5)	
7244-7255	Category A	(b)(5)	
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7498-7506	Category A	(b)(5)	
7507-7513	Category A	(b)(5)	
7514-7521	Category A	(b)(5)	
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7536-7551	Category A	(b)(5)	
7552-7559	Category A	(b)(5)	
7560-7567	Category A	(b)(5)	
7568-7573	Category A	(b)(5)	
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7594-7604	Category A	(b)(5)	

7605-7613	Category A	(b)(5)	
7614-7623	Category A	(b)(5)	
7624-7633	Category A	(b)(5)	
7634-7643	Category A	(b)(5)	
7644-7653	Category A	(b)(5)	
7654-7664	Category A	(b)(5)	
7665-7674	Category A	(b)(5)	
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7849-7854	Category A	(b)(5)	
7855-7860	Category A	(b)(5)	
7861-7866	Category A	(b)(5)	
7867-7873	Category A	(b)(5)	
7874-7877	Category A	(b)(5)	

Categories	Descriptions
A	Draft of paper "Possible artifacts of data biases in the recent global surface warming hiatus" by Thomas Karl, et al. as well as the drafts of the "supplementary materials" that accompanied the paper and were made available for download by Science upon publication of the paper. Non-final, pre-decisional draft contains opinions and recommendations of one or more NOAA authors; draft language, data, and data interpretation for consideration by other NOAA authors; comments on previous drafts of the paper, and/or responses to other NOAA authors' or
B	Drafts of cover letter exchanged between authors, from Tom Karl to Science magazine, in response to peer review comments.

C	Draft responses to external peer review. Draft responses exchanged among NOAA authors to determine how best to respond to comments provided by external peer reviewers. Pre-decisional discussions that reflect proposed responses to peer review comments. Drafts contain opinions and recommendations of one or more NOAA authors; draft language, data, and data interpretation for consideration by other authors; comments on previous drafts of the responses to peer reviewers; and/or responses to other authors' comments on earlier drafts of the responses to peer reviewers.
D	Responses to external peer reviews. NOAA's Responses to constructive criticism and advice submitted by scientific experts as part of the confidential peer review process for papers submitted to scientific journals. Responses were submitted as part of process to assist in authors' deliberations whether and in what form to publish the paper.
E	Questions for discussion and draft graphs circulated by one author and created for author discussions during development of the paper.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

Exhibit 2 to Declaration of Mark Graff



May 27, 2016

Mr. Bill Marshall
425 Third St., SW
Suite 800
Washington, DC 20024

Re: FOIA Request No. DOC-NOAA-2016-000351

Dear Mr. Marshall:

This letter is in response to your Freedom of Information Act (FOIA) request entered into FOIAOnline on December 15, 2015, for certain records of the National Oceanic and Atmospheric Administration (NOAA). Pursuant to the Joint Status Report filed on March 22, 2016 in *Judicial Watch v. U.S. Department of Commerce*, 1:15-cv-2088-CRC (D.D.C.), and the Court's March 24, 2016 Minute Order in that action, on April 15, 2016, we released in their entirety 122 pages of records that are responsive to item 4 of your FOIA request, as modified by the March 1, 2016 Joint Status Report.

Pursuant to the March 22, 2016 Status Report and the Court's March 24, 2016 Minute Order, this letter responds to items 1-3 of your request, as modified by the March 1, 2016 Joint Status Report. We are providing 242 pages, including:

- 102 pages of records that we are releasing in their entirety.
- 57 pages of records that have been partially redacted under FOIA Exemption (b)(5), 5 U.S.C. 552(b)(5), which exempts from disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." The redacted material is protected by the deliberative process privilege.
- 13 pages of records that contain redactions of non-responsive material.
- 17 pages of records that have been partially redacted under FOIA Exemption (b)(5) (deliberative process) and also contain redactions of non-responsive material.
- 3 pages of records that are partially redacted under FOIA Exemption (b)(5) and FOIA Exemption (b)(6), 5 U.S.C. 552(b)(6), which protects "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

In this release, we have also noted, on 50 separate pages, where pages of email chains have been withheld in their entirety as non-responsive or under a FOIA exemption. We are withholding in their entirety 8,013 pages of records under FOIA Exemption (b)(5) that are pre-decisional and deliberative, and protected under the deliberative process privilege. 7,877 of these pages are drafts and other documents. 136 of these pages are deliberative email communications. Because the request sought records of multiple custodians, there is a significant amount of duplicative material in the responsive records.

If you have any questions, your attorney may contact Kevin Snell, Trial Attorney, at 202-305-0924. Please be sure to refer to the civil action number, 1:15-cv-2088-CRC, and the FOIA Request Number, DOC-NOAA-2016-00351, in all correspondence regarding this case.

Sincerely,

A handwritten signature in blue ink that reads "Mark S. Paese". The signature is written in a cursive style with a large initial "M" and a long horizontal stroke at the end.

Mark S. Paese
Deputy Assistant Administrator
NOAA Satellite and Information Service

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,)	
425 Third Street, SW, Suite 800)	
Washington, D.C. 20024)	
)	
Plaintiff,)	
)	
v.	)	Civil Action No. 15-2088 (CRC)
)	
U.S. DEPARTMENT OF)	
COMMERCE,)	
1401 Constitution Avenue, NW)	
Washington, D.C. 20230)	
)	
Defendant.)	
_____)	

DECLARATION OF DR. RICHARD W. SPINRAD

1. I am Dr. Richard W. Spinrad, and I have been the Chief Scientist of the National Oceanic and Atmospheric Administration (NOAA) since May 9, 2014. As Chief Scientist, I provide policy and program direction for the agency’s science and technology priorities. I have 30 years of scientific and executive experience. At different points in my career, I have worked as a research scientist, including for the Navy; held faculty appointments at three universities; directed a national non-profit organization; and presided over a private company.

2. I am aware that the pending litigation regards NOAA’s decision to withhold certain substantive communications among scientists from its response to a request under the Freedom of Information Act (FOIA), in light of the exception from disclosure under FOIA that applies to material generated in connection with a “deliberative process.” At issue are email

discussions among NOAA scientists at the National Centers for Environmental Information (NCEI) who authored a report published in June 2015 addressing climate trends, as well as communications between those NOAA scientists and scientists located outside the federal government. I am, further, aware that a separate declaration from the NOAA FOIA Officer (Mark H. Graff) will address the particular facts of the specific report and specific communications at issue in this litigation.

3. I submit this declaration to describe more generally the harm that would result to our agency and to federal scientists if the deliberative communications among NOAA's scientists, or between NOAA's scientists and outside experts providing input to the agency's processes, were to be released. Such harm would result from release of either deliberative communications among federal scientists, or of deliberative communications between federal scientists and scientists outside the federal government (whom I refer to as "outside scientists"). Such outside scientists may work, for example, in academia, international data-collecting organizations, non-governmental research organizations, state agencies, or private industry.

4. My education includes a Bachelor of Arts degree (1975) in Earth and Planetary Sciences from The Johns Hopkins University in Baltimore, Maryland, and Master of Science (1978) and Doctoral degrees (1982) in oceanography from Oregon State University.

5. Prior to joining NOAA, I served as a Program Manager and Division Director with the United States Navy Office of Naval Research (1987 - 1994); the Executive Director for the Consortium for Oceanographic Research and Education, a non-profit research advocacy organization (1994 - 1999); and Technical Director (senior civilian) at the United States Navy Office of the Oceanographer of the Navy (1999 - 2003). In connection with my service, I was

awarded the U.S. Navy Distinguished Civilian Service Award, which is the highest civilian award given by the Navy.

6. From 2003 to 2010, I served as Assistant Administrator at NOAA in two sequential capacities, as head of the National Ocean Service and as head of NOAA's Office of Oceanic and Atmospheric Research.

7. I then served as Vice President for Research at Oregon State University in Corvallis, Oregon (2010 - 2014) before being appointed as NOAA's Chief Scientist.

8. Among my other duties during my career at NOAA, I have served as co-lead of the White House committee that developed the first national set of ocean research priorities and as the representative from the Department of Commerce to the White House Office of Science and Technology Policy (OSTP) committee addressing scientific integrity, culminating in guidance from OSTP in December 2010.

9. As NOAA's Assistant Administrator for Oceanic and Atmospheric Research (2005 - 2010), I directed the agency's programs in oceanography, atmospheric science, and climate science. I directly supervised significant research efforts including those relating to ocean exploration, the National Sea Grant College Program, and the Climate Program Office. I also supervised seven NOAA laboratories around the United States.

10. As NOAA's Assistant Administrator for Ocean Services and Coastal Zone Management (2003 - 2005), I directed the agency's navigation and coastal services, including the National Geodetic Survey, the Office of National Marine Sanctuaries, and the Office of Coastal Resource Management. As part of my duties, I represented the interests of the United States in

the establishment of a global tsunami warning system. I also served as the United States permanent representative to the United Nations' Intergovernmental Oceanographic Commission.

11. I have received several high honors during my tenure at NOAA, including Presidential Rank Awards from Presidents George W. Bush and Barack H. Obama.

12. During my career, I have belonged to several professional societies designed to advance research and education and to promote communication among the scientific community. Such organizations bring together scientists from different settings, including government, academia, and industry, recognizing their shared goals. I am a fellow of the American Meteorological Society, the Marine Technology Society, and the Institute of Marine Engineering, Science and Technology. I am the past president of the Oceanography Society and president-elect of the Marine Technology Society.

13. Because I have worked as a scientist in multiple settings, including NOAA, the Navy and in academia, I have a broad perspective on the key importance of collaboration to the scientific community. My experiences have included a broad array of types and intensities of collaboration. I have worked alongside researchers in the field and at sea, and have co-authored dozens of peer-reviewed publications with collaborators from all of the sectors identified above.

14. The heart of the scientific method is the formulation, refining, and testing of hypotheses using available facts, which must be gathered through research and then analyzed. Scientists pursuing a research objective may begin with only rough ideas or ideas that are not yet fully formed. Those ideas are then developed, tested, and revised as data are collected and interpreted. The possible interpretations are generated and tested in part through exchanges and

candid debates with peers inside and outside the federal government. The set of available information, and our understanding of it, evolves through this process.

15. Focusing on the work we do at NOAA, I would point to the exchange and debate among peers as the mechanism that allows us to ensure that the scientific products we develop and release to the public are robustly developed and accurately tested. Such rigorous vetting is critical to developing and releasing scientific information of the highest possible quality to inform the public and decision-makers.

16. When we are developing and refining hypotheses, then, we value input and feedback from the community of scientists who have expertise in the field relating to a particular project. The relevant expertise will likely not be located in just one organization, but most often will be shared among several different scientists, each of whom may have a specialized focus.

17. In seeking out expert feedback and input, scientists generally do not distinguish between colleagues who work within federal agencies and scientists who work in other settings. Rather, our scientific peers who have expertise to offer are generally considered as belonging to one scientific community that shares the overall goal of advancing scientific understanding in their fields. Sometimes experts located outside the federal government have a specialized area of expertise that the agency lacks, or they may be respected peers who can offer a second opinion.

18. Indeed, in some scientific fields (including climate science) there are only a limited number of scientists with the relevant, specialized expertise. Many of them are federal employees, and having a strong scientific team in-house enables our agencies to produce very high quality scientific products. Integrating the perspectives and information from outside scientists allows us to produce even more robust scientific products.

19. It is therefore commonplace, as a research project proceeds, for federal scientists to reach out to request feedback and input from colleagues both inside and outside the federal government who have relevant knowledge and expertise. As I noted above (§ 3), these colleagues may be located in such settings as academia, international data-collecting organizations, non-governmental organizations, or private industry, and may have a common history of collaborating with federal scientists on working groups and panels. These requests for input often lead to candid discussions and debates that can be thought of as a type of informal peer review that fulfills a valuable role in developing scientific thought and promoting scientific understanding. In an earlier era, such discussions were limited to conversations among scientists at irregular intervals, such as at professional society gatherings. The advent of electronic communications has facilitated more frequent and regular discussions, to the great advancement of science.

20. There is a general and well-established presumption, often implied rather than explicit, that such discussions are not intended to be, and will not be, shared with a wider audience. Confidentiality is essential to ensuring the participants are free to propose new ideas or explanations without fear of misinterpretation or being taken out of context, and without slowing down the exchange of ideas. Sometimes the communications are very informal and are developed quickly, which is helpful particularly at the initial stages of project development when it is important to generate new ideas.

21. By allowing for the testing and refinement of ideas, such confidential discussions help ensure that scientific products are more well-developed and robust. If such discussions

could not take place, the exchange of scientific understanding would be hampered and the pace of scientific progress would slow.

22. I believe several types of harm would likely result to the agency, to federal scientists, and ultimately to the public if federal scientists could not engage in the type of confidential, candid discussions with each other or with outside experts that I have described. Federal scientists should be permitted the same opportunities for collegial collaboration that is the standard for scientists in other settings. This collaboration is particularly productive as new facts become available and we seek consensus in the scientific community on the appropriate interpretation and understanding of these facts.

23. First, there is the risk of chilling candid, informal exchanges and debates among scientists in the community of experts, leading to a less robust scientific process overall. This would adversely affect the agency's ability to produce high quality scientific products. Federal scientists obviously must communicate with one another in developing their agencies' products, and should have confidence that their preliminary views and suggestions will be treated as confidential. They should also feel free to reach out and express their ideas to qualified outside scientists for their feedback. If there is uncertainty as to whether their communications will be kept from public view, federal scientists would likely be less candid about expressing their views and seeking important feedback. They may be concerned, for example, about potential damage to their reputation from a statement being misconstrued or taken out of context or about the risk of harassment. In certain contexts, such as climate research and analysis, the potential for a chilling effect is particularly high because developments in this area typically generate a high

level of interest or controversy. The quality of our scientific products would greatly suffer if our scientists were unable to freely suggest, explore and test their ideas due to such considerations.

24. Similarly, outside scientists should have confidence that input they provide to their peers at federal agencies will be treated as confidential. If an outside scientist believed that their communications with federal scientists may become public, he or she may change the way they engage with federal colleagues in a way that slows the exchange of ideas, or they may choose not to engage in this type of valuable, informal peer review at all. This would narrow the range of perspectives taken into account in generating our scientific products and therefore reduce the overall robustness of the scientific process.

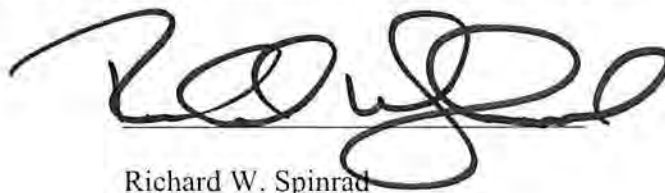
25. Second, there is a risk that the public may become confused by preliminary or incomplete information contained in the communications among scientists, or by information that is misinterpreted or taken out of context. Here also, the climate science context is one in which the risks of misinterpretation or confusion are somewhat elevated, in light of the degree of interest by various groups and the complex nature of the interpretations at issue. For example, because the community of experts is already familiar with the context of their communications and the current state of the science, they tend to use shorthand and informal language in sharing ideas that are actually highly technical and complex. I note, for example, that the use of the term "theory" has a very specific definition in scientific circles, but is interpreted in a vastly different manner by the lay public. While use of informal or short-hand language is useful and appropriate to expedite discussions among peers, more formal explanations and, in many cases, caveats, would be necessary for products that are intended to be shared with a public audience.

26. Third, there is the risk that federal agencies would be unable to attract and retain the best scientists if these scientists were unable to communicate in confidence with peers inside their agencies or with experts in the community outside the federal government. This was demonstrated dramatically as we improved the OSTP guidance on scientific integrity over the last several years; I have had many discussions with academic scientists who indicated that the scientific freedom reflected in the government's policies on scientific integrity have encouraged them to consider applying for and accepting positions in government laboratories. If instead federal scientists believed they must wall themselves off from confidential discussions with each other or with outside scientists, depriving their projects of valuable, informal input and expertise, they may conclude they can perform their work better in another setting.

27. In conclusion, upholding the expectations of confidentiality of scientists – whether employed in the federal government or outside of it – who have participated in candid exchanges and debates in the development of the agency's scientific products is critical to fostering a vigorous scientific process. This, in turn, is critical to ensuring the public receives the highest quality information from federal agencies.

Pursuant to 28 U.S.C. § 1746, I hereby affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 15 day of December, 2016, Washington, D.C.

A handwritten signature in black ink, appearing to read "Spinrad", written over a horizontal line.

Richard W. Spinrad

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

[PROPOSED] ORDER

Upon consideration of the U.S. Department of Commerce’s (“the Department’s”) motion for summary judgment, and any response and reply thereto, and the entire record here, and for good cause shown, it is hereby

ORDERED that, for the reasons set forth in the Department’s motion:

- 1. The Department’s motion is hereby **GRANTED**; and
- 2. Summary judgment is hereby **ENTERED** for the Department.

Dated: _____

CHRISTOPHER R. COOPER
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

MOTION FOR SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56, Defendant U.S. Department of Commerce hereby moves for summary judgment on all of Plaintiff's claims. This motion is supported by a statement of material facts as to which there is no genuine issue, a memorandum of points and authorities, the Declarations of Mark Graff and Dr. Richard Spinrad, and a *Vaughn* index. A proposed order is attached.

Dated: December 15, 2016

Respectfully submitted,

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

ELIZABETH J. SHAPIRO
Deputy Director, Federal Programs Branch

/s/ Kevin M. Snell
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
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INTRODUCTION

In this Freedom of Information Act (“FOIA”), Plaintiff Judicial Watch requested from the National Oceanographic and Atmospheric Administration (“NOAA”), a component of the Department of Commerce, records relating to different temperature metrics and datasets.¹ The parties conferred and reached an agreement regarding the scope of the request and relevant search parameters. Using those agreed-upon parameters, NOAA conducted a search and ultimately produced responsive, non-exempt material.

Plaintiff now challenges the adequacy of NOAA’s search and all of its redactions and withholdings. But as discussed more fully herein, NOAA conducted a search that was reasonably calculated to locate all non-duplicative records in its possession responsive to Plaintiff’s request. Moreover, all of the challenged information and records that NOAA withheld were properly exempt from production. The Court should therefore grant summary judgment in favor of the Department of Commerce.

FACTUAL BACKGROUND

I. The Hiatus Paper

The FOIA request at issue centers around a June 4, 2015 study authored by NOAA scientists and published in the journal *Science* entitled *Possible Artifacts of Data Biases in the Recent Global Surface Warming Hiatus* (“Hiatus Paper” or “the Paper”). Between September 2013 and November 2014, the Intergovernmental Panel on Climate Change (“IPCC”) released a report in stages that concluded that the upward global surface temperature trend from 1998-2012

¹ The FOIA request also sought communications between NOAA and the House of Representatives Committee on Science, Space, and Technology. The agency made a separate production of these records, which Plaintiff’s counsel indicated in writing that Plaintiff did not intend to challenge. Therefore, this motion for summary judgment and accompanying documents do not address the agency’s response to that aspect of the request.

was lower than that from 1951-2012. Declaration of Mark Graff (“Graff Decl.”) Decl. ¶ 9 (attached herein as Exhibit A). The apparent observed slowing of the global surface temperatures was dubbed the “hiatus.” *Id.* The Hiatus Paper, drafted after that report by a team of NOAA scientists, sought to properly account for the alleged “hiatus.”

NOAA’s National Centers for Environmental Information (“NCEI”) produces and maintains datasets for global ocean areas and global land areas. *Id.* ¶ 6. Scientists throughout the government, including scientists at agencies other than NOAA, and outside of the government, use the sea surface temperature and land surface temperature datasets for a variety of purposes, including for climatic research and climate assessments. *Id.* NCEI scientists continually work to improve the datasets to provide the public the most up-to-date and accurate information. *Id.* There were two significant developments related to the “hiatus” after the IPCC’s report. In particular, 2013 and 2014 were two of the five warmest years on record for the globe. *Id.* ¶ 10. Also, NOAA scientists made significant improvements to its sea surface temperature dataset, one of largest being a correction that accounted for the difference in data collected from ships and buoys. *Id.* Buoys have been increasingly used since the 1970s to measure sea surface temperatures, and scientists developed a method to correct for the difference between these two observing systems and incorporated those corrections into the dataset. *Id.*

NCEI scientists regularly interpret and analyze datasets and release to the public the most up-to-date climate science, often through publication in scientific journals. *Id.* ¶ 7. The Hiatus Paper is an example of analysis and interpretation of the updated underlying data. *Id.* ¶ 8.

Around late October 2014, Tom Karl, then the Director of NCEI, circulated a draft paper to a group of NOAA scientists that developed an idea for properly accounting for the alleged “hiatus” based on the additional two years of global temperature data and the improvements to

NOAA's sea surface temperature dataset. *Id.* ¶ 11. Karl sought feedback on the draft paper, and a team of scientists at NOAA worked to develop a manuscript. *See id.* ¶¶ 11-13. Many drafts and revisions were exchanged among these scientists, along with emails discussing various aspects of the paper or its content, including suggestions on how best to describe the data, opinions on statistical error uncertainty ranges, thoughts on the implications of other researchers' work, and so on. *Id.* ¶ 13. Such collaboration via discussions and drafts is standard practice at NCEI. *Id.* ¶ 13.

In December 2014, the authors submitted the draft paper to the journal *Science*. *Id.* ¶ 14. Once there, the draft paper went through the journal's peer review process, in which five anonymous peer reviewers weighed in on the manuscript. *Id.* ¶ 20. When the authors received feedback, they discussed internally how to respond in writing to the comments they received, and also revised the manuscript to address the questions and concerns raised. *See id.* ¶ 21. After a second round of peer review, NOAA received word that the article would be published, and *Science* published the Paper on its website on June 4, 2015. *Id.* ¶ 23.

II. The FOIA Request and NOAA's Response

Plaintiff's FOIA request, dated October 30, 2015, sought in relevant part:

1. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the methodology and utilization of Night Marine Air Temperatures to adjust ship and buoy temperature data.
2. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the use of other global temperature datasets for both NOAA's in-house dataset improvements and monthly press releases conveying information to the public about global temperatures.
3. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the

utilization and consideration of satellite bulk atmospheric temperature readings for use in global temperature datasets.

Graff Decl. ¶ 24; *see also* Answer, ECF No. 8-1.

Upon review of the request, NOAA officials determined that it did not reasonably describe the records requested. Graff Decl. ¶ 25. Through counsel, NOAA conferred with Plaintiff to negotiate a clear description of the material sought. *Id.* During the course of those discussions, NOAA indicated to Plaintiff that it understood the request to reflect an interest in the Hiatus Paper and accordingly suggested modifying the request to call for a search for all documents and communications referring to the Hiatus Paper from its nine authors. *Id.* ¶ 26. Plaintiff confirmed its interest in that study, but indicated that it sought only records referring to the topics listed in its initial FOIA request. *Id.*

The parties ultimately “reached an agreement regarding the scope of the request and relevant search parameters.” Second Joint Status Report, ECF No. 10 at 2. For Plaintiff’s FOIA request, NOAA agreed to search the records of the nine authors of the Hiatus Paper for records referring to that paper and that contain one of the following search terms: “NMAT,” “Night Marine Air Temperatures,” “ISTI,” “ICOADS,” “sea ice,” “satellite,” “Advanced Very High Resolution Radiometer,” “AVHRR,” “Advanced Microwave Scanning Radiometer,” and “AMSR.” *Id.*; Graff Decl. ¶ 27.

After NOAA directed those custodians to run the agreed-upon searches, it made a production on May 27, 2016 of 102 pages of material in its entirety and 90 partially redacted pages. *See* Graff Decl. ¶ 29; Fourth Joint Status Report, ECF No. 12 at 2. NOAA withheld in their entirety 8,013 pages of records, and informed Plaintiff that because it sought records from nine separate custodians, a significant amount of duplicative material existed in the responsive records. *See* Graff Decl. ¶ 29; Fourth Joint Status Report, ECF No. 12. The parties then

discussed the details of potential challenges to NOAA's production, and NOAA agreed to provide Plaintiff a draft *Vaughn* index in an attempt to narrow the issues in dispute. *See* Fifth & Sixth Joint Status Report, ECF Nos. 13 & 14. Upon further review of the withheld information, on September 16, 2016, NOAA released to Plaintiff an additional 44 pages of material (7 of those pages were partially redacted to exclude Mr. Karl's cell phone number), Graff Decl. ¶ 30, and contemporaneous with this filing on December 15, 2016, NOAA released an additional 62 records, Graff Decl. ¶ 31.

STANDARD OF REVIEW

A court reviews an agency's response to a FOIA request *de novo*. 5 U.S.C. § 552(a)(4)(B). "FOIA cases are typically and appropriately decided on motions for summary judgment." *Moore v. Bush*, 601 F. Supp. 2d 6, 12 (D.D.C. 2009). In deciding at the summary judgment stage whether an agency has fully discharged its obligations under FOIA, "the agency must show, viewing the facts in the light most favorable to the requester, that there is no genuine issue of material fact." *Steinberg v. U.S. Dep't of Justice*, 23 F.3d 548, 551 (D.C. Cir. 1994).

ARGUMENT

I. NOAA's Search Was Reasonable, Adequate, and Satisfies Its Obligation Under the FOIA

A. The Standard for an Adequate Search

The touchstone for determining whether an agency should prevail on a motion for summary judgment in FOIA litigation is whether the agency demonstrates that its "search for documents was adequate." *Larson v. Dep't of State*, 565 F.3d 857, 869 (D.C. Cir. 2009). An agency's search is adequate if "it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." *Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). The adequacy of a FOIA

search is thus gauged “not by the fruits of the search, but by the appropriateness of the methods used to carry out the search.” *Ancient Coin Collectors Guild v. U.S. Dep’t of State*, 641 F.3d 504, 514 (D.C. Cir. 2011) (quoting *Iturralde v. Comptroller of Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003)). In short, “[t]he adequacy of the search . . . is judged by a standard of reasonableness.” *Steinberg*, 23 F.3d at 551; *see also DiBacco v. U.S. Army*, 795 F.3d 178, 194 95 (D.C. Cir. 2015) (“A search need not be perfect, only adequate, and adequacy is measured by the reasonableness of the effort in light of the specific request.” (quoting *Meeropol v. Meese*, 790 F.2d 942, 956 (D.C. Cir. 1986))).

“In demonstrating the adequacy of the search, the agency may rely upon reasonably detailed, nonconclusory affidavits submitted in good faith.” *Id.* (quoting *Weisberg v. Dep’t of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984)). Such affidavits are sufficient if they “set[] forth the search terms and the type of search performed, and aver[] that all files likely to contain responsive materials (if such records exist) were searched.” *Chambers v. U.S. Dep’t of Interior*, 568 F.3d 998, 1003 (D.C. Cir. 2009) (quoting *McCready v. Nicholson*, 465 F.3d 1, 7 (D.C. Cir. 2006)). This standard does not require that “the affidavits of the responding agency set forth with meticulous documentation the details of an epic search for the requested records.” *Perry v. Block*, 684 F.2d 121, 127 (D.C. Cir. 1982). “Rather, in the absence of countervailing evidence or apparent inconsistency of proof, affidavits that explain in reasonable detail the scope and method of the search conducted by the agency will suffice” *Id.* Moreover, “[s]uch agency affidavits attesting to a reasonable search ‘are afforded a presumption of good faith,’ and ‘can be rebutted only with evidence that the agency’s search was not made in good faith.’” *Riccardi v. US Dep’t of Justice*, 32 F. Supp. 3d 59, 63 (D.D.C. 2014) (quoting *Def. of Wildlife v. U.S. Dep’t of Interior*, 314 F. Supp.2d 1, 8 (D.D.C. 2004)).

Finally, courts in this circuit recognize the “well-worn rule . . . that the adequacy of a FOIA search is not to be judged by its results.” *Rosenberg v. United States Dep’t of Immigration & Customs Enf’t*, 13 F. Supp. 3d 92, 104 (D.D.C. 2014). “The question is not ‘whether there might exist any other documents possibly responsive to the request, but rather whether the search for those documents was *adequate*.’” *Steinberg*, 23 F.3d at 551 (quoting *Weisberg v. Dep’t of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984)) (emphases in original). Thus, courts have rejected challenges to the adequacy of a search, even when a “slim yield may be intuitively unlikely” and a “reasonable observer would find th[e] result[s] unexpected.” *Ancient Coin Collectors Guild*, 641 F.3d at 514. Moreover, “mere speculation that as yet uncovered documents might exist[] does not undermine the determination that the agency conducted an adequate search for the requested records.” *Wilbur v. CIA*, 355 F.3d 675, 678 (D.C. Cir. 2004); *see also Sheffield v. Holder*, 951 F. Supp. 2d 98, 101 (D.D.C. 2013) (noting that a requester “cannot rest . . . on mere conjecture or ‘purely speculative claims about the existence and discoverability of other documents’” (quoting *Elec. Privacy Info. Ctr. v. Dep’t of Homeland Sec.*, 384 F. Supp. 2d 100, 107 (D.D.C. 2005))).

B. NOAA Conducted an Adequate Search

As set forth in Mark Graff’s Declaration, NOAA’s search for records responsive to Plaintiff’s FOIA request was more than adequate. *See Perry*, 684 F.2d at 127. Judicial Watch and NOAA reached an agreement as to how the search would be carried out. The agency would search the records of the nine Hiatus Paper authors for any record referring to that study and containing the term “NMAT,” “night marine air temperatures,” “ISTI,” “ICOADS,” “sea ice,” “satellite,” “advanced very high resolution radiometer,” “AVHRR,” “advanced microwave scanning radiometer,” and “AMSR.” Graff Decl. ¶ 27; Second Joint Status Report at 2, ECF No.

10. The timeframe for the search would be October 1, 2014 to June 4, 2015. *Id.* NOAA determined that the records requested resided within one office, NCEI, because all of the agreed-upon custodians work or had worked there during the time frame in which responsive records were created. *Id.* ¶ 33. NOAA then directed those custodians to search their email, electronic, and paper files for records referring to the Karl Study and containing the agreed-upon search terms. *Id.* ¶ 35. Those scientists searched their electronic files (including email) and non-electronic files, collected any potentially responsive material, and forwarded that material for responsiveness and exemption review. *Id.* ¶¶ 36-38.² There were no common areas at NCEI for NOAA to search. *Id.* ¶ 37. Thus, all files determined to be reasonably likely to contain responsive, non-duplicative material were searched. *Id.* ¶ 44.

On this record, NOAA's search should be upheld under FOIA. NOAA has provided "a reasonably detailed [declaration], setting forth the search terms and the type of search performed," and averred that all files likely to contain responsive, non-duplicative materials were searched. *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 326 (D.C. Cir. 1999) (quoting *Oglesby*, 920 F.2d at 68). NOAA has "made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." *Oglesby*, 920 F.2d at 68.

II. NOAA Properly Withheld Information Under Exemption 5

FOIA does not require disclosure of "matters that are . . . inter-agency or intra-agency memorandums or letters [which] would not be available by law to a party other than an agency in

² One custodian had retired from NCEI by the time the search was conducted and so that former employee's archived email was searched by another custodian. *See* Graff Decl. ¶ 36 n.1. No additional records responsive to this request from that author are known to have existed following his retirement. *See id.*

litigation with the agency.” 5 U.S.C. § 552(b)(5). “Exemption 5 . . . exempt[s] those documents, and only those documents, normally privileged in the civil discovery context.” *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975). Exemption 5 thus protects the attorney-client privilege, the attorney work product privilege, and the deliberative process privilege. *Id.*; see also *Rockwell Int’l Corp. v. Dep’t of Justice*, 235 F.3d 598, 601 (D.C. Cir. 2001).

The deliberative process privilege “allows the government to withhold documents and other materials that would reveal advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.” *In re Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997). According to the D.C. Circuit,

There are essentially three policy bases for this privilege. First, it protects creative debate and candid consideration of alternatives within an agency, and, thereby, improves the quality of agency policy decisions. Second, it protects the public from the confusion that would result from premature exposure to discussions occurring before the policies affecting it had actually been settled upon. And third, it protects the integrity of the decision-making process itself by confirming that officials should be judged by what they decided, not for matters they considered before making up their minds.

Russell v. Dep’t of the Air Force, 682 F.2d 1045, 1048 (D.C. Cir. 1982) (quoting *Jordan v. Dep’t of Justice*, 591 F.2d 753, 772-73 (D.C. Cir. 1978)).

The privilege is necessary because “those who expect public dissemination of their remarks may well temper candor with a concern for appearances . . . to the detriment of the decisionmaking process.” *Sears*, 421 U.S. at 150-51. “[E]fficiency of Government would be greatly hampered if, with respect to legal and policy matters, all Government agencies were prematurely forced to ‘operate in a fishbowl.’” *EPA v. Mink*, 410 U.S. 73, 87 (1973), *abrogated on other grounds*, Pub. L. No. 93-502, 88 Stat. 1561 (1974). There are “[t]wo requirements [that] are essential to the deliberative process privilege: the material must be predecisional and it must be deliberative.” *In re Sealed Case*, 121 F.3d at 737.

The agency is best situated “to know what confidentiality is needed ‘to prevent injury to the quality of agency decisions.’” *Chem. Mfrs. Ass’n v. Consumer Prod. Safety Comm’n*, 600 F. Supp. 114, 118 (D.D.C. 1984) (quoting *Sears*, 421 U.S. at 151). NOAA’s justification for asserting Exemption 5 is “sufficient if it appears ‘logical’ or ‘plausible.’” *Wolf v. CIA*, 473 F.3d 370, 374-75 (D.C. Cir. 2007).

Here, NOAA properly withheld information under Exemption 5 that is protected by the deliberative process privilege because the information withheld reflects deliberations in preparation for decisions of how to analyze and present data and theory, as well as decisions about how to respond to peer review comments and deliberations on developing public communications and congressional presentations. *See* Graff Decl. ¶¶ 50-63. Disclosure of such information, which is predecisional and deliberative, and contains selected factual material intertwined with opinion, would inhibit candid internal discussions and the expression of recommendations and judgments. *Id.* ¶ 64. Disclosure of the details of these confidential discussions and drafts could reasonably be expected to chill the open and frank exchange of comments and opinions that NOAA officials engage in, as well as inhibit candid internal discussions and recommendations regarding preferred courses of action for agency personnel. *Id.*

The documents withheld in full or in part under the deliberative process privilege fall generally into three categories: (1) drafts of the Hiatus Paper; (2) internal deliberations, including email exchanges; and (3) peer review materials, both formal and informal. As explained below and in the attached *Vaughn*, each redacted or withheld document contains both predecisional and deliberative information. Accordingly, NOAA properly asserted Exemption 5 based on the deliberative process privilege.

1. Drafts of the Hiatus Paper

NOAA withheld pursuant to Exemption 5 inter- or intra-agency, predecisional, and deliberative draft versions of the Hiatus Paper (including drafts of its accompanying figures and “supplementary materials”) that were produced while NOAA scientists were developing the Paper. Graff Decl. ¶ 51.³ “[D]raft documents by their very nature, are typically predecisional and deliberative, because they reflect only the tentative view of their authors; views that might be altered or rejected upon further deliberation either by their authors or by superiors.” *In re Apollo Grp., Inc. Sec. Litig.*, 251 F.R.D. 12, 31 (D.D.C. 2008) (non-FOIA case) (citation omitted). Accordingly, “drafts are commonly found exempt under the deliberative process exemption.” *People for the Am. Way Found. v. Nat’l Park Serv.*, 503 F. Supp. 2d 284, 303 (D.D.C. 2007). Among other reasons for this, disclosure of “decisions to insert or delete material or to change a draft’s focus or emphasis . . . would stifle the creative thinking and candid exchange of ideas necessary to produce good historical work.” *Dudman Commc’ns Corp. v. Dep’t of Air Force*, 815 F.2d 1565, 1569 (D.C. Cir. 1987). Indeed, drafts are ordinarily exempt regardless of whether or to what extent segments of the draft made their way into the final product: “If the segment appeared in the final version, it is already on the public record and need not be disclosed. If the segment did not appear in the final version, its omission reveals an agency deliberative process: for some reason, the agency decided not to rely on that fact or argument after having been invited to do so.” *Exxon Corp. v. Dep’t of Energy*, 585 F. Supp. 690, 698 (D.D.C. 1983) (quoting *Lead Industries Ass’n v. OSHA.*, 610 F.2d 70, 86 (2d Cir. 1979)); see *ViroPharma Inc. v. HHS*, 839 F. Supp. 2d 184, 193 (D.D.C. 2012) (“The choice of what factual

³ The fact that some draft versions were shared for peer review purposes outside of the federal government does not affect those drafts’ status as inter- or intra-agency. See *infra* at Section II.3.

material . . . to include or remove during the drafting process is itself often part of the deliberative process, and thus is properly exempt under Exemption 5.”); *cf. Marzen v. HHS*, 825 F.2d 1148, 1155 (7th Cir. 1987) (noting that privilege “protects not only the opinions, comments and recommendations in the draft, but also the process itself”).

These drafts are predecisional inasmuch as they were generated to assist the agency in preparing the final version of the Hiatus Paper. *See Quarles v. Dep’t of the Navy*, 893 F.2d 390, 392 (D.C. Cir. 1990) (explaining that materials are predecisional when “prepared in order to assist an agency decisionmaker in arriving at . . . decisions”). And they are deliberative in that they reflect the development of the final paper; these non-final, predecisional drafts contain opinions and recommendations of the NOAA authors; draft language, data, and data interpretation for consideration by other NOAA authors; comments on previous drafts of the paper; and/or responses to other NOAA authors’ or peer reviewers’ comments on earlier drafts of the paper. *See* Graff Decl. ¶ 51; *Vaughn* part 2 Category A. Withholding this material under Exemption 5 was proper, and the release of such drafts would inhibit agency scientists from expressing their views and deter NOAA scientists from participating candidly in the development of scientific products in the future. *See* Graff Decl. ¶ 51.⁴

2. Communications Among NOAA Personnel

Also integral to the drafting of the Hiatus Paper, the authors frequently communicated and exchanged ideas with one another via email during the Paper’s development. Here, NOAA

⁴ Equally appropriate, NOAA’s *Vaughn* also shows that the agency withheld draft documents that aided in or related to the development of the Paper, such as “[d]raft graphs of land and ocean temperature data created by NOAA scientists to be used in the paper,” *Vaughn* part 2 at bates pages 1170-73, “[d]raft graphs and charts of SST data to be used in [the] development of the paper,” *Vaughn* part 2 at bates pages 2071-76, and a “[d]raft powerpoint by [an] author presenting information on global temperature and presenting data analysis done by NOAA scientists for the paper,” *Vaughn* part 2 at bates pages 1876-86.

withheld inter- or intra-agency, predecisional, and deliberative communications. *See* Graff Decl. ¶ 50. In pursuing a research objective, scientists may begin with only a rough idea, and then develop, test, and revise that idea as data is collected and interpreted. Declaration of Richard W. Spinrad (“Spinrad Decl.”) ¶ 14 (attached herein as Exhibit B). Possible interpretations are generated and tested in part through candid debates and exchanges among peers. *Id.* ¶ 15. Indeed, the exchange and debate among peers is the mechanism that allows NOAA to ensure its scientific products are robustly developed and accurately tested. *Id.* ¶ 16. And there is a general and well-established presumption that such discussions are not intended to be, and will not be, shared with a wider audience, as confidentiality is essential to ensuring participants feel free to propose new ideas or explanations without fear of misinterpretation or being taken out of context. *Id.* ¶ 20. It is critical that this type of information be protected so as not to chill candid exchanges and debates, as well as to avoid the risk of confusing the public with preliminary or incomplete information. *See id.* ¶¶ 23-25.

NOAA’s *Vaughn* index reinforces that these types of predecisional and deliberative communications occurred here, were integral to the development of the Hiatus Paper, and were appropriately withheld or redacted. *See Abteu v. U.S. Dep’t of Homeland Sec.*, 808 F.3d 895, 898 (D.C. Cir. 2015) (“[O]fficials should be judged by what they decided, not for matters they considered before making up their minds” (citation and internal quotation mark omitted)). For example, NOAA is redacting or withholding communications between scientists in which authors asked for clarification on data analysis conducted for developing the Paper, *Vaughn* part 1 at bates pages 22-23, shared opinions on the results of a draft data analysis for developing the Paper, *Vaughn* part 1 at bates page 15, offered opinions as to the best approach to take in the Paper, *Vaughn* part 1 at bates pages 300, 335, 362-63, and provided opinions on statistical error

uncertainty ranges for development of the Paper, *Vaughn* part 1 at bates page 245. Moreover, NOAA withheld a document that presented questions and draft graphs to spur discussion among the NOAA scientists. This document was created and circulated for the purpose of author discussions during the development of the Hiatus Paper, and shows NOAA scientists considering what constitutes the best data analysis and presentation for the Paper. *See Vaughn* part 2 Category E; Graff Decl. ¶ 52.⁵

In addition to withholding communications concerning the development of the Hiatus Paper, NOAA also withheld communications and information reflecting the development of a plan by its officials for communications and press release in preparation for publication of the paper, *e.g. Vaughn* part 1 at bates page 289-90, *Vaughn* part 2 at bates page 7446-50, as well as the agency's development of a presentation to Congress, *e.g., Vaughn* part 1 at bates pages 143, 324 (explaining that redacted email reflected "NOAA scientist discussing climate change research and developing the agency's presentation for Congress"). This withheld information, which reflects NOAA's development of how to brief Congress and the public, is predecisional and deliberative and falls squarely within Exemption 5. *E.g., Judicial Watch, Inc. v. U.S. Dep't of the Treasury*, 796 F. Supp. 2d 13, 31 (D.D.C. 2011) (noting email discussing response to press inquiry protected under deliberative process privilege).

All of this material is precisely the sort of information that the deliberative process privilege is designed to protect. *See Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854,

⁵ Similarly, NOAA withheld information reflecting discussions among scientists concerning potential scientific inquiries. *See, e.g., Vaughn* part 1 at bates page 75 (discussing future climate research and asking for opinion on this research and on possible role of NOAA scientists in this research). Again, such material is predecisional and deliberative, and therefore is exempt from disclosure. *E.g., Sears*, 421 U.S. at 151 n.18 (explaining that protection extends to records that are part of decisionmaking process even where process does not produce actual decision by agency).

866 (D.C. Cir. 1980) (document is “predecisional” if it is “generated before the adoption of an agency policy” and “deliberative” if it “reflects the give-and-take of the consultative process”); *Dep’t of Interior v. Klamath Water Users Protective Ass’n*, 532 U.S. 1, 9 (2001) (explaining that deliberative process privilege’s “object is to enhance the quality of agency decisions by protecting open and frank discussion among those who make them within the Government”) (citation omitted); *Russell*, 682 F.2d at 1048 (“[T]he exemption protects not only communications which are themselves deliberative in nature, but all communications which, if revealed, would expose to public view the deliberative process of an agency.”). Moreover, any factual material in the withheld documents reflect the authors’ selection and presentation of factual material, Graff Decl. ¶ 65, and as such it too is covered by the deliberative process privilege. *See, e.g., Ancient Coin Collectors Guild*, 641 F.3d at 513 (explaining that factual material can be withheld where it reflects “an exercise of discretion and judgment calls” and that the “legitimacy of [the] withholding” turns on “whether the selection or organization of facts is part of an agency’s deliberative process”).

Because all of the redacted and withheld information is inter- or intra-agency, predecisional, and deliberative in nature, NOAA properly applied Exemption 5.

3. Peer Review Material

NOAA also withheld inter- or intra-agency material reflecting the different peer review processes its analyses and drafts underwent prior to publication of the Hiatus Paper. *Science* follows a formal peer review process in which subject matter experts evaluate the rigor and merit of the paper, and provide feedback on an array of issues. Graff Decl. ¶ 15. Those anonymous, impartial reviewers share their reviews with the authors, *Science*’s board, and potentially other reviewers (for cross-comment). *Id.* ¶ 17.

Here, *Science* sent the manuscript to five anonymous peer reviewers, and the scientists received two rounds of comments. Upon receiving these reviewers' comments, the NOAA scientists deliberated internally as to how to respond in writing to every comment received. NOAA properly withheld peer reviewer comments, the agency's internal draft responses to these peer reviewer comments, draft cover letters NOAA's scientists wrote to accompany their response, as well as the agency's final responses to peer reviewer comments. See Graff Decl. ¶¶ 53-54; *Vaughn* part 2 Category B, C, D.

The D.C. Circuit has specifically held that comments provided by peer reviewers during the peer review process for publication of scientific articles in scientific journals are covered by Exemption 5 because they are both "pre-decisional because it preceded the agency's decision whether and in what form to publish" the paper and were part of the agency's deliberative process "because the agency secured review commentary in order to make that decision." See *Formaldehyde Inst. v. U.S. Dep't of Health and Human Servs.*, 889 F.2d 1118, 1123-25 (D.C. Cir. 1989). As that Court recognized, agency scientists "must regularly rely on the comments of expert scientists to help them evaluate the readiness of agency work for publication [and i]n that sense they must rely on the opinions and recommendations of temporary consultants." *Id.* at 1125.

The scientists' draft responses to the peer reviewer comments are also covered by Exemption 5 since these materials, including personal opinions and recommendations, draft language, data, and data interpretation for consideration, as well as comments on previous drafts of the responses, reflect predecisional and deliberative discussions. See *Vaughn* part 2 Category C; Graff Decl. ¶ 54. Similarly, the final responses to peer review comments that NOAA submitted to *Science* during the peer review process reflect the agency's response to constructive

criticism and advice, and were part of the process to assist in the authors' deliberation as to whether and in what form to publish the paper. *See Vaughn* part 2 Category D; Graff Decl. ¶ 55. These final responses, then, fit comfortably within Exemption 5. *See Petroleum Info. Corp.*, 976 F.2d at 1434 (agency documents that were "prepared in order to assist an agency decisionmaker in arriving at his decision" are "predecisional" (citation omitted)); *Coastal States Gas Corp.*, 617 F.2d at 866. Finally, the draft cover letters to *Science* accompanying the scientists' responses to the peer review comments contain edits or otherwise do not include the final wording of the letter, reflecting that the scientists' final approach had not been finalized at that point. *Vaughn* part 2 Category B; Graff Decl. ¶ 53. Withholding such draft material was appropriate.

The fact that the peer review comments were sent by *Science*, and the responses to those peer reviewer comments were sent back to *Science*, does not affect their status as "intra-agency" materials that may be protected by Exemption 5. "Recognizing that the purpose of the exemption was to promote the quality of agency policy decisions and that often these policy decisions were best made by incorporating the advice of outside experts, [the D.C. Circuit] developed a 'consultant corollary' whereby communications with temporary consultants would be considered 'intra-agency' for the purposes of Exemption 5." *Judicial Watch v. U.S. Dep't of Transp.*, 950 F. Supp. 2d 213, 216 (D.D.C. 2013) (citing cases). "When communications between an agency and a non-agency aid the agency's decision-making process and the non-agency did not have an outside interest in obtaining a benefit that is at the expense of competitors, the communication must be considered an intra-agency communication for the purposes of FOIA Exemption 5." *Judicial Watch*, 950 F. Supp. 2d at 218-19 (citing *Nat'l Inst. of Military Justice v. U.S. Dep't of Defense*, 512 F.3d 677 680-85 (D.C. Cir. 2008) ("*NIMJ*"); *Lardner v. U.S. Dep't of Justice*, No. 03-0180, 2005 WL 758267, at *1 (D.D.C. Mar. 31, 2015);

see also, e.g., Hooker v. HHS, 887 F. Supp. 2d 40, 55 (D.D.C. 2012) (upholding agency’s withholding of predecisional and deliberative letter from former employee where he “played the same role in the agency’s process of deliberation after his departure that he would have played had he remained”), *aff’d*, No. 13-5280, 2014 WL 3014213 (D.C. Cir. May 13, 2014); *see also Elec. Privacy Info. Ctr. v. DHS*, 892 F. Supp. 2d 28, 46 (D.D.C. 2012) (“In order to be excluded from the exemption, the contractors must assume a position that is ‘necessarily adverse’ to the government.”).⁶

Moreover, maintaining the confidentiality of these communications is important, as disclosure would discourage the sharing of candid thoughts of the reviewers and scientists. Graff Decl. ¶ 55, 64; *see also* Spinrad Decl. ¶¶ 20-21 (explaining importance of confidentiality in developing scientific products). Here, as in *Formaldehyde*, it is “indisputable” that both “reviewers’ comments are expected to be confidential” and “disclosure of reviewers’ comments would seriously harm the deliberative process.” 889 F.2d at 1124 (internal citations and quotations omitted).

Outside of *Science*’s formal peer review process, NOAA scientists welcomed the informal peer review from a limited number of consultants in evaluating the underlying datasets

⁶ *Department of the Interior v. Klamath Water Users Protective Association*, 532 U.S. 1 (2001), holding that Exemption 5 did not protect documents submitted by American Indian Tribes to the Interior Department addressing tribal interests that were then the subject of state and federal water allocation proceedings, does not prevent the application of the consultant corollary here. Rather, the D.C. Circuit “has allowed any communication that aids the agency’s deliberative process to be protected as ‘intra-agency,’” and “*Klamath* only modifies this by requiring that we not protect communications with interested parties seeking a government benefit that is adverse to others seeking that benefit.” *Judicial Watch*, 950 F. Supp. 2d at 218 (footnote omitted).

Also, to fall within the consultant corollary, there is no requirement that an individual must possess a contractual relationship with the agency in question. *See, e.g., NIMJ*, 512 F.3d at 679-87 (deliberative process privilege exempted from disclosure comments received by Department of Defense, in the course of issuing regulations, from non-governmental lawyers who were former high ranking governmental officials or academics or both).

and developing the Hiatus Paper. Graff Decl. ¶ 56; *see also Formaldehyde Inst.*, 889 F.2d at 1125. In the field of climate science, only a small number of scientists have the relevant, specialized expertise, *see* Spinrad ¶ 17, and it is common for scientists to seek input from colleagues both inside and outside the federal government, *id.* ¶ 19. Sometimes experts that are located outside of the federal government have an expertise that can aid the agency. *See id.* ¶ 17. The consultants here, each of whom is highly regarded in his specialized field, Graff Decl. ¶ 58, share the common goal with NOAA of advancing scientific inquiry and developing accurate information on climate science, *see id.* ¶ 56; *see also Formaldehyde*, 889 F.2d at 1122, quoting *Ryan v. Dep't of Defense*, 617 F.2d 781, 789-90 (D.C. Cir. 1980) (“In the course of its day-to-day activities, an agency often needs to rely on the opinions and recommendations of temporary consultants, as well as its own employees. Such consultations are an integral part of its deliberative process; to conduct this process in public view would inhibit frank discussion of policy matters and likely impair the quality of decisions.”).

As the *Vaughn* and Mark Graff’s declaration make clear, withholding this informal peer review was also appropriate, as their input was used by NOAA to ensure that only the highest quality scientific product would be released. Tom Karl, for example, asked a scientist affiliated with the National Center for Atmospheric Research to comment on a draft while the paper was in development, and that scientist provided insights and feedback in response. Graff Decl. ¶ 59; *Vaughn* part 1 bates 66-67 (explaining redacted information contained feedback and review of a data analysis for the paper and raises issue for further discussion). Other climate science experts responded to the authors upon learning from *Science* of the pending publication, as commonly occurs after an author submits a high-profile scientific paper for publication. *See* Graff Decl. ¶ 60. Two other experts provided feedback on the Paper, discussed implications of the Hiatus

Paper’s conclusion, or provided and discussed data analyses, Graff Decl. ¶¶ 62-63, *Vaughn* part 1 at bates 292-93, which helped provide important feedback about the agency’s product and informed the agency’s continuous, ongoing work of updating agency datasets and trend analyses, Graff Decl. ¶¶ 62-63; *see Vaughn* part 1 at bates 295-96 (noting that expert’s work may be incorporated into a future NOAA analysis). With respect to these types of communications, a general and well-established presumption exists that these communications will not be shared with a wider audience, which is essential to scientific exchanges and the testing and refinement of ideas that help ensure that the agency’s scientific products are well developed and robust. *See Spinrad* Decl. ¶ 20. Disclosing this material could inhibit candid discussions and exchanges and chill the open and frank exchanges upon which NOAA scientists rely. *See Graff* Decl. ¶ 64.

In sum, NOAA’s *Vaughn* and declarations make plain that the agency appropriately applied Exemption 5 to redact and withhold information protected by the deliberative process privilege.

III. NOAA Properly Withheld Information Under Exemption 6

Exemption 6 protects the privacy of individuals from unwarranted invasion. Exemption 6 allows the withholding of information about individuals in “personnel and medical files and similar files” when the disclosure of such information would constitute a “clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). Exemption 6 requires the agency to balance the individual’s right to privacy against the public’s interest in disclosure. *See U.S. Dep’t of the Air Force v. Rose*, 425 U.S. 352, 372 (1976); *Reed v. NLRB*, 927 F.2d 1249, 1251 (D.C. Cir. 1991). When weighing the public interest involved in disclosure, the court considers: (1) whether disclosure would serve the “core purpose” for which Congress enacted the FOIA. *i.e.*, to show “what the government is up to,” and (2) the public interest in general, not particular interests of

the person or group seeking the information. *U.S. Dep't of Justice v. Reporters Comm. For Freedom of the Press*, 489 U.S. 749, 750, 775 (1989).

Here, Exemption 6 has been applied to protect information in which individuals have a recognized privacy interest, specifically, the phone numbers of NOAA scientists. *See, e.g., Vaughn* part 1 at bates 23. Because this information can be identified as applying to a specific individual, the information withheld under Exemption 6 constitutes “similar files” within the meaning of statute; courts have routinely held that phone numbers meet this threshold test. *See, e.g., Judicial Watch, Inc. v. U.S. Dep't of State*, 875 F. Supp. 2d 37, 47 (D.D.C. 2012); *Smith v. Dep't of Labor*, 798 F. Supp. 2d 274, 283 (D.D.C. 2011); *Lowy v. IRS*, No. C 10-767, 2011 WL 1211479, at *16 (N.D. Cal. Mar. 30, 2011).

This threshold test having been met, the next step is to compare the privacy interest at stake with the benefit disclosure would provide toward the public’s understanding of how government operates. *Dep't of Def. v. Fed. Labor Relations Auth.*, 510 U.S. 487, 495 (1994). Here, there is a substantial privacy interest at stake in preventing the burden of unsolicited phone calls and harassment. *See Moore v. Bush*, 601 F. Supp. 2d 6, 14 (D.D.C. 2009); *United Am. Fin., Inc. v. Potter*, 667 F. Supp. 2d 49, 65-66 (D.D.C. 2009); *cf. Shurtleff v. EPA*, 991 F. Supp. 2d 1, 18 (D.D.C. 2013) (protecting email address). By contrast, an individual’s phone number sheds no light on the operations and activities of the agency. NOAA balances the individual’s strong privacy interests against the fact that release of this information would fail to shed any light on the conduct of governmental business, and reasonably concluded that, with regard to the information withheld pursuant to Exemption 6, the individual privacy interests outweighed any public interest in disclosure. Graff Decl. ¶ 66. *See FLRA*, 510 U.S. at 497 (“We must weigh the privacy interest . . . in nondisclosure . . . against the only relevant public interest in the FOIA

balancing analysis the extent to which disclosure of the information sought would she[d] light on an agency's performance of its statutory duties' or otherwise let citizens know what their government is up to."). Accordingly, Exemption 6 was properly applied.

IV. NOAA Has Produced All Reasonably Segregable Information

The FOIA requires that, if a record contains information that is exempt from disclosure, any "reasonably segregable" information must be disclosed after deletion of the exempt information, 5 U.S.C. § 552(b), unless the non-exempt portions are "inextricably intertwined with exempt portions." *Mead Data Ctr. v. U.S. Dep't of Air Force*, 566 F.2d 242, 260 (D.C. Cir. 1977); *Kurdyukov v. U.S. Coast Guard*, 578 F. Supp. 2d 114, 128 (D.D.C. 2008). This provision does not, however, require disclosure of records in which the non-exempt information that remains is meaningless. *See Nat'l Sec. Archive Fund v. CIA*, 402 F. Supp. 2d 211, 221 (D.D.C. 2005) (concluding that no reasonably segregable information existed because "the non-exempt information would produce only incomplete, fragmented, unintelligible sentences composed of isolated, meaningless words"). Consistent with this obligation, NOAA has reviewed each of the documents redacted or withheld and has concluded that there is no additional non-exempt information that may reasonably be segregated and released. *See* Graff Decl. ¶ 67. Accordingly, no further non-exempt material is subject to release.

CONCLUSION

NOAA has conducted an adequate search for documents responsive to Plaintiff's request, and properly withheld information exempt from disclosure under Exemptions 5 and 6. Furthermore, all reasonably segregable information has been released to Plaintiff. For these reasons, the Department of Commerce respectfully requests that summary judgment be entered in its favor.

Dated: December 15, 2016

Respectfully submitted,

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ELIZABETH J. SHAPIRO
Deputy Director, Federal Programs Branch

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Counsel for Defendant

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

**STATEMENT OF MATERIAL FACTS IN SUPPORT OF UNITED STATES
DEPARTMENT OF COMMERCE’S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local Civil Rule 7(h)(1), the following is a statement of material facts as to which the movant, the United States Department of Commerce (“the Department”), contends there is no genuine issue:

1. Between September 2013 and November 2014, the Intergovernmental Panel on Climate Change released a report in stages that concluded that the upward global surface temperature trend from 1998-2012 was lower than that from 1951-2012. Declaration of Mark Graff (“Graff Decl.”) ¶ 9.
2. The apparent observed slowing of the global surface temperatures was dubbed the “hiatus.” Graff Decl. ¶ 9.
3. The National Centers for Environmental Information (“NCEI”) at NOAA produces and maintains datasets for global ocean areas and global land areas. Graff Decl. ¶ 6.
4. NCEI scientists continually work to improve the datasets to provide the public the most up-to-date and accurate information. Graff Decl. ¶ 5.

5. NCEI scientists regularly interpret and analyze datasets and release to the public the most up-to-date climate science, often through publication in scientific journals. Graff Decl. ¶ 7.
6. On June 4, 2015, a study authored by NOAA scientists was published in *Science* entitled *Possible Artifacts of Data Biases in the Recent Global Surface Warming Hiatus* (“Hiatus Paper” or “the Paper”). Graff Decl. ¶ 23.
7. The Hiatus Paper is an example of analysis and interpretation of the updated underlying data. Graff Decl. ¶ 10.
8. Around late October 2014, Tom Karl, then the Director of NCEI, circulated a draft paper to a group of NOAA scientists that developed an idea for properly accounting for the alleged “hiatus” based on the additional two years of global temperature data and the improvements to NOAA’s sea surface temperature dataset. Graff Decl. ¶ 11.
9. Karl sought feedback on the draft paper, and a team of scientists at NOAA formed to develop a manuscript. *See* Graff Decl. ¶¶ 11-13.
10. Many drafts and revisions were exchanged among these scientists, along with emails discussing various aspects of the paper or its content, including suggestions on how best to describe the data, opinions on statistical error uncertainty ranges, thoughts on implications of other researchers’ work, and so on. Graff Decl. ¶ 13.
11. Such collaboration via discussions and drafts is standard practice at NCEI. Graff Decl. ¶ 13.
12. In December 2014, the authors submitted the draft paper to the journal *Science*. Graff Decl. ¶ 14.

13. Once there, the draft paper went through the journal's peer review process, in which five anonymous peer reviewers weighed in on the manuscript. Graff Decl. ¶ 20.
14. When the authors received feedback, they discussed internally how to respond in writing to the comments they received, and also revised the manuscript to address the questions and concerns raised. *See* Graff Decl. ¶ 21.
15. After a second round of peer review, NOAA received word that the article would be published, and *Science* published the Paper on its website on June 4, 2015. Graff Decl. ¶ 23.
16. Plaintiffs' FOIA request, dated October 30, 2015, sought in relevant part:
 1. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the methodology and utilization of Night Marine Air Temperatures to adjust ship and buoy temperature data.
 2. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the use of other global temperature datasets for both NOAA's in-house dataset improvements and monthly press releases conveying information to the public about global temperatures.
 3. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the utilization and consideration of satellite bulk atmospheric temperature readings for use in global temperature datasets.Graff Decl. ¶ 24; *see also* ECF No. 8-1.
17. Upon review of the request, NOAA officials determined that it did not reasonably describe the records requested. Graff Decl. ¶ 25.
18. Through counsel, NOAA conferred with Plaintiff to negotiate a clear description of the material sought. Graff Decl. ¶ 25.

19. During the course of those discussions, NOAA indicated to Plaintiff that it understood the request to reflect an interest in the Hiatus Paper and accordingly suggested modifying the request to call for a search for all documents and communications referring to the Hiatus Paper from its nine authors. Graff Decl. ¶ 26.
20. Plaintiff confirmed its interest in that study, but indicated that it sought only records referring to the topics listed in its initial FOIA request. Graff Decl. ¶ 26.
21. The parties ultimately “reached an agreement regarding the scope of the request and relevant search parameters.” Second Joint Status Report, ECF No. 10 at 2.
22. For Plaintiff’s FOIA request, NOAA agreed to search the records of the nine authors of the Hiatus Paper for records referring to that paper and that contain one of the following search terms: “NMAT,” “Night Marine Air Temperatures,” “ISTI,” “ICOADS,” “sea ice,” “satellite,” “Advanced Very High Resolution Radiometer,” “AVHRR,” “Advanced Microwave Scanning Radiometer,” and “AMSR.” Second Joint Status Report, ECF No. 10 at 2; Graff Decl. ¶ 27.
23. NOAA determined that the records requested resided within one office, NCEI, because all of the agreed-upon custodians work or had worked there during the time frame in which responsive records were created. Graff Decl. ¶ 33.
24. NOAA then directed those custodians to search their email, electronic, and paper files for records referring to the Karl Study and containing the agreed-upon search terms. Graff Decl. ¶ 35.
25. Those scientists searched their electronic files (including email) and non-electronic files, collected any potentially responsive material, and forwarded that material for responsiveness and exemption review. Graff Decl. ¶¶ 36-38.

26. One custodian had retired from NCEI by the time the search was conducted and so that former employee's archived email was searched by another custodian. No additional records responsive to this request from that author are known to have existed following his retirement. *See* Graff Decl. ¶ 36 n.1.
27. There were no common areas at NCEI for NOAA to search. Graff Decl. ¶ 37.
28. Thus, all files determined to be reasonably likely to contain responsive, non-duplicative material were searched. Graff Decl. ¶ 44.
29. On May 27, 2016, NOAA produced 102 pages of material in its entirety and 90 partially redacted pages. Graff Decl. ¶ 29; Fourth Joint Status Report, ECF No. 12 at 2. NOAA withheld in their entirety 8,013 pages of records. Graff Decl. ¶ 29; Fourth Joint Status Report, ECF No. 12 at 2
30. NOAA informed Plaintiff at that time that because it sought records from nine separate custodians, a significant amount of duplicative material existed in the responsive records. *See* Graff Decl. ¶ 29
31. Upon further review of the withheld information, NOAA made two supplemental productions. *See* Graff Decl. ¶¶ 30-31.
32. On September 16, 2016, NOAA released to Plaintiff an additional 44 pages of material (7 of those pages were partially redacted to exclude Mr. Karl's phone number), Graff Decl. ¶ 30.
33. Contemporaneously with this filing (on December 15), NOAA is releasing an additional 62 records. Graff Decl. ¶ 31.
34. NOAA withheld information pursuant to FOIA Exemption 5 and the deliberative process privilege. *See Vaughn Index.*

35. NOAA withheld information pursuant to FOIA Exemption 6. *See Vaughn* Index.

Dated: December 15, 2016

Respectfully submitted,

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ELIZABETH J. SHAPIRO
Deputy Director, Federal Programs Branch

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Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2016, I filed the attached electronically with the Clerk of the United States District Court for the District of Columbia through the CM/ECF system, which caused the following counsel of record to be served by electronic means:

Lauren Burke
Judicial Watch, Inc.
425 Third Street SW, Suite 800
Washington, DC 20024
(202) 646-5172
Lburke@judicialwatch.org

Attorney for Plaintiff

/s/ Kevin M. Snell

From: John Almeida - NOAA Federal <john.almeida@noaa.gov>
Sent: Monday, December 19, 2016 7:42 AM
To: Mark Graff - NOAA Federal; Samuel Dixon - NOAA Affiliate
Subject: Fwd: New Case: FOIA: Friends of Animals et al v. NOAA; response due 1/11/17
Attachments: ATT00001.html; Friends of Animals LIONS.PNG; FOA v. NOAA Complaint.pdf; ATT00004.html; 16-cv-3007 Docket.pdf; ATT00006.html

(b)(5)

----- Forwarded message -----

From: Lois Schiffer - NOAA Federal <lois.schiffer@noaa.gov>
Date: Sat, Dec 17, 2016 at 10:55 PM
Subject: Fwd: New Case: FOIA: Friends of Animals et al v. NOAA; response due 1/11/17
To: john.almeida@noaa.gov

John we can discuss next week

Sent from my iPhone

Begin forwarded message:

From: "McClelland, Michelle (Federal)" <mMcClelland@doc.gov>
To: "Cannon, Michael (Federal)" <MCannon@doc.gov>
Cc: "Schiffer, Lois (Federal)" <Lois.Schiffer@noaa.gov>
Subject: Fwd: New Case: FOIA: Friends of Animals et al v. NOAA; response due 1/11/17

Incoming from DOJ on subject FOIA case. (b)(5). Thx

Sent from my iPhone

Begin forwarded message:

From: "Traskos, Kevin (USACO)" <Kevin.Traskos@usdoj.gov>
To: "Sandoval, Marisela (USACO)" <Marisela.Sandoval@usdoj.gov>
Cc: "Kellogg, Ian (USACO)" <Ian.Kellogg@usdoj.gov>, "Butler, Leah (USACO) [Contractor]" <Leah.Butler3@usdoj.gov>, "Jones, Meghan (USACO)" <Meghan.Jones@usdoj.gov>, "McConnell, Caitlin (USACO)" <Caitlin.McConnell@usdoj.gov>, "McClelland, Michelle (Federal)" <mMcClelland@doc.gov>
Subject: FW: New Case: FOIA: Friends of Animals et al v. NOAA; response due 1/11/17

(b)(5)
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

Thanks!

Kevin

Warning: This message may contain confidential or privileged information. If you have received this email in error, please contact me and delete the email. Thank you.

Kevin Traskos

Chief, Civil Division

Assistant U.S. Attorney

U.S. Attorney's Office, District of Colorado

1225 17th Street, Suite 700

Denver, Colorado 80207

[\(303\) 454-0184](tel:3034540184)

Fax: [\(303\) 454-0404](tel:3034540404)

Kevin.Traskos@usdoj.gov

From: McConnell, Caitlin (USACO)
Sent: Monday, December 12, 2016 3:13 PM
To: Traskos, Kevin (USACO) <KTraskos@usa.doj.gov>

Cc: Jones, Meghan (USACO) <mjones1@usa.doj.gov>

Subject: New Case: FOIA: Friends of Animals et al v. NOAA; response due 1/11/17

Hello,

Today we received the attached summons and complaint via certified mail. (b)(5)

[REDACTED]

(b)(5)

Thank you,
Caitlin

(b) (4)

(b) (4)

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Image not available for this document, ID: 0.7.3707.13502 000004

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
District of Colorado

FRIENDS OF ANIMALS, a New York non-profit corporation, and
SEA SHEPHERD LEGAL, a Washington non-profit corporation
Plaintiff(s)
v.

Civil Action No. 16-3007

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, an agency of the United States
Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Bob Troyer
United States Attorney
1225 17th Street
Suit 700
Denver, CO 80202

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Michael Harris
Wildlife Law Program
Friends of Animals
7500 E. Arapahoe Road, Suite 385
Centennial, CO 80112

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 16-3007

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):*

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
FRIENDS OF ANIMALS, a New York non-profit corporation, and
SEA SHEPHERD LEGAL, a Washington non-profit corporation
(b) County of Residence of First Listed Plaintiff Arapahoe County
(c) Attorneys Michael Harris, Friends of Animals, Wildlife Law Program, 7500 E. Arapahoe Rd., Suite 385, Centennial, CO 80112; Tel: (720) 949-7791

DEFENDANTS
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, an agency of the
United States
County of Residence of First Listed Defendant District of Columbia
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

II. BASIS OF JURISDICTION
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question
4 Diversity

III. CITIZENSHIP OF PRINCIPAL PARTIES
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district
6 Multidistrict litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing:
5 U.S.C 552- Failure to respond to request under the Freedom of Information Act
Brief description of cause: AP Docket

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMANDS
JURY DEMAND: Yes No

DATE: 12/08/2016
SIGNATURE OF ATTORNEY OF RECORD: /s/ Michael Ray Harris

FOR OFFICE USE ONLY
RECEIPT #
AMOUNT
APPLYING IFP
JUDGE
MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows.

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment noting, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example:

U.S. Civil Statute: 47 USC 553

Brief Description:

Unauthorized reception of cable service

Or:

"AP Docket"

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

FRIENDS OF ANIMALS, and
SEA SHEPHERD LEGAL;

Plaintiffs,

v.

NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION
an agency of the United States,

Defendant.

Civ. No. 16-3007

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF
(FREEDOM OF INFORMATION ACT)**

INTRODUCTION

1. This action is brought to remedy violations of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et. seq.* Specifically, it challenges the failure of the National Oceanic and Atmospheric Administration (“Federal Defendant”) to provide a final determination, including all responsive documents, within the time required by FOIA in regard to Plaintiffs Friends of Animals’ and Sea Shepherd Legal’s (“Plaintiffs”) April 14, 2016 request for information (“Request”).

2. In the Request, Plaintiffs asked for all documents in Federal Defendant’s possession related to pending or final approvals under the Marine Mammal Protection Act, National Environmental Policy Act and the Endangered Species Act for anthropogenic activities affecting the Cook Inlet beluga whale. Plaintiffs also sought all documents related to biological analyses and threats to the Cook Inlet beluga whale. *See* Exhibit A.

3. As of the date on this Complaint, Federal Defendant has not made a final determination regarding the release of documents, nor has Federal Defendant provided a timeline or other plan for compliance with the requirements of FOIA to indicate when or whether the Request will be fully satisfied.

4. Federal Defendant is unlawfully withholding public disclosure of information that Plaintiffs are entitled to receive under FOIA. By failing to make either a timely determination or timely and complete releases after the initial tranche of documents, Federal Defendant failed to comply with the statutory mandates and deadlines imposed by FOIA.

5. Accordingly, Plaintiffs seek declaratory relief establishing that Federal Defendant has violated FOIA. Plaintiffs also seek injunctive relief directing Federal Defendant to make a determination on the Request, provide a timeline for the release of the remaining documents, and promptly provide the requested material free of cost.

6. Plaintiffs bring this lawsuit to obtain timely disclosure of critical information related to authorized takes, and to pending authorizations of requested takes, of hundreds of Cook Inlet beluga whales from multiple and geographically overlapping oil and gas projects in the Cook Inlet. Given the significant potential impact upon the rapidly diminishing population of Cook Inlet beluga whales and the strong public interest in disclosure of information that may directly assist Plaintiffs' ongoing efforts to protect this population, Plaintiffs seek expeditious treatment of their Complaint pursuant to 28 U.S.C. § 1657.

JURISDICTION AND VENUE

7. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA) and 28 U.S.C. § 1331 (federal question). This Court may grant the declaratory relief under 28 U.S.C. §§ 2201, *et seq.* (Declaratory Judgment Act) and injunctive relief under 5 U.S.C. § 552(a)(4)(B) (FOIA). An actual, justiciable controversy exists within the meaning of the Declaratory Judgment Act between Plaintiffs and Federal Defendant. The Court has jurisdiction, upon receipt of a complaint, "to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B).

8. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B), which provides venue for FOIA cases in this district as the district in which a plaintiff resides. Friends of Animals maintains a principle office here in Colorado. Venue is also proper under 28 U.S.C. § 1391(b) because the defendant is subject to personal jurisdiction in this federal district.

PARTIES

9. Friends of Animals is a nonprofit international advocacy organization with nearly 200,000 members, incorporated in the state of New York since 1957. Friends of Animals seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living and domestic animals. Friends of Animals engages in a variety of advocacy programs in support of these goals. Friends of Animals informs its members about animal advocacy issues as well as the organization's progress in addressing these issues through its magazine called *ActionLine*, its website, and other reports. Friends of Animals has published articles and information advocating for the protection of wild species so that they can live unfettered in their natural habitats.

10. In 2013, Friends of Animals created a federal wildlife law program. The program established its principle office in Centennial, Colorado. The office consists of four full-time employees and one part-time employee. Through this office, Friends of Animals submitted the Request at issue in this action.

11. Sea Shepherd Legal is a nonprofit public interest law organization dedicated to its mission to end the destruction of habitat and slaughter of wildlife in the world's oceans in order to conserve and protect ecosystems and species. In furtherance of that mission, Sea Shepherd Legal has been involved in protecting marine life throughout the world. Sea Shepherd Legal uses public outreach and education to advocate for and motivate the creation of greater protections for cetaceans and other marine life.

12. The interests of Plaintiffs and their members are harmed by Federal Defendant's failure to release the requested documents in a timely manner, which prevents Plaintiffs

from obtaining, analyzing, disseminating and using the requested information to advance Plaintiffs' missions of ensuring the protection of marine wildlife and, in particular here, the Cook Inlet beluga whale.

13. Federal Defendant is an agency within the meaning of 5 U.S.C. § 552(f)(1). Federal Defendant is responsible for fulfilling Plaintiffs' Request and complying with all federal laws.

STATUTORY BACKGROUND

14. Congress enacted FOIA to ensure public access to U.S. government records. FOIA carries a presumption of disclosure. *Dep't of State v Ray*, 502 U.S. 164 (1991). Upon receipt of a written request that "reasonably describes" the records sought and complies with "published rules . . . and procedures to be followed," agencies of the United States government are required to "promptly" disclose their records, unless they can be lawfully withheld from disclosure under one of nine specific exemptions in FOIA. 5 U.S.C. § 552(a)(3)(A). The burden is on the government—not the requestor or public—to justify why particular information may be withheld. *Ray*, 502 U.S. at 164.

15. FOIA requires agencies to "determine within 20 days . . . after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefore, and of the right of such person to appeal to the head of the agency any adverse determination." *Id.* at § 552(a)(6)(A)(i).

16. On determination by an agency to comply with the request, the records shall be made "promptly available." *Id.* at § 552(a)(6)(C).

17. In "unusual circumstances," an agency may extend the time limits for up to 10 working days by providing written notice to the requester setting forth the unusual circumstance(s) and the date on which the determination is expected to be dispatched. *Id.* at § 552(a)(6)(B).

18. In some limited circumstances, FOIA allows an agency to seek an extension potentially beyond 10 days. Specifically, FOIA requires an agency to provide written notification to the requester: (1) offering an opportunity to limit the scope of the request so that it may be processed within the 20 work-day limit, or (2) offering an opportunity to arrange with the agency an “alternative time frame” for processing the request. *Id.* at § 552(a)(6)(B)(ii). If the agency elects this option, it must make its FOIA Public Liaison available to the requester to assist in any disputes with the agency. *Id.*

19. If the agency fails to make a determination on a document request within 20 work-days, or within the limited additional time permitted upon proper notification of “unusual circumstances,” the requester is deemed to have constructively exhausted administrative remedies and may seek judicial review. *Id.* at § 552(a)(6)(C). *Oglesby v. Dep’t of Army*, 920 F.2d 57(D.C. Cir 1990), *Nurse v. Sec’y of the Air Force*, 231 F. Supp. 2d 323, 328 (D.D.C. 2002) (“The FOIA is considered a unique statute because it recognizes a constructive exhaustion doctrine for purposes of judicial review upon the expiration of certain relevant FOIA deadlines.”)

20. FOIA requires that the agency “shall make the records promptly available to any person” and may not defer release of responsive documents indefinitely. *Id.* at § 552 (a)(3)(A). Failure to issue a determination and to complete the release of documents in a timely fashion is a violation of FOIA even if the initial response and releases may have been prompt. *Munger, Tolles, Olsen v. Dept. of Army*, 58 F. Supp. 3d 1050 (C.D. Cal 2014). *See also Fiduccia v. U.S. Dep’t of Justice*, 185 F.3d 1035, 1041 (9th Cir. 1999)(“Congress gave agencies 20 days, not years, to decide whether to comply with requests and notify the requesters”); *Long v. IRS*, 693 F.2d 907, 910 (9th Cir. 1982) (“[U]nreasonable delays in disclosing non-exempt documents violate the intent and purpose of the FOIA, and the courts have a duty to prevent these abuses.”).

FACTUAL BACKGROUND

21. On April 12, 2016, Plaintiffs submitted the Request under FOIA to Federal Defendant reasonably describing all documents of which Plaintiffs sought disclosure.

22. On April 21, 2016, Federal Defendant provided written notification confirming receipt of the Request and disclosing that the Request had been assigned for processing on April 14, 2016.

23. In the confirmation, Federal Defendant did not request any additional information needed to clarify the Request. Federal Defendant did request a Scope Conference with Friends of Animals.

24. On April 29, 2016, Federal Defendant and Friends of Animals conducted the Scope Conference. During this conference, Federal Defendant did not request any additional information needed to clarify the Request but asked Plaintiffs to prioritize the individual document categories identified in the Request. Friends of Animals instructed Federal Defendant to proceed with the original FOIA request, but agreed to send a letter outlining the priorities of the original FOIA request.

25. On May 10, 2016, Friends of Animals submitted a letter to Federal Defendant outlining the top priorities of the original FOIA request. In that letter, Friends of Animals stated as follows: "As discussed on the April 29, 2016 conference call, Friends of Animals has not changed or altered the original request, nor are we waiving under [sic] rights under FOIA. We provide the following priorities merely to assist the agency in processing our request."

26. On May 16, 2016, Federal Defendant confirmed receipt of Friends of Animals' May 10 letter outlining the top priorities of the original FOIA request and indicated the need for a 10-day extension due to "unusual circumstances." Federal Defendant further stated that the first interim release of records could be anticipated on May 25, 2016.

27. The 20 work-day time limit for providing a determination on the Request commenced on April 14 and, thus, expired on May 12, 2016.

28. Federal Defendant made two interim releases of documents. The first release was dated June 9, 2016. The second was dated July 26, 2016 (but not received until August 29, 2016).

29. Since August 29, 2016, no further documents have been released.

30. Since August 29, 2016, Federal Defendant has not provided any timeline for the release of any remaining documents.

31. As of the date of this complaint, Plaintiffs have not received a final determination on their Request.

32. Plaintiffs believe and allege that Federal Defendant is unlawfully withholding public disclosure of information sought by Plaintiffs, information to which they are entitled to receive promptly, and for which Federal Defendant has not provided a valid disclosure exemption.

33. Federal Defendant has offered no reasonable explanation for its delay, and it has failed to estimate when it will finally be able to comply with its obligations under FOIA.

34. Since Federal Defendant has neither produced responsive documents nor provided an appealable final determination, Plaintiffs have constructively exhausted their administrative remedies with respect to the requested documents.

CLAIM FOR RELIEF
Violation of Freedom of Information Act
Failure to Respond with a Determination

35. Plaintiffs herein incorporate all allegations contained in the proceeding paragraphs.

36. FOIA provides that any person may obtain those agency records that are not subject to the FOIA disclosure exemptions promptly. 5 U.S.C. § 552 (a)(3)(A).

37. Plaintiffs properly requested records within the control of Federal Defendant.

38. Federal Defendant failed to provide Plaintiffs with a final determination as to whether Federal Defendant has any non-exempt records responsive to the Request and whether it intended to release such records within the required timeframe. *Id.* § 552(a)(6)(A)(i) and § 552(a)(6)(B).

39. Federal Defendant failed to properly invoke and comply with FOIA's provision allowing a 10 working day extension for "unusual circumstances." *Id.* at § 552(a)(6)(B)(i).

40. Federal Defendant failed to properly invoke and comply with FOIA's provision permitting an extension of potentially greater than 10 working days by offering Plaintiffs an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. *Id.* at § 552(a)(6)(B)(ii).

41. Federal Defendant has failed to promptly make available responsive documents without unreasonable delay.

42. Federal Defendant's failures to comply with FOIA are subject to judicial review under 5 U.S.C. § 552 (a)(4)(B). Federal Defendant's failure to issue a determination within the statutory deadlines violates 5 U.S.C. § 552 (a)(3)(A).

43. Accordingly, Plaintiffs are entitled to injunctive and declaratory relief with respect to a determination on the Request.

PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court enter judgment providing the following relief:

1. Declare that Federal Defendant violated FOIA by failing to (1) make a determination on Plaintiffs' Request and (2) make records responsive to Plaintiffs' Request available within the statutory deadlines.
2. Order Federal Defendant to (1) provide Plaintiffs with a final determination and (2) process and release all records responsive to the Request at no cost to Plaintiffs within 10 days from the date of such order;

3. Retain jurisdiction of this action to ensure the processing of the Request, and to ensure that no agency records are wrongfully withheld;
4. Award Plaintiffs costs, including reasonable attorney fees and litigation costs in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
5. Grant Plaintiffs any other relief that the Court deems just and proper.

Dated: December 08, 2016

Respectfully Submitted,

/s/ Michael Harris
Michael Ray Harris
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Attorney for Plaintiff Friends of Animals

/s/ Brett Sommermeyer
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Attorney for Plaintiff Sea Shepherd Legal

EXHIBIT A

~~EXPLOITERS~~
FRIENDS
of ANIMALS

April 12, 2016

Submitted Via U.S Certified Mail and FOIAonline

National Oceanic and Atmospheric Administration
Public Reference Facility (SOU1000)
1315 East-West Highway (SSMC3)
Room 9719
Silver Spring, Maryland 20910

Re: FOIA Request for Records Relating to Incidental Harassment Authorizations
Issued for Activities Impacting Cook Inlet Beluga Whales in Federal Waters
Administered by the National Oceanic and Atmospheric Administration

Dear FOIA Officer:

I am writing on behalf of Friends of Animals, Sea Shepherd Legal, and the Turtle Island Restoration Network (collectively, the "Requesters"). Pursuant to 43 C.F.R. Part 2, and the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, Requesters seek the disclosure of all documents¹ in the categories listed below regarding the harassment of the distinct population segment of Cook Inlet beluga whales in waters managed by the National Oceanic and Atmospheric Administration ("NOAA"). Unless otherwise specified, Requesters seek all documents for the time period starting January 26th, 2007 and ending April 11, 2016. Requesters also request a full waiver of all search and duplication fees.

¹ The terms "document(s)" and "records" are used in the broadest sense contemplated by Federal Rule of Civil Procedure 34. It means all written, transcribed, recorded or graphic matters, however produced or reproduced. This definition includes, but is not limited to, any and all original copies or drafts of any and all of the following: records; notes; nonconforming copies that contain deletions, insertions, corrections, handwritten notes or comment summaries; memoranda; schedules; contracts; binders; work papers; logs; diaries; work sheets; files; letters; correspondence; summaries of memoranda; reports or memoranda of telephone conversations or records of personal conversations or interviews; handwritten notes; telephone logs; facsimiles; summaries; invoices; promissory notes; contracts; loan agreements; vouchers; billing statements; tape recordings or transcripts of tape recordings; photographs; videotapes; computerized output or data bases; electronic files; computer disks; computer CDs' electronic mail transmittals; data and all other writings; calculations; and figures or symbols of any kind which, in any manner mentioned, relate to the subjects of the specific requests contained below. This request includes all documents that have ever been within your custody or control, including all inter and intra agency documents, whether they exist in agency working, investigative, retired, electronic mail, or other files currently or at any other time.

A. FOIA Request.

Over the course of several years, NOAA has issued multiple Letters of Authorization (“LoA”) and Incidental Harassment Authorizations (“IHA”) for Level B takes of Cook Inlet beluga whales under the Marine Mammal Protection Act (“MMPA”) incidental to anthropogenic activities in Cook Inlet. Under the MMPA, Level B takes have “the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, feeding, or sheltering.” 16 U.S.C. § 1362(18).

Please provide the following documents in your possession, whether received, created, and/or distributed by NOAA:

- (1) All documents regarding the status of any pending anthropogenic activities in the Cook Inlet area for which IHAs or LoAs have been requested for takes of Cook Inlet belugas;
- (2) All documents regarding the final IHAs or LoAs issued for anthropogenic activities in Cook Inlet, including all documents supporting a “negligible” impact finding pursuant to the MMPA;
- (3) All documents, including research or commentary, not currently available to the public concerning the specific effects of anthropogenic noise or cumulative effects of Level B takes on the Cook Inlet beluga population;
- (4) All documents regarding the cumulative or synergistic effects of Level B takes of Cook Inlet beluga whales resulting from anthropogenic development activities over the past ten years (2007-2016);
- (5) All documents regarding Level A² takes of Cook Inlet belugas resulting from anthropogenic activities;
- (6) All documents regarding the status of NOAA’s preparation of the programmatic EA and EIS analyzing takes of marine mammals of Cook Inlet incidental to anthropogenic activities and all records of anticipated new agency actions or research pertaining to Cook Inlet belugas;
- (7) All documents regarding the preparation of the final recovery plan for Cook Inlet belugas under the federal Endangered Species Act (“ESA”);
- (8) All documents regarding any limiting factors analysis completed or in progress for Cook Inlet belugas;
- (9) All documents regarding any prioritization of threats to Cook Inlet belugas;
- (10) All documents of any accounting(s) of anthropogenic activities in the Cook Inlet that may result in the taking of a beluga whale;

² As defined as having “the potential to injure a marine mammal or marine mammal stock in the wild.” 16 U.S.C. § 1362(18)(A)(i).

- (11) All documents regarding any population monitoring for Cook Inlet belugas planned or in progress for 2016;
- (12) All documents regarding any population monitoring for Cook Inlet belugas conducted within the last three years, including any population surveys (or similar activities) in proposed project areas conducted by the applicant(s) for an IHA or LoA;
- (13) All documents regarding any formal or informal consultations involving Cook Inlet belugas under Section 7 of the ESA.

The items specifically requested are not meant to be exclusive of any other documents that, although not specially requested, have a reasonable relationship to the subject matter of this request.

For purposes of this request, "anthropogenic activities" are defined to encompass any activity wholly or substantially relating to vessel or aircraft noise (if vessel or aircraft movements are products of an anthropogenic project), ship traffic, including strikes, dredging, pile driving, explosions, demolition, sonar use, oil and gas exploration (including seismic operations, drilling, platform noise, airguns, multibeam echosounders, and sub-bottom profilers), shore construction, military testing activities (i.e. explosions, sonar), pipe and cable laying, water pollution and any other activities reasonably affiliated with anthropogenic projects.

The Supreme Court has stated that FOIA establishes a "strong presumption in favor of disclosure" of requested information, and that the burden is on the government to substantiate why information may not be released under the act's various exemptions. *Department of State v. Ray*, 502 U.S. 164, 173 (1991). Congress affirmed these tenets of FOIA in the Open Government Act of 2007, finding that "the Government [should] remain open and accessible to the American people" and always be based "not upon the need to know but upon the fundamental right to know." Public Law 110-175, 121 Stat. 2524, 2525 (Dec. 31, 2007) (internal citations omitted). President Obama has also directed that "[t]he presumption of disclosure should be applied to all decisions involving FOIA." 74 Fed. Reg. 4683 (Jan. 26, 2009). Please consider the foregoing before withholding any documents that are responsive to this request.

The Requesters anticipate that you will make the requested materials available within the statutorily prescribed period. We also request that you waive any applicable fees since disclosure meets the statutory standard for a fee waiver in that it is clearly "in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii).

B. Fee Waiver Request.

FOIA provides that "documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). The legislative history of FOIA, as well as the case law interpreting the Act, indicates that the statute's fee waiver provision is to be liberally construed favoring the public interest. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 Cong. Rec. S14298 (Sept. 30, 1986) (Sen. Leahy)).

This request for information qualifies for a fee waiver under this standard and, accordingly, we request that all fees be waived. This request satisfies both statutory and regulatory requirements for granting a fee waiver. Below we explain how the request and the Requesters meet each of requirements for a fee waiver delineated in NOAA's FOIA regulations (under its parent agency, the Department of Commerce) 15 CFR § 4.11(k).

1. Disclosure of the Information Requested is in the Public Interest.

(i) *"The subject of the request: whether the subject of the requested records concerns the operations or activities of the Government."*

The requested records concern the operations and activities of NOAA, a federal agency. Specifically, they concern the operation of this federal agency, its management of federally protected Cook Inlet beluga whales, and its permitting decision-making process.

(ii) *"The informative value of the information to be disclosed: whether the disclosure is 'likely to contribute' to an understanding of Government operations or activities."*

(a) How the contents of the records are meaningfully informative;

The requested documents would have substantive, meaningfully informative value and would be likely to contribute to a better understanding of NOAA and its actions. The documents will illuminate in a clear and direct way the operations and activities of the federal government and the activities that it undertakes in regards to management of Cook Inlet beluga whales and the anthropogenic projects that affect them. Although Cook Inlet beluga whales have been in the public spotlight in recent years due to their dwindling numbers and Endangered Species Act listing in 2008, not much is definitively known about the Level B take, cumulative, and noise pollution impacts on Cook Inlet beluga whales from anthropogenic activities. The information requested concerns the operations of the agency responsible for approving activities that have the potential to seriously injure or even kill Cook Inlet

beluga whales and the details of NOAA's past and current permitting decisions and decision-making process in regards to these whales.

- (b) The logical connection between the content of the records and the operations or activities;

The release of the requested documents will significantly contribute to public understanding and oversight of the federal government's operations. For example, the records will help the public understand the status of current Cook Inlet projects, how often and to which activities the federal government authorizes Level B takes, how the government evaluates the significance of cumulative and noise impacts, and the process by which the government makes decisions that affect Cook Inlet beluga whales.

- (iii) *"The contribution to an understanding of the subject by the public likely to result from disclosure: whether disclosure of the requested information will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester."*

Friends of Animals:

Friends of Animals is a nonprofit, international animal advocacy organization incorporated in the state of New York since 1957. Friends of Animals seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living, and domestic animals. The public impact of this disclosed information would be magnified through Friends of Animals' public engagement mechanisms. Friends of Animals has a proven track record of contributing to public understanding of issues surrounding animal advocacy and human-wildlife interactions.

Friends of Animals informs its members about animal advocacy issues, as well as the organization's progress in addressing such issues, through its quarterly magazine called *ActionLine*, its website, and other reports. Friends of Animals has published articles and information advocating for the protection of animals so that they can live unfettered in their natural habitat. In particular, Friends of Animals has a long-standing commitment to protecting animals imperiled due to human-caused activities. Friends of Animals regularly publicizes information about wildlife. Friends of Animals employs several experts who are able to quickly digest and circulate the information obtained from this request, including attorneys and media correspondents.

Friends of Animals plans to disseminate the requested information to Friends of Animals' members, members of other conservation organizations, and other interested members of the public through its website, its quarterly magazine,

and through outreach to other media outlets. By disseminating and distributing this information, Friends of Animals will significantly contribute to the public's understanding of how the government manages harassment of Cook Inlet beluga whales. Friends of Animals also informs its members about animal advocacy issues—including government management of birds, wild horses, and other wildlife—through lawsuits.

Friends of Animals staff has the ability to review, consolidate, and disseminate this information to the public. By consolidating and releasing the information, Friends of Animals will significantly enhance the public's understanding of how the government is currently operating. Additionally, the requested information will constitute a significant contribution to public understanding because it will allow Friends of Animals and the public to determine how the federal government's actions are impacting Cook Inlet beluga whales and whether the federal government has met its obligations under the National Environmental Policy Act, the Marine Mammal Protection Act, and Endangered Species Act.

Sea Shepherd Legal

Sea Shepherd Legal is an international, nonprofit, public interest environmental law firm with a mission to save marine wildlife and habitats by enforcing, strengthening, and developing protective laws, treaties, policies, and practices worldwide. Sea Shepherd Legal works on a range of matters from ensuring proper governmental agency action to developing innovative policy approaches, in order to encourage greater protections for marine wildlife and ecosystems. Public outreach is a key aspect of Sea Shepherd Legal's work.

Sea Shepherd Legal engages in public outreach in order to raise awareness about marine conservation facts, law, resources and tools. Through outreach and education, Sea Shepherd Legal promotes public understanding regarding the importance of biodiversity conservation and how members of the public can play an essential role in protecting marine wildlife and habitats.

Sea Shepherd Legal's general public outreach work involves the bi-weekly publication of a blog, disseminating information regarding marine wildlife protection through social media, and initiating calls to action through online campaign petitions. Related Sea Shepherd entities selectively disseminate these materials to more than one million followers.

The public has a right to know which wildlife species and habitats are at risk, the nature of such risk – including anthropogenic impacts, the role the government is required to play in assessing and mitigating risks, and the government's official response thereto. Through its extensive public outreach endeavors, Sea Shepherd

Legal will ensure that the public acquires this knowledge.

Turtle Island Restoration Network

Turtle Island Restoration Network (“TIRN”) is an international public interest non-profit with a strong track record of disseminating information from FOIA requests to its own membership, decision-makers, the media and the general public. TIRN is a non-profit organization that informs, educates, and counsels the public regarding environmental issues, policies, and laws relating to imperiled species, including marine species. TIRN has been substantially involved in the management activities of numerous government agencies for years, and has consistently displayed its ability to disseminate information granted to it through FOIA requests. As a long established advocacy organization, our informational publications supply information not only to our membership, but also to the memberships of most other conservation organizations, locally as well as nationally. Our informational publications continue to contribute information to public media outlets, as well. TIRN routinely disseminates such information through e-mail alerts and newsletters, which are sent to over 200,000 members and activists. In addition, we disseminate information through our websites, which receives over 100,000 page views per month. Furthermore, we bring such information to our partner organizations and to the media for dissemination to the membership of other organizations and the public at large. Information and our analyses of NMFS’s compliance with the MSA, the MMPA and the ESA will likely be disseminated through all of these means.

TIRN will publicize the results of any analysis of the data to inform the public about the policy choices and information regarding the management of anthropogenic impacts to the Cook Inlet Beluga Whale. This is certain to result in a significant increase in public understanding of government agency activity, especially NOAA’s approach to the conservation of marine species. In addition to informing the public about information relevant to policy and management, TIRN has a proven track record of enforcing environmental laws and publicizing agency compliance with the provisions of various environmental laws through information gained from FOIA requests like this one. TIRN intends to use the documents requested in this request in a similar manner, as appropriate.

- (iv) *“The significance of the contribution to public understanding: whether the disclosure is likely to contribute ‘significantly’ to public understanding of Government operations or activities.”*

Requesters seek the requested documents to increase their understanding, and subsequently contribute to public understanding, of how the federal government is managing activities that affect Cook Inlet beluga whales in Alaska. Many anthropogenic projects are approved by NOAA each year, many of them

granted Level B takes of marine mammals, and the government claims that these actions have a negligible effect on marine mammals. However, the public does not have access to all of the documents available to NOAA and thus cannot understand exactly how NOAA makes its non-negligible impact determinations during agency review of project applications. Additionally, the public cannot understand the justifications used by NOAA staff, its decision-making process, or how risks associated with permitting are assessed without more information about the operations of NOAA.

If the information is not disclosed to the Requesters, the public will remain uninformed about what activities the federal government conducts and authorizes. Disclosure, however, will permit the Requesters to disseminate information to the public, and it will increase transparency surrounding the federal government's activities. This is particularly important because NEPA grants the public a right to this information and a right to participate in federal decisions, such as commenting on proposed anthropogenic activities in Cook Inlet.

The information requested is not, to our knowledge, publicly available. The government may omit sending us requested records that are available in publicly accessible forums (e.g. Internet) or in published materials that are routinely available at public or university libraries. If the government chooses to omit such information, please provide the Requesters with adequate references and/or website links so that we may obtain these materials on our own. We would request that the government provide us with an index of such omitted documents, so that we may have reasonable certainty that we have access to the complete record regarding the management and protection of the Cook Inlet Beluga whales. However, we suspect that the majority of requested materials will not be available unless we receive them from the government in satisfaction of this FOIA request.

2. Disclosure of the Information is Not Primarily in the Commercial Interest of the Requester

When considering whether a request for a fee waiver meets the second prong of the fee waiver requirement, the agency is directed to consider: (1) "whether or not the requester has a commercial interest that would be furthered by the requested disclosure," and (2) "the primary interest in disclosure," i.e. whether the interest of the requester is primarily commercial or public.

None of the Requesters have a commercial, trade, or profit interest in the requested records. In fact, the Requesters do not have any commercial, trade, or profit interests.

Friends of Animals is a non-profit, international animal advocacy organization, incorporated in the state of New York since 1957. It serves the public interest by increasing the general public's awareness of animal advocacy issues and

by teaching how to end animal cruelty and exploitation around the world. Friends of Animals seeks to promote a respectful view of nonhuman, free-living and domestic animals. The Internal Revenue Service recognizes Friends of Animals as a 501(c)(3) tax-exempt organization (IRS Employer Identification#: 13-6018549). Friends of Animals' successful and well-orchestrated public education programs on animal advocacy issues and government operations merit granting a fee waiver for the requested records.

Sea Shepherd Legal was established in 2014 for the purpose of saving marine wildlife and habitats by enforcing, strengthening, and developing protective laws, treaties, policies, and practices worldwide. Sea Shepherd Legal works on a range of matters to ensure greater protections for marine wildlife and ecosystems, via the use of tools including litigation, policy development and public outreach. The IRS recognizes Sea Shepherd Legal as a public interest environmental law firm. Sea Shepherd Legal's EIN number is 47-2272507.

Turtle Island Restoration Network is a 501(c)(3) that has been working to protect marine wildlife, especially sea turtles, but also marine mammals and other endangered species, since the early 1980s. TIRN works through a combination of legal and advocacy strategies and grassroots organizing and education to strengthen protections worldwide. TIRN's EIN is 91-1818080.

CONCLUSION

Please produce the records regarding this FOIA request by electronic mail to wlp_admin@friendsofanimals.org or to the physical address listed below:

Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112

Please produce the records on a rolling basis to the extent possible; at no point should the search for—or the deliberation concerning—certain records delay the production of others that the federal government has already retrieved and elected to produce.

Thank you for your attention to this request. If you have any questions about the requested documents or the requested fee waiver, please do not hesitate to contact me at 720-949-7791 or at wlp_admin@friendsofanimals.org.

Sincerely,



Kaylee Dolen, Administrative Assistant

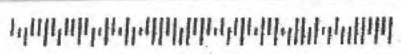
Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112
720-949-7791
wlp_admin@friendsofanimals.org

RECEIVED

2016 DEC 12 PM 1:48

U.S. DISTRICT COURT
DISTRICT OF COLORADO
CENTENNIAL, CO

tarris
Law P
Animal
Arapahoe Rd. Suite 385
A, CO 80112



MAIL



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MAILED DEC 09 2016
80112



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RETURN RECEIPT
REQUESTED

T.D.
12/11/2016

Bob Troyer
United States Attorney
1225 17th Street
Suite 700
Denver, CO 80202

Last Name: friends of animals First:
 FBI #: SSN #:
 CATS #: EIN #:
 PDID #: Marshals #:

Name Matching

- Spelling Match
- Sounds Like

Explanation

Participant	USAOID	Alias	Stat Role		AUSA	Court	Court #
FRIENDS OF ANIMALS	2016V00861		A	P	IJK	DC	16-CV-0279
FRIENDS OF ANIMALS	2016V00092		C	P	IJK	DC	16-CV-00196-
FRIENDS OF ANIMALS	2016V00091		C	P	IJK	DC	16-CV-00194-

Move highlight bar to record and press <F3> to GOTO the Case Summary screen.

MON, 12-DEC-2016

From: Chua, Alvin (Federal) <achua@doc.gov>
Sent: Monday, December 19, 2016 8:59 AM
To: Almeida, John (Federal); Graff, Mark (Federal)
Cc: McKenna, Alice (Federal)
Subject: Friends of Animals v. NOAA
Attachments: Complaint.pdf

Good morning,

We just received word of a new suit against NOAA (b)(5)

?

Thanks,

Alvin Chua
Attorney
Office of the General Counsel | U.S. Department of Commerce
Office: 202.482.5023 | Fax: 202.482.2552
E-mail: achua@doc.gov

Confidentiality Notice: This e-mail message is intended only for the named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
District of Colorado

FRIENDS OF ANIMALS, a New York non-profit corporation, and
SEA SHEPHERD LEGAL, a Washington non-profit corporation
Plaintiff(s)
v.

Civil Action No. 16-3007

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, an agency of the United States
Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Bob Troyer
United States Attorney
1225 17th Street
Suit 700
Denver, CO 80202

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Michael Harris
Wildlife Law Program
Friends of Animals
7500 E. Arapahoe Road, Suite 385
Centennial, CO 80112

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 16-3007

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
FRIENDS OF ANIMALS, a New York non-profit corporation, and SEA SHEPHERD LEGAL, a Washington non-profit corporation
(b) County of Residence of First Listed Plaintiff Arapahoe County
(c) Attorneys (Firm Name, Address, and Telephone Number)
Michael Harris
Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Suite 385, Centennial, CO 80112; Tel: (720) 949-7791

DEFENDANTS
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, an agency of the United States
County of Residence of First Listed Defendant District of Columbia
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT: 110 Insurance, 120 Marine, 130 Miller Act, 140 Negotiable Instrument, 150 Recovery of Overpayment & Enforcement of Judgment, 151 Medicare Act, 152 Recovery of Defaulted Student Loans (Excl. Veterans), 153 Recovery of Overpayment of Veteran's Benefits, 160 Stockholders' Suits, 190 Other Contract, 195 Contract Product Liability, 196 Franchise
REAL PROPERTY: 210 Land Condemnation, 220 Foreclosure, 230 Rent Lease & Ejectment, 240 Torts to Land, 245 Tort Product Liability, 290 All Other Real Property
PERSONAL INJURY: 310 Airplane, 315 Airplane Product Liability, 320 Assault, Libel & Slander, 330 Federal Employers' Liability, 340 Marine, 345 Marine Product Liability, 350 Motor Vehicle, 355 Motor Vehicle Product Liability, 360 Other Personal Injury, 362 Personal Injury - Med. Malpractice
PERSONAL INJURY: 365 Personal Injury - Product Liability, 367 Health Care Pharmaceutical Personal Injury Product Liability, 368 Asbestos Personal Injury Product Liability
PERSONAL PROPERTY: 370 Other Fraud, 371 Truth in Lending, 380 Other Personal Property Damage, 385 Property Damage Product Liability
FORFEITURE/PENALTY: 625 Drug Related Seizure of Property 21 USC 881, 690 Other
LABOR: 710 Fair Labor Standards Act, 720 Labor/Mgmt. Relations, 740 Railway Labor Act, 751 Family and Medical Leave Act, 790 Other Labor Litigation, 791 Empl. Ret. Inc. Security Act
IMMIGRATION: 462 Naturalization Application, 465 Other Immigration Actions
BANKRUPTCY: 422 Appeal 28 USC 158, 423 Withdrawal 28 USC 157
PROPERTY RIGHTS: 820 Copyrights, 830 Patent, 840 Trademark
SOCIAL SECURITY: 861 HIA (1395ff), 862 Black Lung (923), 863 DIWC/DJWC (405(g)), 864 SSID Title XVI, 865 RSI (405(g))
TAX SUITS: 870 Taxes (U.S. Plaintiff or Defendant), 871 IRS - Third Party 26 USC 7609
OTHER STATUTES: 375 False Claims Act, 400 State Reapportionment, 410 Antitrust, 430 Banks and Banking, 450 Commerce, 460 Deportation, 470 Racketeer Influenced and Corrupt Organizations, 480 Consumer Credit, 490 Cable/Sat TV, 850 Securities/Commodities/Exchange, 890 Other Statutory Actions, 891 Agricultural Acts, 893 Environmental Matters, 895 Freedom of Information Act, 896 Arbitration, 899 Administrative Procedure Act/Review or Appeal of Agency Decision, 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
5 U.S.C 552- Failure to respond to request under the Freedom of Information Act
Brief description of cause: AP Docket

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMANDS
CHECK YES only if demanded in complaint.
JURY DEMAND: Yes No

DATE: 12/08/2016
SIGNATURE OF ATTORNEY OF RECORD: /s/ Michael Ray Harris

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows.

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment noting, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example:

U.S. Civil Statute: 47 USC 553

Brief Description:

Unauthorized reception of cable service

Or:

"AP Docket"

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

FRIENDS OF ANIMALS, and
SEA SHEPHERD LEGAL;

Plaintiffs,

v.

NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION
an agency of the United States,

Defendant.

Civ. No. 16-3007

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF
(FREEDOM OF INFORMATION ACT)**

INTRODUCTION

1. This action is brought to remedy violations of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et. seq.* Specifically, it challenges the failure of the National Oceanic and Atmospheric Administration (“Federal Defendant”) to provide a final determination, including all responsive documents, within the time required by FOIA in regard to Plaintiffs Friends of Animals’ and Sea Shepherd Legal’s (“Plaintiffs”) April 14, 2016 request for information (“Request”).

2. In the Request, Plaintiffs asked for all documents in Federal Defendant’s possession related to pending or final approvals under the Marine Mammal Protection Act, National Environmental Policy Act and the Endangered Species Act for anthropogenic activities affecting the Cook Inlet beluga whale. Plaintiffs also sought all documents related to biological analyses and threats to the Cook Inlet beluga whale. *See* Exhibit A.

3. As of the date on this Complaint, Federal Defendant has not made a final determination regarding the release of documents, nor has Federal Defendant provided a timeline or other plan for compliance with the requirements of FOIA to indicate when or whether the Request will be fully satisfied.

4. Federal Defendant is unlawfully withholding public disclosure of information that Plaintiffs are entitled to receive under FOIA. By failing to make either a timely determination or timely and complete releases after the initial tranche of documents, Federal Defendant failed to comply with the statutory mandates and deadlines imposed by FOIA.

5. Accordingly, Plaintiffs seek declaratory relief establishing that Federal Defendant has violated FOIA. Plaintiffs also seek injunctive relief directing Federal Defendant to make a determination on the Request, provide a timeline for the release of the remaining documents, and promptly provide the requested material free of cost.

6. Plaintiffs bring this lawsuit to obtain timely disclosure of critical information related to authorized takes, and to pending authorizations of requested takes, of hundreds of Cook Inlet beluga whales from multiple and geographically overlapping oil and gas projects in the Cook Inlet. Given the significant potential impact upon the rapidly diminishing population of Cook Inlet beluga whales and the strong public interest in disclosure of information that may directly assist Plaintiffs' ongoing efforts to protect this population, Plaintiffs seek expeditious treatment of their Complaint pursuant to 28 U.S.C. § 1657.

JURISDICTION AND VENUE

7. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA) and 28 U.S.C. § 1331 (federal question). This Court may grant the declaratory relief under 28 U.S.C. §§ 2201, *et seq.* (Declaratory Judgment Act) and injunctive relief under 5 U.S.C. § 552(a)(4)(B) (FOIA). An actual, justiciable controversy exists within the meaning of the Declaratory Judgment Act between Plaintiffs and Federal Defendant. The Court has jurisdiction, upon receipt of a complaint, "to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B).

8. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B), which provides venue for FOIA cases in this district as the district in which a plaintiff resides. Friends of Animals maintains a principle office here in Colorado. Venue is also proper under 28 U.S.C. § 1391(b) because the defendant is subject to personal jurisdiction in this federal district.

PARTIES

9. Friends of Animals is a nonprofit international advocacy organization with nearly 200,000 members, incorporated in the state of New York since 1957. Friends of Animals seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living and domestic animals. Friends of Animals engages in a variety of advocacy programs in support of these goals. Friends of Animals informs its members about animal advocacy issues as well as the organization's progress in addressing these issues through its magazine called *ActionLine*, its website, and other reports. Friends of Animals has published articles and information advocating for the protection of wild species so that they can live unfettered in their natural habitats.

10. In 2013, Friends of Animals created a federal wildlife law program. The program established its principle office in Centennial, Colorado. The office consists of four full-time employees and one part-time employee. Through this office, Friends of Animals submitted the Request at issue in this action.

11. Sea Shepherd Legal is a nonprofit public interest law organization dedicated to its mission to end the destruction of habitat and slaughter of wildlife in the world's oceans in order to conserve and protect ecosystems and species. In furtherance of that mission, Sea Shepherd Legal has been involved in protecting marine life throughout the world. Sea Shepherd Legal uses public outreach and education to advocate for and motivate the creation of greater protections for cetaceans and other marine life.

12. The interests of Plaintiffs and their members are harmed by Federal Defendant's failure to release the requested documents in a timely manner, which prevents Plaintiffs

from obtaining, analyzing, disseminating and using the requested information to advance Plaintiffs' missions of ensuring the protection of marine wildlife and, in particular here, the Cook Inlet beluga whale.

13. Federal Defendant is an agency within the meaning of 5 U.S.C. § 552(f)(1). Federal Defendant is responsible for fulfilling Plaintiffs' Request and complying with all federal laws.

STATUTORY BACKGROUND

14. Congress enacted FOIA to ensure public access to U.S. government records. FOIA carries a presumption of disclosure. *Dep't of State v Ray*, 502 U.S. 164 (1991). Upon receipt of a written request that "reasonably describes" the records sought and complies with "published rules . . . and procedures to be followed," agencies of the United States government are required to "promptly" disclose their records, unless they can be lawfully withheld from disclosure under one of nine specific exemptions in FOIA. 5 U.S.C. § 552(a)(3)(A). The burden is on the government—not the requestor or public—to justify why particular information may be withheld. *Ray*, 502 U.S. at 164.

15. FOIA requires agencies to "determine within 20 days . . . after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefore, and of the right of such person to appeal to the head of the agency any adverse determination." *Id.* at § 552(a)(6)(A)(i).

16. On determination by an agency to comply with the request, the records shall be made "promptly available." *Id.* at § 552(a)(6)(C).

17. In "unusual circumstances," an agency may extend the time limits for up to 10 working days by providing written notice to the requester setting forth the unusual circumstance(s) and the date on which the determination is expected to be dispatched. *Id.* at § 552(a)(6)(B).

18. In some limited circumstances, FOIA allows an agency to seek an extension potentially beyond 10 days. Specifically, FOIA requires an agency to provide written notification to the requester: (1) offering an opportunity to limit the scope of the request so that it may be processed within the 20 work-day limit, or (2) offering an opportunity to arrange with the agency an “alternative time frame” for processing the request. *Id.* at § 552(a)(6)(B)(ii). If the agency elects this option, it must make its FOIA Public Liaison available to the requester to assist in any disputes with the agency. *Id.*

19. If the agency fails to make a determination on a document request within 20 work-days, or within the limited additional time permitted upon proper notification of “unusual circumstances,” the requester is deemed to have constructively exhausted administrative remedies and may seek judicial review. *Id.* at § 552(a)(6)(C). *Oglesby v. Dep’t of Army*, 920 F.2d 57(D.C. Cir 1990), *Nurse v. Sec’y of the Air Force*, 231 F. Supp. 2d 323, 328 (D.D.C. 2002) (“The FOIA is considered a unique statute because it recognizes a constructive exhaustion doctrine for purposes of judicial review upon the expiration of certain relevant FOIA deadlines.”)

20. FOIA requires that the agency “shall make the records promptly available to any person” and may not defer release of responsive documents indefinitely. *Id.* at § 552(a)(3)(A). Failure to issue a determination and to complete the release of documents in a timely fashion is a violation of FOIA even if the initial response and releases may have been prompt. *Munger, Tolles, Olsen v. Dept. of Army*, 58 F. Supp. 3d 1050 (C.D. Cal 2014). *See also Fiduccia v. U.S. Dep’t of Justice*, 185 F.3d 1035, 1041 (9th Cir. 1999)(“Congress gave agencies 20 days, not years, to decide whether to comply with requests and notify the requesters”); *Long v. IRS*, 693 F.2d 907, 910 (9th Cir. 1982) (“[U]nreasonable delays in disclosing non-exempt documents violate the intent and purpose of the FOIA, and the courts have a duty to prevent these abuses.”).

FACTUAL BACKGROUND

21. On April 12, 2016, Plaintiffs submitted the Request under FOIA to Federal Defendant reasonably describing all documents of which Plaintiffs sought disclosure.

22. On April 21, 2016, Federal Defendant provided written notification confirming receipt of the Request and disclosing that the Request had been assigned for processing on April 14, 2016.

23. In the confirmation, Federal Defendant did not request any additional information needed to clarify the Request. Federal Defendant did request a Scope Conference with Friends of Animals.

24. On April 29, 2016, Federal Defendant and Friends of Animals conducted the Scope Conference. During this conference, Federal Defendant did not request any additional information needed to clarify the Request but asked Plaintiffs to prioritize the individual document categories identified in the Request. Friends of Animals instructed Federal Defendant to proceed with the original FOIA request, but agreed to send a letter outlining the priorities of the original FOIA request.

25. On May 10, 2016, Friends of Animals submitted a letter to Federal Defendant outlining the top priorities of the original FOIA request. In that letter, Friends of Animals stated as follows: "As discussed on the April 29, 2016 conference call, Friends of Animals has not changed or altered the original request, nor are we waiving under [sic] rights under FOIA. We provide the following priorities merely to assist the agency in processing our request."

26. On May 16, 2016, Federal Defendant confirmed receipt of Friends of Animals' May 10 letter outlining the top priorities of the original FOIA request and indicated the need for a 10-day extension due to "unusual circumstances." Federal Defendant further stated that the first interim release of records could be anticipated on May 25, 2016.

27. The 20 work-day time limit for providing a determination on the Request commenced on April 14 and, thus, expired on May 12, 2016.

28. Federal Defendant made two interim releases of documents. The first release was dated June 9, 2016. The second was dated July 26, 2016 (but not received until August 29, 2016).

29. Since August 29, 2016, no further documents have been released.

30. Since August 29, 2016, Federal Defendant has not provided any timeline for the release of any remaining documents.

31. As of the date of this complaint, Plaintiffs have not received a final determination on their Request.

32. Plaintiffs believe and allege that Federal Defendant is unlawfully withholding public disclosure of information sought by Plaintiffs, information to which they are entitled to receive promptly, and for which Federal Defendant has not provided a valid disclosure exemption.

33. Federal Defendant has offered no reasonable explanation for its delay, and it has failed to estimate when it will finally be able to comply with its obligations under FOIA.

34. Since Federal Defendant has neither produced responsive documents nor provided an appealable final determination, Plaintiffs have constructively exhausted their administrative remedies with respect to the requested documents.

CLAIM FOR RELIEF
Violation of Freedom of Information Act
Failure to Respond with a Determination

35. Plaintiffs herein incorporate all allegations contained in the proceeding paragraphs.

36. FOIA provides that any person may obtain those agency records that are not subject to the FOIA disclosure exemptions promptly. 5 U.S.C. § 552 (a)(3)(A).

37. Plaintiffs properly requested records within the control of Federal Defendant.

38. Federal Defendant failed to provide Plaintiffs with a final determination as to whether Federal Defendant has any non-exempt records responsive to the Request and whether it intended to release such records within the required timeframe. *Id.* § 552(a)(6)(A)(i) and § 552(a)(6)(B).

39. Federal Defendant failed to properly invoke and comply with FOIA's provision allowing a 10 working day extension for "unusual circumstances." *Id.* at § 552(a)(6)(B)(i).

40. Federal Defendant failed to properly invoke and comply with FOIA's provision permitting an extension of potentially greater than 10 working days by offering Plaintiffs an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. *Id.* at § 552(a)(6)(B)(ii).

41. Federal Defendant has failed to promptly make available responsive documents without unreasonable delay.

42. Federal Defendant's failures to comply with FOIA are subject to judicial review under 5 U.S.C. § 552 (a)(4)(B). Federal Defendant's failure to issue a determination within the statutory deadlines violates 5 U.S.C. § 552 (a)(3)(A).

43. Accordingly, Plaintiffs are entitled to injunctive and declaratory relief with respect to a determination on the Request.

PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court enter judgment providing the following relief:

1. Declare that Federal Defendant violated FOIA by failing to (1) make a determination on Plaintiffs' Request and (2) make records responsive to Plaintiffs' Request available within the statutory deadlines.
2. Order Federal Defendant to (1) provide Plaintiffs with a final determination and (2) process and release all records responsive to the Request at no cost to Plaintiffs within 10 days from the date of such order;

3. Retain jurisdiction of this action to ensure the processing of the Request, and to ensure that no agency records are wrongfully withheld;
4. Award Plaintiffs costs, including reasonable attorney fees and litigation costs in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
5. Grant Plaintiffs any other relief that the Court deems just and proper.

Dated: December 08, 2016

Respectfully Submitted,

/s/ Michael Harris
Michael Ray Harris
Director, Wildlife Law Program
Friends of Animals
7500 E. Arapahoe Road, Suite 385
Centennial, CO 80112
720-949-7791
michaelharris@friendsofanimals.org

Attorney for Plaintiff Friends of Animals

/s/ Brett Sommermeyer
Brett Sommermeyer (admission pending)
Legal Director
Sea Shepherd Legal
2226 Eastlake Ave., E.
No. 108
Seattle, WA 98102
brett@seashepherdlegal.org

Attorney for Plaintiff Sea Shepherd Legal

EXHIBIT A

~~EXPLOITERS~~
FRIENDS
of ANIMALS

April 12, 2016

Submitted Via U.S Certified Mail and FOIAonline

National Oceanic and Atmospheric Administration
Public Reference Facility (SOU1000)
1315 East-West Highway (SSMC3)
Room 9719
Silver Spring, Maryland 20910

Re: FOIA Request for Records Relating to Incidental Harassment Authorizations
Issued for Activities Impacting Cook Inlet Beluga Whales in Federal Waters
Administered by the National Oceanic and Atmospheric Administration

Dear FOIA Officer:

I am writing on behalf of Friends of Animals, Sea Shepherd Legal, and the Turtle Island Restoration Network (collectively, the "Requesters"). Pursuant to 43 C.F.R. Part 2, and the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, Requesters seek the disclosure of all documents¹ in the categories listed below regarding the harassment of the distinct population segment of Cook Inlet beluga whales in waters managed by the National Oceanic and Atmospheric Administration ("NOAA"). Unless otherwise specified, Requesters seek all documents for the time period starting January 26th, 2007 and ending April 11, 2016. Requesters also request a full waiver of all search and duplication fees.

¹ The terms "document(s)" and "records" are used in the broadest sense contemplated by Federal Rule of Civil Procedure 34. It means all written, transcribed, recorded or graphic matters, however produced or reproduced. This definition includes, but is not limited to, any and all original copies or drafts of any and all of the following: records; notes; nonconforming copies that contain deletions, insertions, corrections, handwritten notes or comment summaries; memoranda; schedules; contracts; binders; work papers; logs; diaries; work sheets; files; letters; correspondence; summaries of memoranda; reports or memoranda of telephone conversations or records of personal conversations or interviews; handwritten notes; telephone logs; facsimiles; summaries; invoices; promissory notes; contracts; loan agreements; vouchers; billing statements; tape recordings or transcripts of tape recordings; photographs; videotapes; computerized output or data bases; electronic files; computer disks; computer CDs' electronic mail transmittals; data and all other writings; calculations; and figures or symbols of any kind which, in any manner mentioned, relate to the subjects of the specific requests contained below. This request includes all documents that have ever been within your custody or control, including all inter and intra agency documents, whether they exist in agency working, investigative, retired, electronic mail, or other files currently or at any other time.

A. FOIA Request.

Over the course of several years, NOAA has issued multiple Letters of Authorization (“LoA”) and Incidental Harassment Authorizations (“IHA”) for Level B takes of Cook Inlet beluga whales under the Marine Mammal Protection Act (“MMPA”) incidental to anthropogenic activities in Cook Inlet. Under the MMPA, Level B takes have “the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, feeding, or sheltering.” 16 U.S.C. § 1362(18).

Please provide the following documents in your possession, whether received, created, and/or distributed by NOAA:

- (1) All documents regarding the status of any pending anthropogenic activities in the Cook Inlet area for which IHAs or LoAs have been requested for takes of Cook Inlet belugas;
- (2) All documents regarding the final IHAs or LoAs issued for anthropogenic activities in Cook Inlet, including all documents supporting a “negligible” impact finding pursuant to the MMPA;
- (3) All documents, including research or commentary, not currently available to the public concerning the specific effects of anthropogenic noise or cumulative effects of Level B takes on the Cook Inlet beluga population;
- (4) All documents regarding the cumulative or synergistic effects of Level B takes of Cook Inlet beluga whales resulting from anthropogenic development activities over the past ten years (2007-2016);
- (5) All documents regarding Level A² takes of Cook Inlet belugas resulting from anthropogenic activities;
- (6) All documents regarding the status of NOAA’s preparation of the programmatic EA and EIS analyzing takes of marine mammals of Cook Inlet incidental to anthropogenic activities and all records of anticipated new agency actions or research pertaining to Cook Inlet belugas;
- (7) All documents regarding the preparation of the final recovery plan for Cook Inlet belugas under the federal Endangered Species Act (“ESA”);
- (8) All documents regarding any limiting factors analysis completed or in progress for Cook Inlet belugas;
- (9) All documents regarding any prioritization of threats to Cook Inlet belugas;
- (10) All documents of any accounting(s) of anthropogenic activities in the Cook Inlet that may result in the taking of a beluga whale;

² As defined as having “the potential to injure a marine mammal or marine mammal stock in the wild.” 16 U.S.C. § 1362(18)(A)(i).

- (11) All documents regarding any population monitoring for Cook Inlet belugas planned or in progress for 2016;
- (12) All documents regarding any population monitoring for Cook Inlet belugas conducted within the last three years, including any population surveys (or similar activities) in proposed project areas conducted by the applicant(s) for an IHA or LoA;
- (13) All documents regarding any formal or informal consultations involving Cook Inlet belugas under Section 7 of the ESA.

The items specifically requested are not meant to be exclusive of any other documents that, although not specially requested, have a reasonable relationship to the subject matter of this request.

For purposes of this request, "anthropogenic activities" are defined to encompass any activity wholly or substantially relating to vessel or aircraft noise (if vessel or aircraft movements are products of an anthropogenic project), ship traffic, including strikes, dredging, pile driving, explosions, demolition, sonar use, oil and gas exploration (including seismic operations, drilling, platform noise, airguns, multibeam echosounders, and sub-bottom profilers), shore construction, military testing activities (i.e. explosions, sonar), pipe and cable laying, water pollution and any other activities reasonably affiliated with anthropogenic projects.

The Supreme Court has stated that FOIA establishes a "strong presumption in favor of disclosure" of requested information, and that the burden is on the government to substantiate why information may not be released under the act's various exemptions. *Department of State v. Ray*, 502 U.S. 164, 173 (1991). Congress affirmed these tenets of FOIA in the Open Government Act of 2007, finding that "the Government [should] remain open and accessible to the American people" and always be based "not upon the need to know but upon the fundamental right to know." Public Law 110-175, 121 Stat. 2524, 2525 (Dec. 31, 2007) (internal citations omitted). President Obama has also directed that "[t]he presumption of disclosure should be applied to all decisions involving FOIA." 74 Fed. Reg. 4683 (Jan. 26, 2009). Please consider the foregoing before withholding any documents that are responsive to this request.

The Requesters anticipate that you will make the requested materials available within the statutorily prescribed period. We also request that you waive any applicable fees since disclosure meets the statutory standard for a fee waiver in that it is clearly "in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii).

B. Fee Waiver Request.

FOIA provides that "documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). The legislative history of FOIA, as well as the case law interpreting the Act, indicates that the statute's fee waiver provision is to be liberally construed favoring the public interest. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 Cong. Rec. S14298 (Sept. 30, 1986) (Sen. Leahy)).

This request for information qualifies for a fee waiver under this standard and, accordingly, we request that all fees be waived. This request satisfies both statutory and regulatory requirements for granting a fee waiver. Below we explain how the request and the Requesters meet each of requirements for a fee waiver delineated in NOAA's FOIA regulations (under its parent agency, the Department of Commerce) 15 CFR § 4.11(k).

1. Disclosure of the Information Requested is in the Public Interest.

(i) *"The subject of the request: whether the subject of the requested records concerns the operations or activities of the Government."*

The requested records concern the operations and activities of NOAA, a federal agency. Specifically, they concern the operation of this federal agency, its management of federally protected Cook Inlet beluga whales, and its permitting decision-making process.

(ii) *"The informative value of the information to be disclosed: whether the disclosure is 'likely to contribute' to an understanding of Government operations or activities."*

(a) How the contents of the records are meaningfully informative;

The requested documents would have substantive, meaningfully informative value and would be likely to contribute to a better understanding of NOAA and its actions. The documents will illuminate in a clear and direct way the operations and activities of the federal government and the activities that it undertakes in regards to management of Cook Inlet beluga whales and the anthropogenic projects that affect them. Although Cook Inlet beluga whales have been in the public spotlight in recent years due to their dwindling numbers and Endangered Species Act listing in 2008, not much is definitively known about the Level B take, cumulative, and noise pollution impacts on Cook Inlet beluga whales from anthropogenic activities. The information requested concerns the operations of the agency responsible for approving activities that have the potential to seriously injure or even kill Cook Inlet

beluga whales and the details of NOAA's past and current permitting decisions and decision-making process in regards to these whales.

- (b) The logical connection between the content of the records and the operations or activities;

The release of the requested documents will significantly contribute to public understanding and oversight of the federal government's operations. For example, the records will help the public understand the status of current Cook Inlet projects, how often and to which activities the federal government authorizes Level B takes, how the government evaluates the significance of cumulative and noise impacts, and the process by which the government makes decisions that affect Cook Inlet beluga whales.

- (iii) *"The contribution to an understanding of the subject by the public likely to result from disclosure: whether disclosure of the requested information will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester."*

Friends of Animals:

Friends of Animals is a nonprofit, international animal advocacy organization incorporated in the state of New York since 1957. Friends of Animals seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living, and domestic animals. The public impact of this disclosed information would be magnified through Friends of Animals' public engagement mechanisms. Friends of Animals has a proven track record of contributing to public understanding of issues surrounding animal advocacy and human-wildlife interactions.

Friends of Animals informs its members about animal advocacy issues, as well as the organization's progress in addressing such issues, through its quarterly magazine called *ActionLine*, its website, and other reports. Friends of Animals has published articles and information advocating for the protection of animals so that they can live unfettered in their natural habitat. In particular, Friends of Animals has a long-standing commitment to protecting animals imperiled due to human-caused activities. Friends of Animals regularly publicizes information about wildlife. Friends of Animals employs several experts who are able to quickly digest and circulate the information obtained from this request, including attorneys and media correspondents.

Friends of Animals plans to disseminate the requested information to Friends of Animals' members, members of other conservation organizations, and other interested members of the public through its website, its quarterly magazine,

and through outreach to other media outlets. By disseminating and distributing this information, Friends of Animals will significantly contribute to the public's understanding of how the government manages harassment of Cook Inlet beluga whales. Friends of Animals also informs its members about animal advocacy issues—including government management of birds, wild horses, and other wildlife—through lawsuits.

Friends of Animals staff has the ability to review, consolidate, and disseminate this information to the public. By consolidating and releasing the information, Friends of Animals will significantly enhance the public's understanding of how the government is currently operating. Additionally, the requested information will constitute a significant contribution to public understanding because it will allow Friends of Animals and the public to determine how the federal government's actions are impacting Cook Inlet beluga whales and whether the federal government has met its obligations under the National Environmental Policy Act, the Marine Mammal Protection Act, and Endangered Species Act.

Sea Shepherd Legal

Sea Shepherd Legal is an international, nonprofit, public interest environmental law firm with a mission to save marine wildlife and habitats by enforcing, strengthening, and developing protective laws, treaties, policies, and practices worldwide. Sea Shepherd Legal works on a range of matters from ensuring proper governmental agency action to developing innovative policy approaches, in order to encourage greater protections for marine wildlife and ecosystems. Public outreach is a key aspect of Sea Shepherd Legal's work.

Sea Shepherd Legal engages in public outreach in order to raise awareness about marine conservation facts, law, resources and tools. Through outreach and education, Sea Shepherd Legal promotes public understanding regarding the importance of biodiversity conservation and how members of the public can play an essential role in protecting marine wildlife and habitats.

Sea Shepherd Legal's general public outreach work involves the bi-weekly publication of a blog, disseminating information regarding marine wildlife protection through social media, and initiating calls to action through online campaign petitions. Related Sea Shepherd entities selectively disseminate these materials to more than one million followers.

The public has a right to know which wildlife species and habitats are at risk, the nature of such risk – including anthropogenic impacts, the role the government is required to play in assessing and mitigating risks, and the government's official response thereto. Through its extensive public outreach endeavors, Sea Shepherd

Legal will ensure that the public acquires this knowledge.

Turtle Island Restoration Network

Turtle Island Restoration Network (“TIRN”) is an international public interest non-profit with a strong track record of disseminating information from FOIA requests to its own membership, decision-makers, the media and the general public. TIRN is a non-profit organization that informs, educates, and counsels the public regarding environmental issues, policies, and laws relating to imperiled species, including marine species. TIRN has been substantially involved in the management activities of numerous government agencies for years, and has consistently displayed its ability to disseminate information granted to it through FOIA requests. As a long established advocacy organization, our informational publications supply information not only to our membership, but also to the memberships of most other conservation organizations, locally as well as nationally. Our informational publications continue to contribute information to public media outlets, as well. TIRN routinely disseminates such information through e-mail alerts and newsletters, which are sent to over 200,000 members and activists. In addition, we disseminate information through our websites, which receives over 100,000 page views per month. Furthermore, we bring such information to our partner organizations and to the media for dissemination to the membership of other organizations and the public at large. Information and our analyses of NMFS’s compliance with the MSA, the MMPA and the ESA will likely be disseminated through all of these means.

TIRN will publicize the results of any analysis of the data to inform the public about the policy choices and information regarding the management of anthropogenic impacts to the Cook Inlet Beluga Whale. This is certain to result in a significant increase in public understanding of government agency activity, especially NOAA’s approach to the conservation of marine species. In addition to informing the public about information relevant to policy and management, TIRN has a proven track record of enforcing environmental laws and publicizing agency compliance with the provisions of various environmental laws through information gained from FOIA requests like this one. TIRN intends to use the documents requested in this request in a similar manner, as appropriate.

- (iv) *“The significance of the contribution to public understanding: whether the disclosure is likely to contribute ‘significantly’ to public understanding of Government operations or activities.”*

Requesters seek the requested documents to increase their understanding, and subsequently contribute to public understanding, of how the federal government is managing activities that affect Cook Inlet beluga whales in Alaska. Many anthropogenic projects are approved by NOAA each year, many of them

granted Level B takes of marine mammals, and the government claims that these actions have a negligible effect on marine mammals. However, the public does not have access to all of the documents available to NOAA and thus cannot understand exactly how NOAA makes its non-negligible impact determinations during agency review of project applications. Additionally, the public cannot understand the justifications used by NOAA staff, its decision-making process, or how risks associated with permitting are assessed without more information about the operations of NOAA.

If the information is not disclosed to the Requesters, the public will remain uninformed about what activities the federal government conducts and authorizes. Disclosure, however, will permit the Requesters to disseminate information to the public, and it will increase transparency surrounding the federal government's activities. This is particularly important because NEPA grants the public a right to this information and a right to participate in federal decisions, such as commenting on proposed anthropogenic activities in Cook Inlet.

The information requested is not, to our knowledge, publicly available. The government may omit sending us requested records that are available in publicly accessible forums (e.g. Internet) or in published materials that are routinely available at public or university libraries. If the government chooses to omit such information, please provide the Requesters with adequate references and/or website links so that we may obtain these materials on our own. We would request that the government provide us with an index of such omitted documents, so that we may have reasonable certainty that we have access to the complete record regarding the management and protection of the Cook Inlet Beluga whales. However, we suspect that the majority of requested materials will not be available unless we receive them from the government in satisfaction of this FOIA request.

2. Disclosure of the Information is Not Primarily in the Commercial Interest of the Requester

When considering whether a request for a fee waiver meets the second prong of the fee waiver requirement, the agency is directed to consider: (1) "whether or not the requester has a commercial interest that would be furthered by the requested disclosure," and (2) "the primary interest in disclosure," i.e. whether the interest of the requester is primarily commercial or public.

None of the Requesters have a commercial, trade, or profit interest in the requested records. In fact, the Requesters do not have any commercial, trade, or profit interests.

Friends of Animals is a non-profit, international animal advocacy organization, incorporated in the state of New York since 1957. It serves the public interest by increasing the general public's awareness of animal advocacy issues and

by teaching how to end animal cruelty and exploitation around the world. Friends of Animals seeks to promote a respectful view of nonhuman, free-living and domestic animals. The Internal Revenue Service recognizes Friends of Animals as a 501(c)(3) tax-exempt organization (IRS Employer Identification#: 13-6018549). Friends of Animals' successful and well-orchestrated public education programs on animal advocacy issues and government operations merit granting a fee waiver for the requested records.

Sea Shepherd Legal was established in 2014 for the purpose of saving marine wildlife and habitats by enforcing, strengthening, and developing protective laws, treaties, policies, and practices worldwide. Sea Shepherd Legal works on a range of matters to ensure greater protections for marine wildlife and ecosystems, via the use of tools including litigation, policy development and public outreach. The IRS recognizes Sea Shepherd Legal as a public interest environmental law firm. Sea Shepherd Legal's EIN number is 47-2272507.

Turtle Island Restoration Network is a 501(c)(3) that has been working to protect marine wildlife, especially sea turtles, but also marine mammals and other endangered species, since the early 1980s. TIRN works through a combination of legal and advocacy strategies and grassroots organizing and education to strengthen protections worldwide. TIRN's EIN is 91-1818080.

CONCLUSION

Please produce the records regarding this FOIA request by electronic mail to wlp_admin@friendsofanimals.org or to the physical address listed below:

Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112

Please produce the records on a rolling basis to the extent possible; at no point should the search for—or the deliberation concerning—certain records delay the production of others that the federal government has already retrieved and elected to produce.

Thank you for your attention to this request. If you have any questions about the requested documents or the requested fee waiver, please do not hesitate to contact me at 720-949-7791 or at wlp_admin@friendsofanimals.org.

Sincerely,



Kaylee Dolen, Administrative Assistant

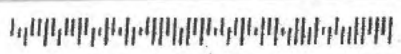
Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112
720-949-7791
wlp_admin@friendsofanimals.org

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DISTRICT OF COLORADO
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T.D.
12/11/2016

Bob Troyer
United States Attorney
1225 17th Street
Suite 700
Denver, CO 80202

From: Lamar Turner - NOAA Federal <lamar.turner@noaa.gov>
Sent: Monday, December 19, 2016 9:40 AM
To: Samuel Dixon - NOAA Affiliate; Lola Stith - NOAA Affiliate; Mark Graff - NOAA Federal; NMFS HQ PR FOIA Requests - NOAA Service Account; Amy Sloan - NOAA Federal; Daniel Bess - NOAA Federal; Jolie Harrison - NOAA Federal; Peaches Hodge-Tonic - NOAA Federal
Subject: FW: New Case: FOIA: Friends of Animals et al v. NOAA; response due 1/11/17
Attachments: Untitled attachment 00245.htm; Friends of Animals LIONS.PNG; FOA v. NOAA Complaint.pdf; Untitled attachment 00248.htm; 16-cv-3007 Docket.pdf; Untitled attachment 00251.htm

For those who are unaware. Friends of Animals have filed a suit against NOAA on the 2016-000959 Cook Inlet Beluga FOIA request. (b)(5)

Lamar N. Turner

FOIA Coordinator
Office of Protected Resources
NOAA Fisheries
1315 East West Highway
Bldg. SSMC3, Room 13733
Silver Spring, Maryland 20910
301-427-8492

From: Lamar Turner - NOAA Federal [mailto:lamar.turner@noaa.gov]
Sent: Monday, December 19, 2016 9:15 AM
To: John Almeida - NOAA Federal
Cc: Deborah Ben-David - NOAA Federal
Subject: FW: New Case: FOIA: Friends of Animals et al v. NOAA; response due 1/11/17

John,

I have not seen the suit. (b)(5)

Lamar N. Turner

FOIA Coordinator
Office of Protected Resources
NOAA Fisheries
1315 East West Highway

Bldg. SSMC3, Room 13733
Silver Spring, Maryland 20910
301-427-8492

From: John Almeida - NOAA Federal [<mailto:john.almeida@noaa.gov>]
Sent: Monday, December 19, 2016 7:54 AM
To: Lamar Turner - NOAA Federal
Subject: Fwd: New Case: FOIA: Friends of Animals et al v. NOAA; response due 1/11/17

Have you seen this new Friends of Animals FOIA suit? (b)(5)

[REDACTED]

Thanks!
John

----- Forwarded message -----

From: Lois Schiffer - NOAA Federal <lois.schiffer@noaa.gov>
Date: Sat, Dec 17, 2016 at 10:55 PM
Subject: Fwd: New Case: FOIA: Friends of Animals et al v. NOAA; response due 1/11/17
To: john.almeida@noaa.gov

John we can discuss next week

Sent from my iPhone

Begin forwarded message:

From: "McClelland, Michelle (Federal)" <mMcClelland@doc.gov>
To: "Cannon, Michael (Federal)" <MCannon@doc.gov>
Cc: "Schiffer, Lois (Federal)" <Lois.Schiffer@noaa.gov>
Subject: Fwd: New Case: FOIA: Friends of Animals et al v. NOAA; response due 1/11/17

Incoming from DOJ on subject FOIA case. (b)(5). Thx

Sent from my iPhone

Begin forwarded message:

From: "Traskos, Kevin (USACO)" <Kevin.Traskos@usdoj.gov>
To: "Sandoval, Marisela (USACO)" <Marisela.Sandoval@usdoj.gov>
Cc: "Kellogg, Ian (USACO)" <Ian.Kellogg@usdoj.gov>, "Butler, Leah (USACO) [Contractor]" <Leah.Butler3@usdoj.gov>, "Jones, Meghan (USACO)" <Meghan.Jones@usdoj.gov>, "McConnell, Caitlin (USACO)" <Caitlin.McConnell@usdoj.gov>, "McClelland, Michelle (Federal)" <mMcClelland@doc.gov>
Subject: FW: New Case: FOIA: Friends of Animals et al v. NOAA; response due 1/11/17

(b)(5)

(b)(5)

Thanks!

Kevin

Warning: This message may contain confidential or privileged information. If you have received this email in error, please contact me and delete the email. Thank you.

Kevin Traskos

Chief, Civil Division

Assistant U.S. Attorney

U.S. Attorney's Office, District of Colorado

1225 17th Street, Suite 700

Denver, Colorado 80207

[\(303\) 454-0184](tel:(303)454-0184)

Fax: [\(303\) 454-0404](tel:(303)454-0404)

Kevin.Traskos@usdoj.gov

From: McConnell, Caitlin (USACO)
Sent: Monday, December 12, 2016 3:13 PM
To: Traskos, Kevin (USACO) <KTraskos@usa.doj.gov>
Cc: Jones, Meghan (USACO) <mjones1@usa.doj.gov>

Subject: New Case: FOIA: Friends of Animals et al v. NOAA; response due 1/11/17

Hello,

Today we received the attached summons and complaint via certified mail. (b)(5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

(b)(5) [REDACTED].

Thank you,
Caitlin

(b) (4)

(b) (4)

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AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Colorado

FRIENDS OF ANIMALS, a New York non-profit corporation, and SEA SHEPHERD LEGAL, a Washington non-profit corporation
Plaintiff(s)
v.

Civil Action No. 16-3007

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, an agency of the United States
Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Bob Troyer
United States Attorney
1225 17th Street
Suit 700
Denver, CO 80202

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Michael Harris
Wildlife Law Program
Friends of Animals
7500 E. Arapahoe Road, Suite 385
Centennial, CO 80112

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 16-3007

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):*

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
FRIENDS OF ANIMALS, a New York non-profit corporation, and SEA SHEPHERD LEGAL, a Washington non-profit corporation
(b) County of Residence of First Listed Plaintiff Arapahoe County
(c) Attorneys Michael Harris, Friends of Animals, Wildlife Law Program, 7500 E. Arapahoe Rd., Suite 385, Centennial, CO 80112; Tel: (720) 949-7791

DEFENDANTS
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, an agency of the United States
County of Residence of First Listed Defendant District of Columbia
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question
4 Diversity

III. CITIZENSHIP OF PRINCIPAL PARTIES
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country

IV. NATURE OF SUIT
CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, TAX SUITS, OTHER STATUTES

V. ORIGIN
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district
6 Multidistrict litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing
5 U.S.C 552- Failure to respond to request under the Freedom of Information Act
Brief description of cause: AP Docket

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMANDS
JURY DEMAND: Yes No

DATE: 12/08/2016
SIGNATURE OF ATTORNEY OF RECORD: /s/ Michael Ray Harris

FOR OFFICE USE ONLY
RECEIPT #, AMOUNT, APPLYING IFP, JUDGE, MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows.

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment noting, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example:

U.S. Civil Statute: 47 USC 553

Brief Description:

Unauthorized reception of cable service

Or:

"AP Docket"

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

FRIENDS OF ANIMALS, and
SEA SHEPHERD LEGAL;

Plaintiffs,

v.

NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION
an agency of the United States,

Defendant.

Civ. No. 16-3007

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF
(FREEDOM OF INFORMATION ACT)**

INTRODUCTION

1. This action is brought to remedy violations of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et. seq.* Specifically, it challenges the failure of the National Oceanic and Atmospheric Administration (“Federal Defendant”) to provide a final determination, including all responsive documents, within the time required by FOIA in regard to Plaintiffs Friends of Animals’ and Sea Shepherd Legal’s (“Plaintiffs”) April 14, 2016 request for information (“Request”).

2. In the Request, Plaintiffs asked for all documents in Federal Defendant’s possession related to pending or final approvals under the Marine Mammal Protection Act, National Environmental Policy Act and the Endangered Species Act for anthropogenic activities affecting the Cook Inlet beluga whale. Plaintiffs also sought all documents related to biological analyses and threats to the Cook Inlet beluga whale. *See* Exhibit A.

3. As of the date on this Complaint, Federal Defendant has not made a final determination regarding the release of documents, nor has Federal Defendant provided a timeline or other plan for compliance with the requirements of FOIA to indicate when or whether the Request will be fully satisfied.

4. Federal Defendant is unlawfully withholding public disclosure of information that Plaintiffs are entitled to receive under FOIA. By failing to make either a timely determination or timely and complete releases after the initial tranche of documents, Federal Defendant failed to comply with the statutory mandates and deadlines imposed by FOIA.

5. Accordingly, Plaintiffs seek declaratory relief establishing that Federal Defendant has violated FOIA. Plaintiffs also seek injunctive relief directing Federal Defendant to make a determination on the Request, provide a timeline for the release of the remaining documents, and promptly provide the requested material free of cost.

6. Plaintiffs bring this lawsuit to obtain timely disclosure of critical information related to authorized takes, and to pending authorizations of requested takes, of hundreds of Cook Inlet beluga whales from multiple and geographically overlapping oil and gas projects in the Cook Inlet. Given the significant potential impact upon the rapidly diminishing population of Cook Inlet beluga whales and the strong public interest in disclosure of information that may directly assist Plaintiffs' ongoing efforts to protect this population, Plaintiffs seek expeditious treatment of their Complaint pursuant to 28 U.S.C. § 1657.

JURISDICTION AND VENUE

7. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA) and 28 U.S.C. § 1331 (federal question). This Court may grant the declaratory relief under 28 U.S.C. §§ 2201, *et seq.* (Declaratory Judgment Act) and injunctive relief under 5 U.S.C. § 552(a)(4)(B) (FOIA). An actual, justiciable controversy exists within the meaning of the Declaratory Judgment Act between Plaintiffs and Federal Defendant. The Court has jurisdiction, upon receipt of a complaint, "to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B).

8. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B), which provides venue for FOIA cases in this district as the district in which a plaintiff resides. Friends of Animals maintains a principle office here in Colorado. Venue is also proper under 28 U.S.C. § 1391(b) because the defendant is subject to personal jurisdiction in this federal district.

PARTIES

9. Friends of Animals is a nonprofit international advocacy organization with nearly 200,000 members, incorporated in the state of New York since 1957. Friends of Animals seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living and domestic animals. Friends of Animals engages in a variety of advocacy programs in support of these goals. Friends of Animals informs its members about animal advocacy issues as well as the organization's progress in addressing these issues through its magazine called *ActionLine*, its website, and other reports. Friends of Animals has published articles and information advocating for the protection of wild species so that they can live unfettered in their natural habitats.

10. In 2013, Friends of Animals created a federal wildlife law program. The program established its principle office in Centennial, Colorado. The office consists of four full-time employees and one part-time employee. Through this office, Friends of Animals submitted the Request at issue in this action.

11. Sea Shepherd Legal is a nonprofit public interest law organization dedicated to its mission to end the destruction of habitat and slaughter of wildlife in the world's oceans in order to conserve and protect ecosystems and species. In furtherance of that mission, Sea Shepherd Legal has been involved in protecting marine life throughout the world. Sea Shepherd Legal uses public outreach and education to advocate for and motivate the creation of greater protections for cetaceans and other marine life.

12. The interests of Plaintiffs and their members are harmed by Federal Defendant's failure to release the requested documents in a timely manner, which prevents Plaintiffs

from obtaining, analyzing, disseminating and using the requested information to advance Plaintiffs' missions of ensuring the protection of marine wildlife and, in particular here, the Cook Inlet beluga whale.

13. Federal Defendant is an agency within the meaning of 5 U.S.C. § 552(f)(1). Federal Defendant is responsible for fulfilling Plaintiffs' Request and complying with all federal laws.

STATUTORY BACKGROUND

14. Congress enacted FOIA to ensure public access to U.S. government records. FOIA carries a presumption of disclosure. *Dep't of State v Ray*, 502 U.S. 164 (1991). Upon receipt of a written request that "reasonably describes" the records sought and complies with "published rules . . . and procedures to be followed," agencies of the United States government are required to "promptly" disclose their records, unless they can be lawfully withheld from disclosure under one of nine specific exemptions in FOIA. 5 U.S.C. § 552(a)(3)(A). The burden is on the government—not the requestor or public—to justify why particular information may be withheld. *Ray*, 502 U.S. at 164.

15. FOIA requires agencies to "determine within 20 days . . . after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefore, and of the right of such person to appeal to the head of the agency any adverse determination." *Id.* at § 552(a)(6)(A)(i).

16. On determination by an agency to comply with the request, the records shall be made "promptly available." *Id.* at § 552(a)(6)(C).

17. In "unusual circumstances," an agency may extend the time limits for up to 10 working days by providing written notice to the requester setting forth the unusual circumstance(s) and the date on which the determination is expected to be dispatched. *Id.* at § 552(a)(6)(B).

18. In some limited circumstances, FOIA allows an agency to seek an extension potentially beyond 10 days. Specifically, FOIA requires an agency to provide written notification to the requester: (1) offering an opportunity to limit the scope of the request so that it may be processed within the 20 work-day limit, or (2) offering an opportunity to arrange with the agency an “alternative time frame” for processing the request. *Id.* at § 552(a)(6)(B)(ii). If the agency elects this option, it must make its FOIA Public Liaison available to the requester to assist in any disputes with the agency. *Id.*

19. If the agency fails to make a determination on a document request within 20 work-days, or within the limited additional time permitted upon proper notification of “unusual circumstances,” the requester is deemed to have constructively exhausted administrative remedies and may seek judicial review. *Id.* at § 552(a)(6)(C). *Oglesby v. Dep’t of Army*, 920 F.2d 57(D.C. Cir 1990), *Nurse v. Sec’y of the Air Force*, 231 F. Supp. 2d 323, 328 (D.D.C. 2002) (“The FOIA is considered a unique statute because it recognizes a constructive exhaustion doctrine for purposes of judicial review upon the expiration of certain relevant FOIA deadlines.”)

20. FOIA requires that the agency “shall make the records promptly available to any person” and may not defer release of responsive documents indefinitely. *Id.* at § 552(a)(3)(A). Failure to issue a determination and to complete the release of documents in a timely fashion is a violation of FOIA even if the initial response and releases may have been prompt. *Munger, Tolles, Olsen v. Dept. of Army*, 58 F. Supp. 3d 1050 (C.D. Cal 2014). *See also Fiduccia v. U.S. Dep’t of Justice*, 185 F.3d 1035, 1041 (9th Cir. 1999)(“Congress gave agencies 20 days, not years, to decide whether to comply with requests and notify the requesters”); *Long v. IRS*, 693 F.2d 907, 910 (9th Cir. 1982) (“[U]nreasonable delays in disclosing non-exempt documents violate the intent and purpose of the FOIA, and the courts have a duty to prevent these abuses.”).

FACTUAL BACKGROUND

21. On April 12, 2016, Plaintiffs submitted the Request under FOIA to Federal Defendant reasonably describing all documents of which Plaintiffs sought disclosure.

22. On April 21, 2016, Federal Defendant provided written notification confirming receipt of the Request and disclosing that the Request had been assigned for processing on April 14, 2016.

23. In the confirmation, Federal Defendant did not request any additional information needed to clarify the Request. Federal Defendant did request a Scope Conference with Friends of Animals.

24. On April 29, 2016, Federal Defendant and Friends of Animals conducted the Scope Conference. During this conference, Federal Defendant did not request any additional information needed to clarify the Request but asked Plaintiffs to prioritize the individual document categories identified in the Request. Friends of Animals instructed Federal Defendant to proceed with the original FOIA request, but agreed to send a letter outlining the priorities of the original FOIA request.

25. On May 10, 2016, Friends of Animals submitted a letter to Federal Defendant outlining the top priorities of the original FOIA request. In that letter, Friends of Animals stated as follows: "As discussed on the April 29, 2016 conference call, Friends of Animals has not changed or altered the original request, nor are we waiving under [sic] rights under FOIA. We provide the following priorities merely to assist the agency in processing our request."

26. On May 16, 2016, Federal Defendant confirmed receipt of Friends of Animals' May 10 letter outlining the top priorities of the original FOIA request and indicated the need for a 10-day extension due to "unusual circumstances." Federal Defendant further stated that the first interim release of records could be anticipated on May 25, 2016.

27. The 20 work-day time limit for providing a determination on the Request commenced on April 14 and, thus, expired on May 12, 2016.

28. Federal Defendant made two interim releases of documents. The first release was dated June 9, 2016. The second was dated July 26, 2016 (but not received until August 29, 2016).

29. Since August 29, 2016, no further documents have been released.

30. Since August 29, 2016, Federal Defendant has not provided any timeline for the release of any remaining documents.

31. As of the date of this complaint, Plaintiffs have not received a final determination on their Request.

32. Plaintiffs believe and allege that Federal Defendant is unlawfully withholding public disclosure of information sought by Plaintiffs, information to which they are entitled to receive promptly, and for which Federal Defendant has not provided a valid disclosure exemption.

33. Federal Defendant has offered no reasonable explanation for its delay, and it has failed to estimate when it will finally be able to comply with its obligations under FOIA.

34. Since Federal Defendant has neither produced responsive documents nor provided an appealable final determination, Plaintiffs have constructively exhausted their administrative remedies with respect to the requested documents.

CLAIM FOR RELIEF
Violation of Freedom of Information Act
Failure to Respond with a Determination

35. Plaintiffs herein incorporate all allegations contained in the proceeding paragraphs.

36. FOIA provides that any person may obtain those agency records that are not subject to the FOIA disclosure exemptions promptly. 5 U.S.C. § 552 (a)(3)(A).

37. Plaintiffs properly requested records within the control of Federal Defendant.

38. Federal Defendant failed to provide Plaintiffs with a final determination as to whether Federal Defendant has any non-exempt records responsive to the Request and whether it intended to release such records within the required timeframe. *Id.* § 552(a)(6)(A)(i) and § 552(a)(6)(B).

39. Federal Defendant failed to properly invoke and comply with FOIA's provision allowing a 10 working day extension for "unusual circumstances." *Id.* at § 552(a)(6)(B)(i).

40. Federal Defendant failed to properly invoke and comply with FOIA's provision permitting an extension of potentially greater than 10 working days by offering Plaintiffs an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. *Id.* at § 552(a)(6)(B)(ii).

41. Federal Defendant has failed to promptly make available responsive documents without unreasonable delay.

42. Federal Defendant's failures to comply with FOIA are subject to judicial review under 5 U.S.C. § 552 (a)(4)(B). Federal Defendant's failure to issue a determination within the statutory deadlines violates 5 U.S.C. § 552 (a)(3)(A).

43. Accordingly, Plaintiffs are entitled to injunctive and declaratory relief with respect to a determination on the Request.

PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court enter judgment providing the following relief:

1. Declare that Federal Defendant violated FOIA by failing to (1) make a determination on Plaintiffs' Request and (2) make records responsive to Plaintiffs' Request available within the statutory deadlines.
2. Order Federal Defendant to (1) provide Plaintiffs with a final determination and (2) process and release all records responsive to the Request at no cost to Plaintiffs within 10 days from the date of such order;

3. Retain jurisdiction of this action to ensure the processing of the Request, and to ensure that no agency records are wrongfully withheld;
4. Award Plaintiffs costs, including reasonable attorney fees and litigation costs in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
5. Grant Plaintiffs any other relief that the Court deems just and proper.

Dated: December 08, 2016

Respectfully Submitted,

/s/ Michael Harris
Michael Ray Harris
Director, Wildlife Law Program
Friends of Animals
7500 E. Arapahoe Road, Suite 385
Centennial, CO 80112
720-949-7791
michaelharris@friendsofanimals.org

Attorney for Plaintiff Friends of Animals

/s/ Brett Sommermeyer
Brett Sommermeyer (admission pending)
Legal Director
Sea Shepherd Legal
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No. 108
Seattle, WA 98102
brett@seashepherdlegal.org

Attorney for Plaintiff Sea Shepherd Legal

EXHIBIT A

~~EXPLOITERS~~
FRIENDS
of ANIMALS

April 12, 2016

Submitted Via U.S Certified Mail and FOIAonline

National Oceanic and Atmospheric Administration
Public Reference Facility (SOU1000)
1315 East-West Highway (SSMC3)
Room 9719
Silver Spring, Maryland 20910

Re: FOIA Request for Records Relating to Incidental Harassment Authorizations
Issued for Activities Impacting Cook Inlet Beluga Whales in Federal Waters
Administered by the National Oceanic and Atmospheric Administration

Dear FOIA Officer:

I am writing on behalf of Friends of Animals, Sea Shepherd Legal, and the Turtle Island Restoration Network (collectively, the "Requesters"). Pursuant to 43 C.F.R. Part 2, and the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, Requesters seek the disclosure of all documents¹ in the categories listed below regarding the harassment of the distinct population segment of Cook Inlet beluga whales in waters managed by the National Oceanic and Atmospheric Administration ("NOAA"). Unless otherwise specified, Requesters seek all documents for the time period starting January 26th, 2007 and ending April 11, 2016. Requesters also request a full waiver of all search and duplication fees.

¹ The terms "document(s)" and "records" are used in the broadest sense contemplated by Federal Rule of Civil Procedure 34. It means all written, transcribed, recorded or graphic matters, however produced or reproduced. This definition includes, but is not limited to, any and all original copies or drafts of any and all of the following: records; notes; nonconforming copies that contain deletions, insertions, corrections, handwritten notes or comment summaries; memoranda; schedules; contracts; binders; work papers; logs; diaries; work sheets; files; letters; correspondence; summaries of memoranda; reports or memoranda of telephone conversations or records of personal conversations or interviews; handwritten notes; telephone logs; facsimiles; summaries; invoices; promissory notes; contracts; loan agreements; vouchers; billing statements; tape recordings or transcripts of tape recordings; photographs; videotapes; computerized output or data bases; electronic files; computer disks; computer CDs; electronic mail transmittals; data and all other writings; calculations; and figures or symbols of any kind which, in any manner mentioned, relate to the subjects of the specific requests contained below. This request includes all documents that have ever been within your custody or control, including all inter and intra agency documents, whether they exist in agency working, investigative, retired, electronic mail, or other files currently or at any other time.

A. FOIA Request.

Over the course of several years, NOAA has issued multiple Letters of Authorization (“LoA”) and Incidental Harassment Authorizations (“IHA”) for Level B takes of Cook Inlet beluga whales under the Marine Mammal Protection Act (“MMPA”) incidental to anthropogenic activities in Cook Inlet. Under the MMPA, Level B takes have “the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, feeding, or sheltering.” 16 U.S.C. § 1362(18).

Please provide the following documents in your possession, whether received, created, and/or distributed by NOAA:

- (1) All documents regarding the status of any pending anthropogenic activities in the Cook Inlet area for which IHAs or LoAs have been requested for takes of Cook Inlet belugas;
- (2) All documents regarding the final IHAs or LoAs issued for anthropogenic activities in Cook Inlet, including all documents supporting a “negligible” impact finding pursuant to the MMPA;
- (3) All documents, including research or commentary, not currently available to the public concerning the specific effects of anthropogenic noise or cumulative effects of Level B takes on the Cook Inlet beluga population;
- (4) All documents regarding the cumulative or synergistic effects of Level B takes of Cook Inlet beluga whales resulting from anthropogenic development activities over the past ten years (2007-2016);
- (5) All documents regarding Level A² takes of Cook Inlet belugas resulting from anthropogenic activities;
- (6) All documents regarding the status of NOAA’s preparation of the programmatic EA and EIS analyzing takes of marine mammals of Cook Inlet incidental to anthropogenic activities and all records of anticipated new agency actions or research pertaining to Cook Inlet belugas;
- (7) All documents regarding the preparation of the final recovery plan for Cook Inlet belugas under the federal Endangered Species Act (“ESA”);
- (8) All documents regarding any limiting factors analysis completed or in progress for Cook Inlet belugas;
- (9) All documents regarding any prioritization of threats to Cook Inlet belugas;
- (10) All documents of any accounting(s) of anthropogenic activities in the Cook Inlet that may result in the taking of a beluga whale;

² As defined as having “the potential to injure a marine mammal or marine mammal stock in the wild.” 16 U.S.C. § 1362(18)(A)(i).

- (11) All documents regarding any population monitoring for Cook Inlet belugas planned or in progress for 2016;
- (12) All documents regarding any population monitoring for Cook Inlet belugas conducted within the last three years, including any population surveys (or similar activities) in proposed project areas conducted by the applicant(s) for an IHA or LoA;
- (13) All documents regarding any formal or informal consultations involving Cook Inlet belugas under Section 7 of the ESA.

The items specifically requested are not meant to be exclusive of any other documents that, although not specially requested, have a reasonable relationship to the subject matter of this request.

For purposes of this request, "anthropogenic activities" are defined to encompass any activity wholly or substantially relating to vessel or aircraft noise (if vessel or aircraft movements are products of an anthropogenic project), ship traffic, including strikes, dredging, pile driving, explosions, demolition, sonar use, oil and gas exploration (including seismic operations, drilling, platform noise, airguns, multibeam echosounders, and sub-bottom profilers), shore construction, military testing activities (i.e. explosions, sonar), pipe and cable laying, water pollution and any other activities reasonably affiliated with anthropogenic projects.

The Supreme Court has stated that FOIA establishes a "strong presumption in favor of disclosure" of requested information, and that the burden is on the government to substantiate why information may not be released under the act's various exemptions. *Department of State v. Ray*, 502 U.S. 164, 173 (1991). Congress affirmed these tenets of FOIA in the Open Government Act of 2007, finding that "the Government [should] remain open and accessible to the American people" and always be based "not upon the need to know but upon the fundamental right to know." Public Law 110-175, 121 Stat. 2524, 2525 (Dec. 31, 2007) (internal citations omitted). President Obama has also directed that "[t]he presumption of disclosure should be applied to all decisions involving FOIA." 74 Fed. Reg. 4683 (Jan. 26, 2009). Please consider the foregoing before withholding any documents that are responsive to this request.

The Requesters anticipate that you will make the requested materials available within the statutorily prescribed period. We also request that you waive any applicable fees since disclosure meets the statutory standard for a fee waiver in that it is clearly "in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii).

B. Fee Waiver Request.

FOIA provides that "documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). The legislative history of FOIA, as well as the case law interpreting the Act, indicates that the statute's fee waiver provision is to be liberally construed favoring the public interest. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 Cong. Rec. S14298 (Sept. 30, 1986) (Sen. Leahy)).

This request for information qualifies for a fee waiver under this standard and, accordingly, we request that all fees be waived. This request satisfies both statutory and regulatory requirements for granting a fee waiver. Below we explain how the request and the Requesters meet each of requirements for a fee waiver delineated in NOAA's FOIA regulations (under its parent agency, the Department of Commerce) 15 CFR § 4.11(k).

1. Disclosure of the Information Requested is in the Public Interest.

(i) *"The subject of the request: whether the subject of the requested records concerns the operations or activities of the Government."*

The requested records concern the operations and activities of NOAA, a federal agency. Specifically, they concern the operation of this federal agency, its management of federally protected Cook Inlet beluga whales, and its permitting decision-making process.

(ii) *"The informative value of the information to be disclosed: whether the disclosure is 'likely to contribute' to an understanding of Government operations or activities."*

(a) How the contents of the records are meaningfully informative;

The requested documents would have substantive, meaningfully informative value and would be likely to contribute to a better understanding of NOAA and its actions. The documents will illuminate in a clear and direct way the operations and activities of the federal government and the activities that it undertakes in regards to management of Cook Inlet beluga whales and the anthropogenic projects that affect them. Although Cook Inlet beluga whales have been in the public spotlight in recent years due to their dwindling numbers and Endangered Species Act listing in 2008, not much is definitively known about the Level B take, cumulative, and noise pollution impacts on Cook Inlet beluga whales from anthropogenic activities. The information requested concerns the operations of the agency responsible for approving activities that have the potential to seriously injure or even kill Cook Inlet

beluga whales and the details of NOAA's past and current permitting decisions and decision-making process in regards to these whales.

- (b) The logical connection between the content of the records and the operations or activities;

The release of the requested documents will significantly contribute to public understanding and oversight of the federal government's operations. For example, the records will help the public understand the status of current Cook Inlet projects, how often and to which activities the federal government authorizes Level B takes, how the government evaluates the significance of cumulative and noise impacts, and the process by which the government makes decisions that affect Cook Inlet beluga whales.

- (iii) *"The contribution to an understanding of the subject by the public likely to result from disclosure: whether disclosure of the requested information will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester."*

Friends of Animals:

Friends of Animals is a nonprofit, international animal advocacy organization incorporated in the state of New York since 1957. Friends of Animals seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living, and domestic animals. The public impact of this disclosed information would be magnified through Friends of Animals' public engagement mechanisms. Friends of Animals has a proven track record of contributing to public understanding of issues surrounding animal advocacy and human-wildlife interactions.

Friends of Animals informs its members about animal advocacy issues, as well as the organization's progress in addressing such issues, through its quarterly magazine called *ActionLine*, its website, and other reports. Friends of Animals has published articles and information advocating for the protection of animals so that they can live unfettered in their natural habitat. In particular, Friends of Animals has a long-standing commitment to protecting animals imperiled due to human-caused activities. Friends of Animals regularly publicizes information about wildlife. Friends of Animals employs several experts who are able to quickly digest and circulate the information obtained from this request, including attorneys and media correspondents.

Friends of Animals plans to disseminate the requested information to Friends of Animals' members, members of other conservation organizations, and other interested members of the public through its website, its quarterly magazine,

and through outreach to other media outlets. By disseminating and distributing this information, Friends of Animals will significantly contribute to the public's understanding of how the government manages harassment of Cook Inlet beluga whales. Friends of Animals also informs its members about animal advocacy issues—including government management of birds, wild horses, and other wildlife—through lawsuits.

Friends of Animals staff has the ability to review, consolidate, and disseminate this information to the public. By consolidating and releasing the information, Friends of Animals will significantly enhance the public's understanding of how the government is currently operating. Additionally, the requested information will constitute a significant contribution to public understanding because it will allow Friends of Animals and the public to determine how the federal government's actions are impacting Cook Inlet beluga whales and whether the federal government has met its obligations under the National Environmental Policy Act, the Marine Mammal Protection Act, and Endangered Species Act.

Sea Shepherd Legal

Sea Shepherd Legal is an international, nonprofit, public interest environmental law firm with a mission to save marine wildlife and habitats by enforcing, strengthening, and developing protective laws, treaties, policies, and practices worldwide. Sea Shepherd Legal works on a range of matters from ensuring proper governmental agency action to developing innovative policy approaches, in order to encourage greater protections for marine wildlife and ecosystems. Public outreach is a key aspect of Sea Shepherd Legal's work.

Sea Shepherd Legal engages in public outreach in order to raise awareness about marine conservation facts, law, resources and tools. Through outreach and education, Sea Shepherd Legal promotes public understanding regarding the importance of biodiversity conservation and how members of the public can play an essential role in protecting marine wildlife and habitats.

Sea Shepherd Legal's general public outreach work involves the bi-weekly publication of a blog, disseminating information regarding marine wildlife protection through social media, and initiating calls to action through online campaign petitions. Related Sea Shepherd entities selectively disseminate these materials to more than one million followers.

The public has a right to know which wildlife species and habitats are at risk, the nature of such risk – including anthropogenic impacts, the role the government is required to play in assessing and mitigating risks, and the government's official response thereto. Through its extensive public outreach endeavors, Sea Shepherd

Legal will ensure that the public acquires this knowledge.

Turtle Island Restoration Network

Turtle Island Restoration Network (“TIRN”) is an international public interest non-profit with a strong track record of disseminating information from FOIA requests to its own membership, decision-makers, the media and the general public. TIRN is a non-profit organization that informs, educates, and counsels the public regarding environmental issues, policies, and laws relating to imperiled species, including marine species. TIRN has been substantially involved in the management activities of numerous government agencies for years, and has consistently displayed its ability to disseminate information granted to it through FOIA requests. As a long established advocacy organization, our informational publications supply information not only to our membership, but also to the memberships of most other conservation organizations, locally as well as nationally. Our informational publications continue to contribute information to public media outlets, as well. TIRN routinely disseminates such information through e-mail alerts and newsletters, which are sent to over 200,000 members and activists. In addition, we disseminate information through our websites, which receives over 100,000 page views per month. Furthermore, we bring such information to our partner organizations and to the media for dissemination to the membership of other organizations and the public at large. Information and our analyses of NMFS’s compliance with the MSA, the MMPA and the ESA will likely be disseminated through all of these means.

TIRN will publicize the results of any analysis of the data to inform the public about the policy choices and information regarding the management of anthropogenic impacts to the Cook Inlet Beluga Whale. This is certain to result in a significant increase in public understanding of government agency activity, especially NOAA’s approach to the conservation of marine species. In addition to informing the public about information relevant to policy and management, TIRN has a proven track record of enforcing environmental laws and publicizing agency compliance with the provisions of various environmental laws through information gained from FOIA requests like this one. TIRN intends to use the documents requested in this request in a similar manner, as appropriate.

- (iv) *“The significance of the contribution to public understanding: whether the disclosure is likely to contribute ‘significantly’ to public understanding of Government operations or activities.”*

Requesters seek the requested documents to increase their understanding, and subsequently contribute to public understanding, of how the federal government is managing activities that affect Cook Inlet beluga whales in Alaska. Many anthropogenic projects are approved by NOAA each year, many of them

granted Level B takes of marine mammals, and the government claims that these actions have a negligible effect on marine mammals. However, the public does not have access to all of the documents available to NOAA and thus cannot understand exactly how NOAA makes its non-negligible impact determinations during agency review of project applications. Additionally, the public cannot understand the justifications used by NOAA staff, its decision-making process, or how risks associated with permitting are assessed without more information about the operations of NOAA.

If the information is not disclosed to the Requesters, the public will remain uninformed about what activities the federal government conducts and authorizes. Disclosure, however, will permit the Requesters to disseminate information to the public, and it will increase transparency surrounding the federal government's activities. This is particularly important because NEPA grants the public a right to this information and a right to participate in federal decisions, such as commenting on proposed anthropogenic activities in Cook Inlet.

The information requested is not, to our knowledge, publicly available. The government may omit sending us requested records that are available in publicly accessible forums (e.g. Internet) or in published materials that are routinely available at public or university libraries. If the government chooses to omit such information, please provide the Requesters with adequate references and/or website links so that we may obtain these materials on our own. We would request that the government provide us with an index of such omitted documents, so that we may have reasonable certainty that we have access to the complete record regarding the management and protection of the Cook Inlet Beluga whales. However, we suspect that the majority of requested materials will not be available unless we receive them from the government in satisfaction of this FOIA request.

2. Disclosure of the Information is Not Primarily in the Commercial Interest of the Requester

When considering whether a request for a fee waiver meets the second prong of the fee waiver requirement, the agency is directed to consider: (1) "whether or not the requester has a commercial interest that would be furthered by the requested disclosure," and (2) "the primary interest in disclosure," i.e. whether the interest of the requester is primarily commercial or public.

None of the Requesters have a commercial, trade, or profit interest in the requested records. In fact, the Requesters do not have any commercial, trade, or profit interests.

Friends of Animals is a non-profit, international animal advocacy organization, incorporated in the state of New York since 1957. It serves the public interest by increasing the general public's awareness of animal advocacy issues and

by teaching how to end animal cruelty and exploitation around the world. Friends of Animals seeks to promote a respectful view of nonhuman, free-living and domestic animals. The Internal Revenue Service recognizes Friends of Animals as a 501(c)(3) tax-exempt organization (IRS Employer Identification#: 13-6018549). Friends of Animals' successful and well-orchestrated public education programs on animal advocacy issues and government operations merit granting a fee waiver for the requested records.

Sea Shepherd Legal was established in 2014 for the purpose of saving marine wildlife and habitats by enforcing, strengthening, and developing protective laws, treaties, policies, and practices worldwide. Sea Shepherd Legal works on a range of matters to ensure greater protections for marine wildlife and ecosystems, via the use of tools including litigation, policy development and public outreach. The IRS recognizes Sea Shepherd Legal as a public interest environmental law firm. Sea Shepherd Legal's EIN number is 47-2272507.

Turtle Island Restoration Network is a 501(c)(3) that has been working to protect marine wildlife, especially sea turtles, but also marine mammals and other endangered species, since the early 1980s. TIRN works through a combination of legal and advocacy strategies and grassroots organizing and education to strengthen protections worldwide. TIRN's EIN is 91-1818080.

CONCLUSION

Please produce the records regarding this FOIA request by electronic mail to wlp_admin@friendsofanimals.org or to the physical address listed below:

Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112

Please produce the records on a rolling basis to the extent possible; at no point should the search for—or the deliberation concerning—certain records delay the production of others that the federal government has already retrieved and elected to produce.

Thank you for your attention to this request. If you have any questions about the requested documents or the requested fee waiver, please do not hesitate to contact me at 720-949-7791 or at wlp_admin@friendsofanimals.org.

Sincerely,



Kaylee Dolen, Administrative Assistant

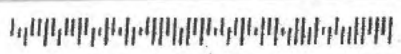
Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112
720-949-7791
wlp_admin@friendsofanimals.org

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U.S. DISTRICT COURT
DISTRICT OF COLORADO
CENTENNIAL, CO

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Law P
Animal
Arapahoe Rd. Suite 385
A, CO 80112



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RETURN RECEIPT
REQUESTED

T.D.
12/11/2016

Bob Troyer
United States Attorney
1225 17th Street
Suite 700
Denver, CO 80202

Last Name: friends of animals First:
 FBI #: SSN #:
 CATS #: EIN #:
 PDID #: Marshals #:

Name Matching

- Spelling Match
- Sounds Like

Explanation

Participant	USAOID	Alias	Stat Role		AUSA	Court	Court #
FRIENDS OF ANIMALS	2016V00861		A	P	IJK	DC	16-CV-0279
FRIENDS OF ANIMALS	2016V00092		C	P	IJK	DC	16-CV-00196-
FRIENDS OF ANIMALS	2016V00091		C	P	IJK	DC	16-CV-00194-

Move highlight bar to record and press <F3> to GOTO the Case Summary screen.

MON, 12-DEC-2016

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Image not available for this document, ID: 0.7.3707.13504 000005

Image not available for this document, ID: 0.7.3707.13504 000006

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Tuesday, December 20, 2016 7:11 AM
To: Robert Swisher - NOAA Federal; Dennis Morgan - NOAA Federal
Subject: Fwd: Filed!
Attachments: Dkt. 16 - 2 Vaughn Index.pdf; Dkt. 16 - 3 May 27 Cover Letter.pdf; Dkt. 16 - 4 Spinrad Declaration.pdf; Dkt. 16 - 5 Proposed Order.pdf; Dkt. 16 - Motion for Summary Judgment.pdf; Dkt. 16 - 1 Graff Declaration.pdf

(b)(5)

. I'll forward to you and you can share if you think it's appropriate.

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) (C)

Confidentiality Notice: This e mail message is intended only for the named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.

----- Forwarded message -----

From: Snell, Kevin (CIV) <Kevin.Snell@usdoj.gov>
Date: Thu, Dec 15, 2016 at 7:53 PM
Subject: Filed!
To: "Lowery, Ruth Ann (Federal)" <RuthAnn.Lowery@noaa.gov>, Rose Stanley - NOAA Federal <rose.stanley@noaa.gov>, "Davidson, Hillary (Federal)" <HDavidson@doc.gov>, "Myers, Jordan (Federal)" <jmyers@doc.gov>, "Vieira, Rodney (Federal)" <Rod.Vieira@noaa.gov>, "Graff, Mark (Federal)" <Mark.Graff@noaa.gov>

Thanks everyone for your incredible efforts in this case. This was not an easy task and it truly took a team effort. I greatly appreciate everyone's help!

Hope everyone has great weekends!

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

)	
JUDICIAL WATCH, INC.,)	
425 Third Street, SW, Suite 800)	
Washington, D.C. 20024)	
)	
Plaintiff,)	
)	
v.	)	Civil Action No. 15-2088 (CRC)
)	
U.S. DEPARTMENT OF)	
COMMERCE,)	
1401 Constitution Avenue, NW)	
Washington, D.C. 20230)	
)	
Defendant.)	
_____)	

DECLARATION OF MARK H. GRAFF

Pursuant to 28 U.S.C. § 1746, I, Mark H. Graff, declare and state as follows:

1. I am currently the Freedom of Information Act (FOIA) Officer for the National Oceanic and Atmospheric Administration (NOAA), which is a part of the United States Department of Commerce (DOC). I have occupied this position since September 6, 2015. My primary duties include management of requests submitted to NOAA for records made under both the FOIA, 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a (PA). In that capacity, I oversee NOAA's receipt and log-in of in-coming FOIA requests, the tasking and coordination of searches for responsive records, and review of out-going responses.

2. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, upon conclusions and determinations reached and made in accordance therewith, and upon my personal examination of

the withheld and redacted documents. Additionally, this declaration includes the search terms, locations and parameters agreed upon with the plaintiffs and utilized by those who conducted the search. I am personally familiar with Plaintiff Judicial Watch's FOIA request, which is at issue in this civil action. I submit this declaration in support of a motion for summary judgment filed by the Department of Commerce in the above-captioned lawsuit.

3. This declaration provides background information on the development of a paper entitled *Possible Artifacts of Data Biases in the Recent Global Surface Warming Hiatus* ("Hiatus Paper" or "the Paper"), which was published in June 2015 in the journal *Science* and is the focus of the FOIA request at issue in this case. It also explains NOAA's search for records responsive to Plaintiff's FOIA request and the FOIA exemptions applied in processing the responsive records. A *Vaughn* index (Exhibit 1) provides a detailed description of information withheld by NOAA and challenged by Plaintiff, as well as NOAA's basis for those withholdings.

I. BACKGROUND

4. The National Centers for Environmental Information (NCEI), located within the NOAA's National Environmental Satellite, Data, and Information Service (NESDIS), develops use-inspired datasets, products and reports that describe average weather conditions (and changes therein) over the United States and the globe. NCEI acts as the "Nation's Scorekeeper" regarding the trends and anomalies of weather and climate, focusing on essential climatic elements such as temperature and rainfall, as well as extreme events such as hurricanes and droughts.

5. NCEI produces and maintains datasets for global ocean areas and global land areas. Changes in surface temperature over long periods are studied using several datasets that are continuously maintained and updated. There are separate datasets for the ocean and the land, which are then merged to create a global dataset.

6. Scientists throughout the government, including at agencies other than NOAA and researchers outside of the government, use NOAA's temperature datasets for a variety of purposes, including for climatic research and climate assessments. NCEI scientists are continually working on improving these datasets to provide scientists and the public with the most up-to-date and accurate information.

7. NCEI scientists periodically interpret and analyze global datasets and release to the public the most up-to-date climate science, often through publication in scientific journals. NCEI scientists use the most recent information from these datasets to propose new scientific theories and also re-evaluate earlier conclusions reached within the scientific community in light of new or updated data.

8. The Hiatus Paper is an example of analysis and interpretation of the updated underlying data, work which is consistent with the mission of NOAA. Nine NOAA scientists contributed to this paper: Thomas Karl (the lead author), Dr. Anthony Arguez, Dr. Boyin Huang, Mr. Jay Lawrimore, Mr. James McMahon, Dr. Matthew Menne, Dr. Thomas Peterson, Dr. Russell Vose, and Dr. Huai-min Zhang. Thomas Karl is the former Director of NCEI. Jay Lawrimore, Dr. Russell Vose, and Dr. Huai-min Zhang are supervisory scientists at NCEI. Dr. Anthony Arguez and Dr. Matthew Menne are climate scientists at NCEI. Since the publication

of the paper, Dr. Thomas Karl and Dr. Thomas Peterson have retired, and Mr. James McMahon no longer works at NCEI.

9. The Intergovernmental Panel on Climate Change (IPCC) released a report in stages between September 2013 and November 2014 that concluded that the upward global surface temperature trend from 1998-2012 was lower than the upward global surface temperature trend from 1951-2012. This apparent observed slowing was dubbed the “hiatus.”

10. There were significant developments related to the alleged “hiatus” in the two years immediately following the release of the IPCC report. In particular, both 2013 and 2014 were among the top-five warmest years on record for the globe. In addition, NOAA scientists made significant improvements to its sea surface temperature dataset, one of the largest being a correction that accounted for the difference in data collected from buoys and ships. (Until the mid-1970s, ships were used to measure sea surface temperatures; since then, buoys have increasingly been used.) Scientists developed a method to correct for the difference between these two observing systems, and incorporated those corrections into its dataset and subsequently the paper that is the subject of this request.

11. On or about October 31, 2014, Director Karl shared with a group of NOAA scientists a draft of a paper that he had worked on himself, inspired by some of the papers exchanged previously by the NCEI scientists. The draft developed an idea for properly accounting for the “hiatus,” based on the additional two years of global temperature data and the improvements to NOAA’s sea surface temperature dataset. Director Karl asked the scientists to provide feedback to his draft.

12. The scientists who received the draft responded with feedback in various forms, including exchanging drafts of the paper with edits done via track changes and sending emails providing feedback.

13. Until the paper was submitted to *Science*, many drafts and revisions were exchanged along with emails and one-on-one discussions about various aspects of the paper, including: suggestions on how best to describe the data, opinions on statistical error uncertainty ranges, thoughts on implications of other researchers' work, and so on. Such collaboration via drafts and discussions in emails and orally is standard practice at NCEI.

14. On or about December 23, 2014, a NOAA author submitted the draft paper to *Science* via an online portal.

15. *Science* follows a formal peer review process that is described on their public website. See <http://www.sciencemag.org/authors/peer-review-science-publications>. Peer reviewers are subject matter experts in the topic of the submitted paper who are able to use their expertise to evaluate the scientific rigor and merit of the paper.

16. Peer reviewers provide feedback on an array of issues, including making an overall recommendation as to whether the paper should be published, in view of *Science*'s mission and also providing more detailed critique on a range of issues. These issues include the technical rigor of the data and methods used and whether the conclusions of the report are novel or similar to work already published. See <http://www.sciencemag.org/sites/default/files/REinstr13.pdf>.

17. According to *Science*, their peer review process is anonymous. The identities of reviewers are never revealed to authors, and reviewers are instructed not to identify themselves to any entity, including the press. Reviews are shared only with the author, potentially other reviewers (for cross-comment), and the Board of the journal. See <http://www.sciencemag.org/authors/peer-review-science-publications>.

18. Reviewers are expressly instructed to treat the submitted manuscript as privileged and confidential:

The submitted manuscript is a privileged communication and must be treated as a confidential document. Please destroy all copies of the manuscript after review. Please do not share the manuscript with any colleagues without the explicit permission of the editor. Reviewers should not make personal or professional use of the data or interpretations before publication without the authors' specific permission (unless you are writing an editorial or commentary to accompany the article).

<http://www.sciencemag.org/authors/peer-review-science-publications>.

19. This is reinforced in the journal's Instructions to Peer Reviewers of reports, which states:

Confidentiality: We expect reviewers to protect the confidentiality of the manuscript and ensure that it is not disseminated or exploited. Please destroy your copy of the manuscript when you are done. Only discuss the paper with a colleague with permission from the editor. We do not disclose the identity of our reviewers.

<http://www.sciencemag.org/sites/default/files/REinstr13.pdf>.

20. The authors received via email the first round of reviews from *Science* on or about February 26, 2015. In this case, *Science* sent the manuscript to five peer reviewers. These reviewers provided their comments anonymously to NOAA through *Science*, as is standard in the peer review process for *Science*.

21. After determining the best response to all of the peer reviewer comments, the authors submitted the revised manuscript and a response to reviewer comments to *Science* via the online submission portal on or about March 27, 2015. See Categories C and D of part 2 of the *Vaughn* Index.

22. On or about April 22, 2015, the authors received the second round of reviews from *Science* via email. The authors developed responses to this second round of comments, made revisions accordingly, and submitted the revised manuscript and response to reviewer comments to *Science* via the online portal on or about May 5, 2015. *See id.*

23. After submitting the revised manuscript, the authors received notice that it would be published, received galley proofs, and approved them. On June 4, 2015, the paper was published online on the *Science* website. This was followed up by publication in the printed volume of *Science* on June 26, 2015 (Volume 348, Issue 6242, at 1469).

II. ADMINISTRATIVE PROCESSING OF PLAINTIFF'S REQUEST

24. Plaintiff's FOIA request was addressed to NOAA, which is located within the Department of Commerce ("the Department"). The request sought, in relevant part:

1. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the methodology and utilization of Night Marine Air Temperatures to adjust ship and buoy temperature data.
2. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the use of other global temperature datasets for both NOAA's in-house dataset improvements and monthly press releases conveying information to the public about global temperatures.

3. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the utilization and consideration of satellite bulk atmospheric temperature readings for use in global temperature datasets.

25. When NOAA officials first reviewed the request, they determined that it did not reasonably describe the records sought. NOAA and the Department, through counsel, conferred with Plaintiff's counsel to negotiate a clear description of the materials sought.

26. During the course of those discussions, NOAA indicated to Plaintiff that it understood Plaintiff's request to reflect an interest in the Hiatus Paper. Defendant suggested Plaintiff modify the FOIA request to call for a search for all documents and communications referring to the Hiatus Paper from October 1, 2014 through June 4, 2015. Defendant offered to search the files of the nine authors of the Study. Plaintiff confirmed its interest in the Hiatus Paper, but indicated that it sought only records referring to the topics listed in its initial FOIA request.

27. The parties ultimately "reached an agreement regarding the scope of the request and the relevant search parameters," which was memorialized in the Second Joint Status Report, submitted to this Court on March 1, 2016. Regarding the documents at issue in this litigation, the parties agreed that:

"Defendant will search the records of the nine authors of the June 4, 2015 study entitled Possible Artifacts of Data Biases in the Recent Global Surface Warming Hiatus published in Science ("Karl Study") for records referring to the Karl Study and that contain the following search terms:

(1) "NMAT" and "Night Marine Air Temperatures";

(2) "ISTU", "ICOADS", and "sea ice";

(3) "satellite", "Advanced Very High Resolution Radiometer", "AVHRR", "Advanced Microwave Scanning Radiometer", and "AMSR".

For items 1, 2, and 3 of Plaintiff's FOIA request, the timeframe for the searches will be October 1, 2014 to June 4, 2015."

See Second Joint Status Report, ECF No. 10.

28. In the Third Joint Status Report, submitted to this Court on March 22, 2016, the parties agreed that NOAA, through the Department, would produce responsive, non-exempt records, as described above, to Plaintiff by May 27, 2016. *See* ECF No. 11.

29. On May 27, 2016, the Department released 102 pages of material in its entirety and 90 partially redacted pages. Defendant withheld in their entirety 8,013 pages of records. *See* May 27 Cover Letter (Exhibit 2); *see also* Fourth Joint Status Report, ECF No. 12. In that letter, NOAA informed Plaintiff that "[b]ecause the request sought records of multiple custodians, there is a significant amount of duplicative material in the responsive records." Exhibit 2.

30. NOAA made a supplemental release of records on September 16, 2016, providing Plaintiff with an additional 44 pages of released material after further review the records identified and described in the letter accompanying the May 27, 2016, production, 7 of which were partially redacted because they included Tom Karl's personal telephone number.

31. After the September release, NOAA continued to evaluate the responsiveness and exemption status of the records that had been identified. Contemporaneously with this filing (on December 15), NOAA is releasing another 62 records providing Plaintiff with additional records that were previously withheld.

32. Because of the further segregation and responsiveness review NOAA conducted that led to the release of additional material to the Plaintiff, the page counts in the May 27 cover letter (and also the Fourth Joint Status Report) originally provided to Plaintiff are no longer accurate. A complete listing of all records withheld in full or in part pursuant to an exemption is reflected in the attached *Vaughn* Index.

II. THE SEARCH PROCESS

33. After NOAA and Plaintiffs, through counsel, reached an agreement as to the terms of the search for this FOIA request, it was determined that the records requested resided within one office: NCEI. NCEI's headquarters is located in Asheville, North Carolina. This determination was based on the fact that all of the agreed-upon custodians work or had worked within NCEI during the time in which responsive records were created.

34. The nine authors of the Hiatus Paper were Thomas R. Karl, Anthony Arguez, Boyin Huang, Jay H. Lawrimore, James R. McMahon, Matthew J. Menne, Thomas C. Peterson, Russell S. Vose, and Huai-Min Zhang.

35. NOAA instructed eight of the nine authors (record custodians) that were still within NCEI to conduct a search in accordance with the parameters agreed to by the parties and memorialized in the Second Joint Status Report. NOAA specified that custodians must search their email, electronic, and paper records.

36. Each records custodian still at NCEI¹ searched his own records in accordance with these instructions. As such, all search terms and parameters of the search as agreed upon by the Plaintiff were utilized by NOAA in the search of the files where responsive records were likely to be filed.

37. There were no common areas to be searched at NCEI because the authors all kept their own files separate.

38. After the custodians collected their records, they were forwarded for responsiveness and exemption review.

39. The search conducted was reasonably calculated to uncover all relevant, non-duplicative documents.

40. The Department compiled two sets of bates-numbered files, which included, in addition to the partially redacted and fully withheld email records, placeholder pages, which are discussed further in Paragraph 49. One bates-numbered file reflects the email records, and the other bates-numbered file reflects documents, as contained on parts 1 and 2 of the *Vaughn*.

41. Each record was evaluated separately for responsiveness, and each email was deemed to be one record.

42. In the case of an email with attachment(s), responsiveness determinations were made independently for that email and any attachment(s) to that email.

43. For email records that were joined with other emails in a chain, NOAA deemed responsive any email that related to the Paper and contained an agreed-upon search term as well

¹ One custodian (Thomas Peterson) had retired by the time of the search. His archived email inbox and outbox were searched by another author who was still with NOAA at the time. No additional, non-duplicative records created by Mr. Peterson that are responsive to this request are known to have existed following the retirement of Mr. Peterson.

as other, surrounding emails that were related to or provided important context for the email that contained the search term. If an email appeared to directly relate to the subject matter of the request in an email containing the search term, a case-by-case determination was made in good faith and in the effort to maximize transparency as to whether that record was responsive even though not technically within the search terms outlined in the Second Joint Status Report.

44. The search was reasonably calculated to uncover all relevant documents and there are no known locations where additional, non-duplicative, responsive material is likely to be found. Accordingly, all files determined to be reasonably likely to contain responsive, non-duplicative material were searched.

III. The Vaughn Index

45. I have read the *Vaughn* index attached as Exhibit 1 and reviewed the documents referenced in that index. Based on my review of the documents and on information provided me in the course of my official duties, I have determined that the material redacted from the referenced documents falls within the enumerated FOIA exemptions identified in the index.

46. The *Vaughn* index is divided into two parts. The first part covers responsive emails that were withheld or redacted. It identifies each record by Bates stamp numbers (which correspond to the numbering on records provided to Plaintiff), the originator, the recipient(s), the date of the record, the title of the email, the exemption invoked, and the basis for withholding.

47. Due to how the email records are stored in and were printed from the user's email accounts, some email records are duplicative but certain copies truncate the metadata for that record email (e.g., the sender, recipient, subject line, who was cc'd on the records). Sometimes

NOAA was able to reconstruct the information by looking to duplicate instances that were printed differently, or by going to the original files. We have generally inferred that the subject line that prints at the top of the printed email chain carried through for individual email records connected to that string of emails.

48. The second part of the *Vaughn* index covers non-email documents that were withheld in their entirety, except for a relatively small number of documents that were released to Plaintiffs upon further review. These documents consist almost exclusively of five categories of records. Records that fell into one of the five categories are labeled in the *Vaughn* index by a letter that corresponds to a category. The few exceptions that do not fall into one of the five categories have a more detailed description.

49. The *Vaughn* index reflects occasional “gaps” in the Bates stamp numbering. For example, *Vaughn* part one reflects an entry for bates page 1, and the next entry is for bates page 4. Such “gaps” exist for three reasons. First, not all pages had redacted information. Only pages with redacted information are accounted for on the *Vaughn*. Second, NOAA, in an effort to be transparent during production, included pages that served as “placeholders” for records in email chains that were removed because those records were either non-responsive or were fully withheld under Exemption 5. For example, if one page with responsive records was produced with redactions, followed by four fully withheld pages of records, the four fully withheld pages were represented in the production by a placeholder page that indicated four pages of material had been withheld as either not responsive or as exempt under Exemption 5. That placeholder page was bates stamped during the initial production, but NOAA has not listed it in the *Vaughn*

index. And third, NOAA removed bates-marked documents that were non-responsive that had been inadvertently bates stamped during the initial production. The withheld records, if responsive, are represented elsewhere in the *Vaughn* index.

50. As reflected in the first part of the *Vaughn* index, NOAA withheld or redacted emails under Exemption 5 because they are protected by the deliberative process privilege. *See, generally, Vaughn* part 1. These records are inter-agency or intra-agency communications. The bulk of this information reflects the predecisional and deliberative exchange of ideas and recommendations among scientists within and outside NOAA as NOAA scientists developed and edited the Hiatus Paper or discussed the underlying analysis of the datasets for purposes of developing the paper. The information also includes communications among NOAA personnel carrying out related agency deliberations such as development of public communications and presentations to Congress. The communications are, unless otherwise indicated, among NOAA personnel and reflect agency deliberations or input to agency determinations. These deliberations were in preparation for agency decisions, including how to analyze and present the data and interpretation. A relatively small number of the deliberative communications reflect input from non-federal scientists who were contacted either by one of the authors or by the journal *Science* to provide feedback and input on the Paper. These non-federal scientists provided NOAA's scientists input for the agency's ongoing processes of developing the Hiatus Paper, as well as providing input for the agency's potential updating of underlying datasets and analysis based on those datasets. Additionally, one scientist provided input to inform the agency's development of a communications plan for the paper.

51. In addition to the emails redacted or withheld, NOAA withheld drafts of the Hiatus Paper. *See Vaughn* part two Category A. These documents are inter-agency or intra-agency drafts. This category includes the drafts of the “supplementary materials” that accompanied the Hiatus Paper and were made available for download by *Science* upon publication of the Paper. Category A in the *Vaughn* Index sometimes lists the draft paper text, figures and supplementary materials as one entry and sometimes separately. These were pre-decisional drafts that contained the opinions and recommendations of one or more NOAA authors; draft language, data, and data interpretation for consideration by other NOAA authors; comments on previous drafts of the paper; and/or responses to other NOAA authors’ or expert reviewers’ comments on earlier drafts of the paper. Disclosure of deliberative draft documents that were not ultimately finalized or adopted by NOAA risks confusing the public concerning NOAA’s position and also risks data or statements being taken out of context. Disclosure of these deliberative draft materials would also seriously undermine the quality and integrity of NOAA’s decisionmaking process, by deterring NOAA staff or experts outside the agency who are collaborating in development of the agency’s work from expressing their candid views on the development of data analysis and presentation.

52. NOAA also withheld documents that contain questions for discussion and draft graphs that were circulated by an author and created for author discussions during the development of the Hiatus Paper. *See Vaughn* part two Category E. These records are inter-agency or intra-agency documents. These documents are deliberative and pre-decisional, as they

reflect NOAA scientists' deliberations as to what constitutes the best data analysis and presentation for the Hiatus Paper.

53. NOAA also withheld drafts of a cover letter from Tom Karl to *Science* magazine in response to peer review comments. *See Vaughn* part two Category B. These records are inter-agency or intra-agency drafts. These drafts are predecisional and deliberative in that they include discussions and exchanges among authors in determining what to include, and how to present, their formal letter to accompany their peer review responses. The draft cover letters to *Science* contain edits or otherwise do not include the final wording of the letter, reflecting that the scientists' approach had not been finalized at that point.

54. NOAA also withheld draft responses to peer reviewers enlisted by *Science* as part of that journal's peer review process. *See Vaughn* Index part two Category C. These records are inter-agency or intra-agency drafts. These drafts reflect pre-decisional discussions and proposed responses to peer review comments. The drafts contain opinions and recommendations of one or more NOAA authors; draft language, data, and data interpretation for consideration by other authors; comments on previous drafts of the responses to peer reviewers; and/or responses to other authors' comments on earlier drafts of the responses to peer reviewers. These drafts helped the NOAA authors determine how best to respond to comments provided during the peer review process initiated by the submission of the Hiatus Paper to *Science* for potential publication. These documents are internal, pre-decisional drafts that reflect the view of NOAA authors as to how to present their response to peer review feedback.

55. NOAA also withheld the final responses to peer reviewers enlisted by *Science* as part of that journal's peer review process. See *Vaughn* Index Part 2 Category D. These records are inter-agency or intra-agency documents. These documents are predecisional and deliberative because they are responses to constructive criticism and advice submitted by scientific experts as part of the confidential peer review process for papers submitted to scientific journals. The responses were submitted as part of a process to assist in the authors' deliberations regarding whether and in what form to publish the paper. Confidentiality is important to the peer review process, and disclosure of the responses to peer reviews would discourage the sharing of candid thoughts of both the reviewers and of the scientists.

56. In addition to this formal peer review, NOAA's authors also welcomed the assistance of informal peer review from a limited group of scientific experts in evaluating the underlying datasets and developing the Hiatus Paper. It is common for NOAA scientists to seek input from other qualified experts to get a second opinion on a working hypothesis or to provide expertise that an author's affiliated organization may lack. Sometimes those scientists are employed outside the federal government, but they share the common goal with NOAA of advancing scientific inquiry and developing accurate information on climate science.

57. This collegial relationship and shared goals lays the groundwork for an author to reach out for the kind of honest, confidential feedback necessary to formulate a sustainable, justified scientific conclusion.

58. Each of these scientists who offered their assistance is highly regarded in their specialized fields. Their prior work represents a portion of the prior published literature on the

alleged hiatus. Some of those works were consulted by the team in developing the “hiatus” paper and were cited as references in it.

59. One of the outside scientists who contributed (and is listed in the “Acknowledgements” section of the Hiatus Paper) is Dr. Gerald (Jerry) A. Meehl, an affiliate with the National Center for Atmospheric Research (NCAR), which is a National Science Foundation Federally Funded Research and Development Center. *See* <https://www2.ucar.edu/about-us/quick-facts>. In November 2014, Director Karl emailed Dr. Meehl and invited him to comment on drafts of the paper, and he provided insights and feedback in response. *See* Bates 66 (11/27/14) (released).

60. If a paper is expected to get an unusual amount of attention, a journal may seek pre-publication reactions from experts in the field outside of that journal’s formal peer review process. On occasion, those experts who are contacted by the journal will then directly communicate with the author(s) of the article and share their thoughts on the article.

61. These communications provide important feedback to the authors on the Hiatus Paper and often provide information, relied upon by NOAA, about the external expert’s own related recent or ongoing work. These communications provide input to the continuous, ongoing work to update and improve datasets and trend analyses, as described in Paragraphs 5 through 7.

62. One outside scientist who provided input (and is cited in the references for the Hiatus Paper) is Dr. Kevin E. Trenberth, who (like Dr. Meehl) is also affiliated with the NCAR. Dr. Trenberth was contacted for his expertise by a journalist prior to publication of the Hiatus Paper and asked to provide comment on the paper. Dr. Trenberth then contacted Director Karl

by email to provide feedback and discuss implications of the conclusion in light of other literature. *See* Bates 379 (6/1/15). As discussed in paragraph 61, above, this type of input provides important feedback and also helps inform the continuous, ongoing work to update and improve datasets and trend analyses. In part, this information was also provided to inform NOAA in its deliberations as it formulated its public communications messaging for the Hiatus Paper. *See* Bates 381-382 (6/1/15).

63. Last, Dr. Kevin Cowtan, who is affiliated with the University of York in the United Kingdom, is an outside scientist who contacted Dr. Boyin and Director Karl, after being contacted by a writer at *Science* who was seeking comment on the paper before publication, during the embargo period. *See* Bates 292-293 (6/2/15). Those emails indicate that all participants understood and respected that there was an embargo on publicly disseminating or discussing the work until it was officially released on June 4. *See, e.g.*, Bates 295 (6/2/15). Director Karl indicated in an email that he would like to continue to review and incorporate Dr. Cowtan's work in NOAA's ongoing work. *See* Bates 295-296 (6/2/15). As discussed in paragraph 61, above, this type of input provides important feedback and also helps inform the continuous, ongoing work to update and improve our datasets and trend analyses.

64. Disclosure of any of this information that is pre-decisional and deliberative would inhibit candid internal discussions and expressions of ideas, recommendations, criticism, and judgments regarding the development of scientific theories and presentations of information to the public and to Congress. Disclosure of the details of these confidential discussions, drafts, and responses, could reasonably be expected to chill the open and frank exchange of comments

and opinions that occurs between NOAA scientists and a limited group of qualified outside experts at such times. It would also inhibit candid internal discussions and the expression of recommendations and judgments regarding preferred courses of action for agency personnel.

65. To the extent the redacted or withheld information contains some factual material, the authors' selection and presentation of that factual material reflects the agency's deliberative process and is therefore protected from disclosure. Singling out a particular data point in the course of a deliberative discussion reflects a preliminary judgment or argument rather than an assertion of scientific fact. There is a risk of misconstruing or taking out of context an instance where one piece of information has been singled out for purposes of an informal discussion.

66. With regard to information withheld pursuant to exemption (b)(6), NOAA has determined that the individual privacy interests outweighed the public interest in disclosure.

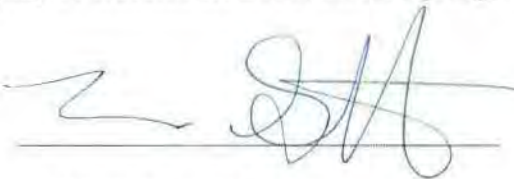
67. I am further satisfied that NOAA has reasonably concluded that there was no additional non-exempt, responsive information that could be reasonably segregated and released to the plaintiff.

IV. CONCLUSION

In summary, the Department conducted thorough searches of all components that were reasonably likely to maintain responsive records and withheld only reasonably segregable information under exemption (b)(5) and (b)(6). Additionally, the search was reasonably calculated to uncover all relevant documents, and there are no known locations where additional, non-duplicative, responsive material is likely to be found.

Pursuant to 28 U.S.C. § 1746, I hereby affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 14th day of December, 2016, Silver Spring, Maryland.

A handwritten signature in blue ink, consisting of a stylized 'M' followed by 'H' and 'G', written over a horizontal line.

Mark H. Graff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

Exhibit 1 to Declaration of Mark Graff

Vaughn Index Part 1: Emails

Bates Page	Originator	Addressee	Date	Time	Title	Exemption	Released Status	Basis
1	Maycock, Tom	Zhang, Huai-min	05/06/2015	9:30 AM	Re: NCEI communications: question re. uncertainty in "hiatus" paper	(b)(5)	Partially Redacted	NOAA affiliate asking NOAA scientist for clarification on data results from the paper prior to publication for development of communications materials related to the paper.
4	Peterson, Thomas C.	Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin; Zhang, Huai-min	3/16/2015	10:50 AM	Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper. Scientist is also asking for opinion of another scientist.
6	Huang, Boyin	Mcmahon, James; Vose, Russell; Peterson, Thomas C.; Tanner, Michael; Karl, Thomas R.; Menne, Matthew; Arguez, Anthony; Lawrimore, Jay; Zhang, Huai-min	3/19/2015	4:02 PM	Re: Invitation: Update on Science Hiatus paper @ Fri Mar 20, 2015 11am 12pm	(b)(5)	Partially Redacted	NOAA scientist sharing draft data analysis, based on scientist discussions, for development of the paper with other scientists.
14	Vose, Russell	Peterson, Thomas C.; McMahon, James; Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Lawrimore, Jay; Matthews, Jessica	3/23/2015	9:12 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist sharing drafts of the paper and discussing edits made to the paper. Email is duplicate of email found on page 102.
14	Peterson, Thomas C.	Mcmahon, James; Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	4:03 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist sharing drafts of supplemental materials for the paper and discussing edits made to the paper.
14-15	Mcmahon, James	Huang, Boyin; Peterson, Thomas C.; Karl, Thomas R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	2:15 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist sharing drafts of the paper and discussing edits made for the development the paper.

15	Huang, Boyin	Peterson, Thomas C.; Karl, Thomas R.; Arguez, Anthony; McMahan, James; Huai-min, Zhang; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	10:03 AM	Re: Science-hiatus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist sharing opinion on results of draft data analysis for development of the paper.
15	Peterson, Thomas C.	Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; McMahan, James; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	9:55 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist sharing opinion on results of draft data analysis for development of the paper.
17	Peterson, Thomas C.	Lawrimore, Jay; Huang, Boyin; Zhang, Huai-min	3/16/2015	2:51 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist discussing edits to be made for development of the paper. Asking another NOAA scientist about work to be done for the paper.
19	Peterson, Thomas C.	McMahon, James; Huang, Boyin; Karl, Thomas, R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	4:03 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 14.
22	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew	12/16/2014	1:02 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
22-23	McMahon, James	Zhang, Huai-min	12/16/2014	12:45 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist asking another scientist for clarification on data analysis conducted for the development of the paper.
23	Zhang, Huai-min	McMahon, James	12/16/2014	11:17 AM	Interpolation of LSAT over the arctic and antarctic	(b)(6)	Partially Redacted	Personal cell phone number of scientist.
25-26	McMahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew	12/16/2014	1:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper. Scientist is also asking for opinion of another scientist.

26	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	1:31 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper. Scientist is also asking for opinion of another scientist.
27	Huang, Boyin	Zhang, Huai-min; Mcmahon, James; Menne, Matthew; Lawrimore, Jay	12/16/2014	2:26 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
27-28	Mcmahon, James	Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Lawrimore, Jay	12/16/2014	2:55 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper. Scientist is also asking for opinion of another scientist.
28	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	3:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
28-29	Mcmahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	3:21 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
33	Maycock, Tom	Zhang, Huai-min	05/06/2015	9:30 AM	Re: NCEI communications: question re. uncertainty in "hiatus" paper	(b)(5)	Partially Redacted	Duplicate of page 1.
37	Huang, Boyin	Karl, Thomas R.; Zhang, Hai-min; Mcmahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	2:20 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist discussing proposed data analysis and potential research methods to be conducted for the development of the paper.

37-38	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	12:21 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist discussing proposed data analysis and potential research methods to be conducted for the development of the paper.
38-40	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	11:35 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper (the scientist's responses are inserted into text of earlier email).
41	Huang, Boyin	Zhang, Huai-min; Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	8:43 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
41	Zhang, Huai-min	Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:27 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
42	Karl, Thomas R.	Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:21 AM	Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to question from another scientist and offering personal opinion on data analysis and graphics for the paper.
42	Zhang, Huai-min	McMahon, James; Karl, Thomas R.; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	1:56 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist sharing data analysis and graphics for development of the paper with other scientists.
45	Zhang, Huai-min	Lawrimore, Jay; Huang, Boyin	11/20/2014	2:47 PM	article method	(b)(5)	Partially Redacted	NOAA scientist sharing drafts of the paper and asking about edits to be made to the paper.

48	Karl, Thomas R.	Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:21 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Email text is cut off but text is duplicate of full text on page 42.
48	Zhang, Huai-min	Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:27 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 41.
48	Huang, Boyin	Zhang, Huai-min; Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	8:43 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 41.
48-49	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	8:49 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist is responding to question from another scientist and offering personal opinion on draft data analysis for development of the paper.
49	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	10:39 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist is responding to question from another scientist and offering personal opinion on draft data analysis for development of the paper.
49-50	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	11:35 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of pages 38-40.
50	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	12:21 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37-38.

50-51	Huang, Boyin	Karl, Thomas R.; Zhang, Hai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	2:20 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37.
51	Menne, Matthew	Lawrimore, Jay; Karl, Thomas R.; Huang, Boyin; Zhang, Hai-min; McMahon, James; Vose, Russell	11/06/2014	10:55 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist sharing proposed language for the paper as well as draft data analysis and graphics for development of the paper. Although this email was initially identified as not responsive, NOAA has determined the email to be responsive and exempt under (b)(5).
53	Huang, Boyin	Karl, Thomas R.; Zhang, Hai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	2:20 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37.
53	Karl, Thomas R.	Huang, Boyin; Zhang, Hai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	12:21 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37-38.
53	Huang, Boyin	Karl, Thomas R.; Zhang, Hai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	11:35 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of pages 38-40.
66-67	Meehl, Gerald	Karl, Thomas R.	11/28/2014	5:45 PM	Jerry this is not finished. We have another figure to add and describe, but it will give you an idea of where we are going with this	(b)(5)	Partially Redacted	Outside scientist is providing feedback and review of data analysis for the paper in response to request for feedback from Tom Karl (via email that was Released). The outside scientist is providing observations regarding the climatic data used in the paper and raising issues for further discussion and clarification.

67-68	Karl, Thomas R.	Meehl, Gerald	11/29/2014	9:41 AM	Jerry this is not finished. We have another figure to add and describe, but it will give you an idea of where we are going with this	(b)(5)	Fully Withheld	NOAA scientist is responding to feedback on the hiatus paper provided by outside scientist and discussing data analysis conducted for the development of the paper. Although this email was initially identified as not responsive, NOAA has determined the email to be responsive and exempt under (b)(5).
69	Huang, Boyin	Mcmahon, James; Vose, Russell; Peterson, Thomas, C.; Tanner, Michael; Karl, Thomas R.; Menne, Matthew; Arguez, Anthony; Lawrimore, Jay; Zhang, Huai-min	3/19/2015	4:02 PM	Re: Invitation: Update on Science Hiatus paper @ Fri Mar 20, 2015 11am 12pm	(b)(5)	Partially Redacted	Duplicate of page 6.
70	Kossin, James P.	Karl, Thomas R.	5/21/2015	11:44 AM	Science paper	(b)(5)	Partially Redacted	NOAA scientist asking paper author offering personal opinion and inquiring about potential data analysis for the paper.
70	Karl, Thomas R.	Kossin, James P.	5/21/2015	11:55 AM	Science paper	(b)(5)	Partially Redacted	Paper author responding to personal opinion of NOAA scientist and sharing his personal opinion on draft data analysis for the paper. Asking if NOAA scientist about involvement future research and data analysis.
75	Karl, Thomas R.	Holdren, John P.	3/26/2015	4:35 PM	Acceptance of your Science Manuscript aaa5632	(b)(5)	Partially Redacted	NOAA scientist sharing release date for paper. NOAA scientist is also discussing future climate research for the agency and asking for opinion of John Holdren on this research and on the possible role of NOAA scientists in this research.
88	Huang, Boyin	Karl, Thomas R.; Lawrimore, Jay	1/15/2015	4:16 PM	Your recent paper	(b)(5)	Partially Redacted	NOAA scientist is responding to question from another scientist and sharing results of data analysis he conducted for the paper and personal opinion on future research.
88	Karl, Thomas R.	Huang, Boyin; Lawrimore, Jay	1/15/2015	16:20	Your recent paper	(b)(5)	Partially Redacted	NOAA scientist asking other scientists about data to potentially be used in further research study.

88-89	Huang, Boyin	Karl, Thomas R.; Lawrimore, Jay	1/15/2015	4:33 PM	Your recent paper	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to question from another scientist and offering personal opinion on data analysis for the paper and personal opinion on future research.
100	Huang, Boyin	Peterson, Thomas C.; Karl, Thomas R.; Arguez, Anthony; McMahon, James; Huai-min, Zhang; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	10:03 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 15.
100-101	Peterson, Thomas C.	Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; McMahon, James; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	9:55 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 15.
101	Mcmahon, James	Huang, Boyin; Peterson, Thomas C.; Karl, Thomas R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	2:15 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 15.
101-102	Peterson, Thomas C.	Mcmahon, James; Huang, Boyin; Karl, Thomas, R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	4:03 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 14.
102	Vose, Russell	Peterson, Thomas C.; McMahon, James; Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Lawrimore, Jay; Matthews, Jessica	3/23/2015	9:12 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 14.
104	Zhang, Huai-min	Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:27 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Email text is partially cut off. Duplicate of full email found on page 41.

104	Huang, Boyin	Zhang, Huai-min; Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	8:43 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 41.
104	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	8:49 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of pages 48-49.
104-105	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	10:39 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 49.
105-106	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	11:35 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of pages 38-40.
106	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	12:21 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37-38.
106	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	2:20 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37.

108-109	Meehl, Gerald	Karl, Thomas R.	11/28/2014	5:45 PM	Jerry this is not finished. We have another figure to add and describe, but it will give you an idea of where we are going with this	(b)(5)	Partially Redacted	Email addresses are cut off. Duplicate of full email found on pages 66-67.
112	Zhang, Huai-min	Mcmahon, James	12/16/2014	11:17 AM	Interpolation of LSAT over the arctic and antarctic	(b)(6)	Partially Redacted	Duplicate of page 23.
112	Mcmahon, James	Zhang, Huai-min	12/16/2014	12:45 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22-23.
112	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew	12/16/2014	1:02 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22.
112-113	Mcmahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew	12/16/2014	1:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 25-26.
113	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	1:31 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 26.
113	Huang, Boyin	Zhang, Huai-min; Mcmahon, James; Menne, Matthew; Lawrimore, Jay	12/16/2014	2:26 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 27.
113-114	Mcmahon, James	Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Lawrimore, Jay	12/16/2014	2:55 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of pages 27-28.
114	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	3:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 28.
114	Mcmahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	3:21 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 28-29.
116	Karl, Thomas R.	Sessing, Janice; Vose, Russell; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; Mcmahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/21/2015	2:54 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Partially Redacted	NOAA scientist sharing with other NOAA affiliates his thoughts on presenting the agency's climate change research to Congress.

128	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew	12/16/2014	1:02 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22.
128	Mcmahon, James	Zhang, Huai-min	12/16/2014	12:45 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22-23.
128	Zhang, Huai-min	Mcmahon, James	12/16/2014	11:17 AM	Interpolation of LSAT over the arctic and antarctic	(b)(6)	Partially Redacted	Duplicate of 23.
128-129	Mcmahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew	12/16/2014	1:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22-23.
129	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	1:31 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 26.
129	Huang, Boyin	Zhang, Huai-min; Mcmahon, James; Menne, Matthew; Lawrimore, Jay	12/16/2014	2:26 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 27.
130	Mcmahon, James	Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Lawrimore, Jay	12/16/2014	2:55 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of pages 27-28.
130	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	3:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 28.
130	Mcmahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	3:21 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of pages 28-29.
131	Huang, Boyin	Lawrimore, Jay; Peterson, Thomas C.; Zhang, Huai-min; Mcmahon, James; Karl, Thomas R.; Vose, Russell; Menne, Matthew	03/06/2015	8:33 AM	SST trend experiment	(b)(5)	Partially Redacted	NOAA scientist is sharing data analysis he conducted for the paper offering his opinion of the best approach to take in the paper.
133	Huang, Boyin	Mcmahon, James; Vose, Russell; Peterson, Thomas, C.; Tanner, Michael; Karl, Thomas R.; Menne, Matthew; Arguez, Anthony; Lawrimore, Jay; Zhang, Huai-min	3/19/2015	4:02 PM	Re: Invitation: Update on Science Hiatus paper @ Fri Mar 20, 2015 11am 12pm	(b)(5)	Partially Redacted	Duplicate of page 6.

137-138	Peterson, Thomas C.	Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin; Zhang, Huai-min	3/16/2015	10:50 AM	Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 4.
139-140	Lawrimore, Jay	Peterson, Thomas C.; Huang, Boyin; Zhang, Huai-min	3/16/2015	2:47 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist sharing data analysis to be used in the paper and asking for clarification on data analysis conducted for development of the paper.
140	Peterson, Thomas C.	Lawrimore, Jay; Huang, Boyin; Zhang, Huai-min	3/16/2015	2:51 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 17.
143	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Kris	5/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17 th warmest April on record for contiguous U.S.	(b)(5)	Partially Redacted	NOAA scientist discussing agency's climate change research and developing the agency's presentation for Congress.
156	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	2:20 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37.
156	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	12:21 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37-38.
156-157	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	11:35 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 38-40.

157	Huang, Boyin	Zhang, Huai-min; Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	8:43 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 41.
157	Zhang, Huai-min	Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:27 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 41.
158	Karl, Thomas R.	Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:21 AM	Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Fully Withheld	Duplicate of page 42. Although this email was initially identified as not responsive, NOAA has determined the email to be responsive and exempt under (b)(5).
158	Zhang, Huai-min	McMahon, James; Karl, Thomas R.; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	1:56 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Fully Withheld	Duplicate of page 42. Although this email was initially identified as not responsive, NOAA has determined the email to be responsive and exempt under (b)(5).
160	Zhang, Huai-min	Lawrimore, Jay; Huang, Boyin	11/20/2014	2:47 PM	article method	(b)(5)	Partially Redacted	Duplicate of page 45.
162-163	Meehl, Gerald	Karl, Thomas R.	11/28/2014	5:45 PM	Jerry this is not finished. We have another figure to add and describe, but it will give you an idea of where we are going with this	(b)(5)	Partially Redacted	Duplicate of pages 66-67.
164	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	1:31 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 26.
164	McMahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew	12/16/2014	1:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 25-26.

164	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew	12/16/2014	1:02 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22.
164	Mcmahon, James	Zhang, Huai-min	12/16/2014	12:45 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22-23.
166	Huang, Boyin	Mcmahon, James; Vose, Russell; Peterson, Thomas, C.; Tanner, Michael; Karl, Thomas R.; Menne, Matthew; Arguez, Anthony; Lawrimore, Jay; Zhang, Huai-min	3/19/2015	4:02 PM	Re: Invitation: Update on Science Hiatus paper @ Fri Mar 20, 2015 11am 12pm	(b)(5)	Partially Redacted	Duplicate of page 6.
167	Maycock, Tom	Zhang, Huai-min	05/06/2015	12:58 PM	Re: NCEI communications: question re. uncertainty in "hiatus" paper	(b)(5)	Partially Redacted	Duplicate of page 1.
234	Huang, Boyin	Karl, Thomas R.; Lawrimore, Jay	1/15/2015	4:16 PM	Your recent paper	(b)(5)	Partially Redacted	Duplicate of page 88.
234	Karl, Thomas R.	Huang, Boyin; Lawrimore, Jay	1/15/2015	4:20 PM	Your recent paper	(b)(5)	Partially Redacted	Duplicate of page 88.
234-235	Huang, Boyin	Karl, Thomas R.; Lawrimore, Jay	1/15/2015	4:33 PM	Your recent paper	(b)(5)	Partially Redacted	Duplicate of pages 88-89.
240-241	Huang, Boyin	Karl, Thomas R.; Lawrimore, Jay	1/15/2015	4:16 PM	Your recent paper	(b)(5)	Partially Redacted	Duplicate of page 88.
242	Karl, Thomas R.	Huang, Boyin; Lawrimore, Jay	1/15/2015	4:20 PM	Your recent paper	(b)(5)	Partially Redacted	Duplicate of page 88.
242	Huang, Boyin	Karl, Thomas R.; Lawrimore, Jay	1/15/2015	4:33 PM	Your recent paper	(b)(5)	Partially Redacted	Duplicate of pages 88-89.
243	Peterson, Thomas C.	Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; Mcmahon, James; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Matthews, Jessica	03/20/2015	9:55 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	NOAA scientist sharing opinion on results of data analysis for development of the paper.

243	Huang, Boyin	Peterson, Thomas C.; Karl, Thomas R.; Arguez, Anthony; McMahon, James; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Matthews, Jessica	03/20/2015	10:03 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of 15.
245	McMahon, James	Arguez, Anthony; Zhang, Huai-min; Karl, Thomas R.	03/25/2015	10:30 AM	new comparisons	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering personal opinion on statistical error uncertainty ranges for development of the paper.
245	Zhang, Huai-min	McMahon, James; Arguez, Anthony; Karl, Thomas R.	03/25/2015	10:52 AM	new comparisons	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to question from another scientist and offering personal opinion on statistical error uncertainty ranges for development of the paper.
245-246	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin; McMahon, James; Arguez, Anthony	03/25/2015	11:17 AM	new comparisons	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering personal opinion on statistical error uncertainty ranges for development of the paper and his opinion of the best approach to take in the paper.
246	Zhang, Huai-min	Karl, Thomas R.; Huang, Boyin; McMahon, James; Arguez, Anthony	03/25/2015	11:40 AM	new comparisons	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering personal opinion on statistical error uncertainty ranges for development of the paper and his opinion of future revisions.
246	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin; McMahon, James; Arguez, Anthony	03/25/2015	11:52 AM	new comparisons	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering personal opinion on statistical error uncertainty ranges for development of the paper and his opinion of the best approach to take in the paper.

247-248	Peterson, Thomas C.	Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin; Zhang, Huai-min	03/16/2015	10:50 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the development of the paper. Scientist is also asking for opinion of another scientist.
249	Lawrimore, Jay	Peterson, Thomas C.; Huang, Boyin; Zhang, Huai-min	03/16/2015	2:47 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	NOAA scientist discussing how to interpret and apply data trends in the paper as well as plans for discussing a related issue at an upcoming call.
249	Peterson, Thomas C.	Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin; Zhang, Huai-min	03/16/2015	10:50 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of pages 247-248.
251	Zhang, Huai-min	Peterson, Thomas C.; Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin	03/19/2015	1:34 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Text of email is partially cut off but full text of email is on page 300.
251-252	Peterson, Thomas C.	Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin; Zhang, Huai-min	03/16/2015	10:50 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of pages 247-248.
254	Peterson, Thomas C.	Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; McMahon, James; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	03/20/2015	9:55 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of page 243.
257-259	Zhang, Huai-min	Menne, Matthew; McMahon, James; Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Vose, Russell	12/03/2014	10:50 AM	Trend plots	(b)(5)	Fully Withheld	NOAA scientist sharing updated and revised data analysis for the paper with another scientist and indicating what his next step will be.
262	Huang, Boyin	McMahon, James; Vose, Russell; Peterson, Thomas C.; Tanner, Michael; Karl, Thomas R.; Menne, Matthew; Arguez, Anthony; Lawrimore, Jay; Zhang, Huai-min	03/19/2015	4:02 PM	Invitation: Update on Science Hiatus paper @ Fri Mar 20, 2015 11am 12pm	(b)(5)	Fully Withheld	Duplicate of page 6.

263	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	2:20 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Fully Withheld	NOAA scientist explaining how he will analyze data for development of the paper and explaining next steps by another scientist for the same.
265	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/20/2014	7:53 AM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to question from another scientist and offering personal opinion on data for the paper.
265-266	McMahon, James	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	3:51 PM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist asking another scientist to write up a description of the draft analysis to include in the paper and sharing update on draft data analysis and draft figure for development of the paper.
266	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:47 PM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist sharing draft data analysis and explaining data analysis for the development of the paper.
266-267	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:46 PM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist sharing draft data analysis and draft figures for development of the paper. Scientist is also discussing his next steps for working on the draft paper.
270	Karl, Thomas R.	Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:21 AM	Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Fully Withheld	Text of email is partially cut off. Email is duplicate of full email found on page 42.
271	Zhang, Huai-min	Lawrimore, Jay; Karl, Thomas R.; Huang, Boyin; McMahon, James; Menne, Matthew; Vose, Russell	11/13/2014	10:42 AM	Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Fully Withheld	NOAA scientist sharing edits he made to the paper the in preparation of meeting to discuss the paper.
272	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/20/2014	7:53 AM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 265.

272	Mcmahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	3:51 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 265-266.
272	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:47 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 266.
272-273	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:46 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 266-267.
273	Karl, Thomas	Zhang, Huai-min; Mcmahon, James; Huang, Boyin; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/20/2014	7:59 AM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist discussing writing of methods section for data analysis methods to use in the paper.
273	Lawrimore, Jay	Karl, Thomas R.; Zhang, Huai-min; Mcmahon, James; Huang, Boyin; Menne, Matthew; Vose, Russell	11/20/2014	10:39 AM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist is offering his opinion of the best approach to take in the paper and sharing proposed references to use in the paper. Text of email here is partially cut off but full text can be found on page 350.
275-276	Zhang, Huai-min	Menne, Matthew; Mcmahon, James; Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Vose, Russell	12/03/2014	10:50 AM	Trend plots	(b)(5)	Fully Withheld	Duplicate of pages 257-259.
280	Zhang, Huai-min	Mcmahon, James; Arguez, Anthony; Karl, Thomas R.	03/25/2015	10:52 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of page 245.
280	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin; Mcmahon, James; Arguez, Anthony	03/25/2015	11:17 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of pages 245-246.
281	Zhang, Huai-min	Karl, Thomas R.; Huang, Boyin; Mcmahon, James; Arguez, Anthony	03/25/2015	11:40 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of page 246.
281	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin; Mcmahon, James; Arguez, Anthony	03/25/2015	11:52 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of page 246.
281	Karl, Thomas R.	Zhang, Huai-min	03/25/2015	12:05 PM	Fwd: new comparisons	(b)(5)	Fully Withheld	NOAA scientist asking another scientist about potential references to use in developing methods for data analysis for the paper.

281-282	Zhang, Huai-min	Zhang, Huai-min; Huang, Boyin	03/25/2015	12:19 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist sharing sharing potential references to use in developing methods for data analysis for the paper.
282	Karl, Thomas R.	Zhang, Huai-min	03/25/2015	12:56 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist inquiring about status of data analysis to be used in development of the paper.
282	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin	03/25/2015	12:58 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist inquiring about status of data analysis to be used in development of the paper.
282	Zhang, Huai-min	Karl, Thomas R.	03/25/2015	12:59 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist discussing sharing of draft data analysis for the development of the paper. Scientist discusses next steps he will take regarding the paper.
282	Zhang, Huai-min	Karl, Thomas R.; Huang, Boyin	03/25/2015	12:59 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist discussing sharing of draft data analysis for the development of the paper.
282	Karl, Thomas R.	Zhang, Huai-min	03/25/2015	1:03 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist asking another scientist about data analysis methods used in the development of the paper.
283	Zhang, Huai-min	Karl, Thomas R.	03/25/2015	1:15 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist responding to question about data analysis methods used in development of the paper and awaiting information on another method from another scientist.
283	Huang, Boyin	Zhang, Huai-min; Karl, Thomas R.	03/26/2015	8:56 AM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist responding to question about data analysis methods used in draft of the paper.
285	Huang, Boyin	Karl, Thomas R.; Vose, Russell	05/05/2015	8:22 AM	Reference	(b)(5)	Fully Withheld	NOAA scientist sharing draft data analysis and potential references on methods for data analysis to be conducted for the paper.
287	Tepel, Mackenzie	Karl, Thomas R.	5/21/2015	3:45 PM	Re: FYI . . . Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA affiliate discussing the agency's climate change research and developing agency's presentation for Congress.

287	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; O'Connor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	5/21/2015	2:54 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 116.
287	Sessing, Janice	Karl, Thomas R.	5/21/2015	2:41 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA affiliate discussing the agency's climate change research and developing agency's presentation for Congress.
287	Karl, Thomas R.	Sessing, Janice	5/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 143.
287	Sessing, Janice	Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Karl, Thomas R.; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	6:28 PM	Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA affiliate discussing the agency's climate change research and developing agency's presentation for Congress.
289	Vincent, Katy	Karl, Thomas R.	06/03/2015	1:26 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	NOAA affiliate discussing plan for communications and press release in preparation for publication of the paper.
289-290	Karl, Thomas R.	Vincent, Katy	06/03/2015	1:34 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	NOAA scientist discussing plan for communications with NOAA affiliate and press release in preparation for publication of the paper. Scientist is explaining data and methods in order to create public communications materials.
290	Vincent, Katy	Karl, Thomas R.	06/03/2015	2:21 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	NOAA affiliate discussing plan for communications and press release in preparation for publication of the paper.

290	Karl, Thomas R.	Vincent, Katy	06/03/2015	3:29 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	NOAA scientist discussing plan for communications and press release in preparation for publication of the paper.
290	Vincent, Katy	Karl, Thomas R.	06/03/2015	3:31 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	NOAA affiliate discussing plan for communications and press release in preparation for publication of the paper.
291	Karl, Thomas R.	Holdren, John P.	06/04/2015	10:16 AM	Acceptance of your Science Manuscript aaa5632	(b)(5)	Partially Redacted	NOAA scientist offering opinion on temperature trends assessment and potential future research needs and inquiring about the same.
292	Huang, Boyin	Cowtan, Kevin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	9:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	NOAA scientist responding to data analysis shared by outside scientist as relevant to paper. NOAA scientist is sharing his interpretations and asking for clarification on data analysis and conclusions reached by outside scientist. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.
292-293	Cowtan, Kevin	Huang, Boyin	06/02/2015	5:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Outside scientist sharing data analysis he conducted on datasets relevant to the analysis presented in the paper. Scientist is sharing his interpretations and discussing his conclusions. Scientist notes he was contacted by the Journal Science for comment on the NOAA paper. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.

294-295	Karl, Thomas R.	Huang, Boyin; Cowtan, Kevin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	9:37 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	NOAA scientist responding to data analysis shared by outside scientist and explaining how data corrections in the paper were derived. NOAA scientist is sharing his interpretations with the outside scientist and other NOAA scientists and asking for clarification on data analysis and conclusions reached by outside scientist. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.
295	Cowtan, Kevin	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	3:25 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Outside scientist is discussing interpretations and conclusions as relevant to analysis in the paper. Scientist is sharing his interpretations and asking NOAA scientists for clarification on data analysis. Scientist references additional, relevant ongoing research. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.
295-296	Karl, Thomas R.	Cowtan, Kevin; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Tanner, Michael; Privette, Jeff	06/02/2015	3:33 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	NOAA scientist acknowledges further ongoing work of outside scientist, indicates that the work would be relevant to inform future NOAA processes to update dataset methodology, and seeks thoughts from outside scientist regarding implications of other scientists' work.
296	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:36 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Outside scientist commits to continuing the conversation with NOAA scientists regarding ongoing work and noting the further analysis he plans to do relevant to the analysis in the paper in order to provide comment on the paper.

296	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:57 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Outside scientist sharing further analysis he conducted relevant to the analysis in the paper. Scientist is sharing his interpretations and discussing the conclusions he made. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.
296	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; Lawrimore, Jay; Vose, Russell; Peterson, Thomas C.; Arguez, Anthony; Menne, Matthew; McMahon, James	06/02/2015	4:04 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	NOAA scientist forwarding to other NOAA scientists the comments and explanation of further analysis from outside scientist relevant to the analysis in the paper. NOAA scientist provides translation of short-hand used by the outside scientist. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.
296-297	Cowtan, Kevin	Huang, Boyin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Ruedy, Reto	06/07/2015	3:08 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Outside scientist sharing further data analysis he conducted on specific data sets as relevant to the paper. Scientist is sharing his interpretations and discussing the conclusions he made for NOAA's consideration. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.
298-299	Peterson, Thomas C.	Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin; Zhang, Huai-min	03/16/2015	10:50 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of pages 247-248.
299-300	Lawrimore, Jay	Peterson, Thomas C.; Huang, Boyin; Zhang, Huai-min	03/16/2015	2:47 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of page 249.
300	Zhang, Huai-min	Peterson, Thomas C.; Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin	03/19/2015	1:34 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of page 6. Here email addresses are partially cut off but full email is on page 6.

302	Zhang, Huai-min	Mcmahon, James; Karl, Thomas R.; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	1:56 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 42.
302	Karl, Thomas R.	Zhang, Huai-min; Mcmahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:21 AM	Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 42.
302	Zhang, Huai-min	Karl, Thomas R.; Mcmahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:27 AM	Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Fully Withheld	Email text is partially cut off. Duplicate of full text of email found on page 41.
303-304	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:46 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 266-267.
304	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:47 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 266.
304	Mcmahon, James	Mcmahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	3:51 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 265-266.
304	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/20/2014	7:53 AM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 265.
304	Karl, Thomas	Zhang, Huai-min; Mcmahon, James; Huang, Boyin; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/20/2014	7:59 AM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 273.
307	Zhang, Huai-min	Menne, Matthew; Mcmahon, James; Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Vose, Russell	12/3/2014	10:50 AM	Re: Trend plots	(b)(5)	Fully Withheld	Email text is partially cut off. Duplicate of full text of email found on pages 257-259.

309	Huang, Boyin	Lawrimore, Jay; Peterson, Thomas C.; Zhang, Huai-min; McMahan, James; Karl, Thomas R.; Vose, Russell; Menne, Matthew	03/06/2015	8:33 AM	SST trend experiment	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is offering his interpretation of experiments conducted in development of the paper.
309-310	Peterson, Thomas C.	Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahan, James; Karl, Thomas R.; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	8:50 AM	SST trend experiment	(b)(5)	Fully Withheld	NOAA scientist sharing references in developing the paper.
310	Karl, Thomas R.	Peterson, Thomas C.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahan, James; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	9:00 AM	SST trend experiment	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is offering his opinion in developing the paper.
310-311	Peterson, Thomas C.	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahan, James; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	9:02 AM	SST trend experiment	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another NOAA scientist and offering his interpretation of data analysis used in developing the paper.
311	Karl, Thomas R.	Peterson, Thomas C.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahan, James; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	9:21 AM	SST trend experiment	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is asking other NOAA scientists for clarification regarding data analysis for development of the paper.
315	McMahon, James	Menne, Matthew	03/24/2015	12:32 PM	Science paper	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is asking other NOAA scientist for clarification regarding data analysis for development of the paper.
315	Menne, Matthew	McMahon, James	03/24/2015	12:35 PM	Science paper	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to inquiring and explaining his understanding on data analysis for development of the paper.
315	McMahon, James	Menne, Matthew	03/24/2015	12:36 PM	Science paper	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to a question from another NOAA scientists regarding data analysis for development of the paper.

317	Zhang, Huai-min	Mcmahon, James; Arguez, Anthony; Karl, Thomas R.	03/25/2015	10:52 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of page 245.
317	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin; Mcmahon, James; Arguez, Anthony	03/25/2015	11:17 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of pages 245-246.
318	Zhang, Huai-min	Karl, Thomas R.; Huang, Boyin; Mcmahon, James; Arguez, Anthony	03/25/2015	11:40 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of page 246.
318	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin; Mcmahon, James; Arguez, Anthony	03/25/2015	11:52 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of page 246.
318	Zhang, Huai-min	Zhang, Huai-min; Huang, Boyin	03/25/2015	12:19 PM	Fwd: new comparisons	(b)(5)	Fully Withheld	Duplicate of pages 281-282.
320	Huang, Boyin	Karl, Thomas R.; Vose, Russell	05/05/2015	8:22 AM	Reference	(b)(5)	Fully Withheld	Duplicate of page 285.
322	Sessing, Janice	Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Karl, Thomas R.; Vincent, Katy; Gregg, Margarita; Mcmahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	6:28 PM	Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 287.
324	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; Mcmahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 143.
324	Sessing, Janice	Karl, Thomas R.; Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; Mcmahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	6:56 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA affiliate discussing the agency's climate change research and developing the agency's presentation for Congress.

324	Vose, Russell	Karl, Thomas R.; Sessing, Janice; Hammer, Gregory; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	7:47 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA scientist discussing the agency's climate change research and developing the agency's presentation for Congress.
324	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 143.
325	Sessing, Janice	Karl, Thomas R.	5/21/2015	2:41 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 287. Here email is partially cut off, but full text can be found on page 287.
325	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 143.
325	Sessing, Janice	Gregg, Margarita; Karl, Thomas R.	5/11/2015	6:28 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 287.
330	Vincent, Katy	Karl, Thomas R.	06/03/2015	1:26 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	Duplicate of page 289.
330-331	Vincent, Katy	Karl, Thomas R.	6/3/2015	2:21 PM	Re: Outstanding items for reporters	(b)(5)	Fully Withheld	Duplicate of page 290.

331	Karl, Thomas R.	Vincent, Katy	06/03/2015	1:34 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	Duplicate of pages 290-291.
331	Vincent, Katy	Karl, Thomas R.	6/3/2015	3:31 PM	Re: Outstanding items for reporters	(b)(5)	Fully Withheld	Duplicate of page 291.
334-335	Meehl, Gerald	Karl, Thomas R.	11/28/2014	5:45 PM	Jerry this is not finished. We have another figure to add and describe, but it will give you an idea of where we are going with this	(b)(5)	Fully Withheld	Duplicate of pages 66-67.
335	Zhang, Huai-min	Karl, Thomas R.; Huang, Boyin; Menne, Matthew; Vose, Russell; McMahon, James; Lawrimore, Jay	12/1/2014	7:48 PM	Re: Our Science paper	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is discussing how to respond to reviewer feedback and is offering his opinion of the best approach to take for development of the paper.
338	Matthews, Jessica	Peterson, Thomas	3/6/2015	8:32 AM	Fwd: new confidence intervals	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is discussing data analysis methodology to be used in development of the paper.
339	Peterson, Thomas C.	Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahon, James; Karl, Thomas R.; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	8:50 AM	SST trend experiment	(b)(5)	Fully Withheld	Email addresses are partially cut off. Duplicate of full email on pages 309-310.
339	Karl, Thomas R.	Peterson, Thomas C.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahon, James; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	9:00 AM	SST trend experiment	(b)(5)	Fully Withheld	Duplicate of page 310.
340	Peterson, Thomas C.	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahon, James; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	9:02 AM	SST trend experiment	(b)(5)	Fully Withheld	Duplicate of page 310.

340	Karl, Thomas R.	Peterson, Thomas C.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahon, James; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	9:21 AM	SST trend experiment	(b)(5)	Fully Withheld	Duplicate of page 311.
341	Peterson, Thomas C.	Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; McMahon, James; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Matthews, Jessica	03/20/2015	9:55 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of page 243.
342	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; O'Connor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	5/21/2015	2:54 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 116.
342	Sessing, Janice	Karl, Thomas R.	5/21/2015	2:41 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 287.
342	Karl, Thomas R.	Sessing, Janice	5/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA scientist discussing the agency's climate change research and developing the agency's presentation for Congress.
342	Sessing, Janice	Gregg, Margarita; Karl, Thomas R.	5/11/2015	6:28 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Email is partially cut off. Duplicate of full email found on page 287.

343, 348	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; Lawrimore, Jay; Vose, Russell; Peterson, Thomas C.; Arguez, Anthony; Menne, Matthew; McMahon, James	06/02/2015	4:04 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
343	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:57 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
343	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	20:36	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
343, 347	Karl, Thomas R.	Cowtan, Kevin; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Tanner, Michael; Privette, Jeff	06/02/2015	20:33	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 295-296.
343-344	Cowtan, Kevin	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	3:25 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 295.
344, 347	Karl, Thomas R.	Huang, Boyin; Cowtan, Kevin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	14:37	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 294.
344	Huang, Boyin	Cowtan, Kevin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	9:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 295.
344-345	Cowtan, Kevin	Huang, Boyin	06/02/2015	5:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 292-293.
348	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:46 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 266-267.
350	Zhang, Huai-min	Lawrimore, Jay; Karl, Thomas, R.; McMahon, James; Huang, Boyin; Menne, Matthew; Vose, Russell	11/21/2014	9:04 AM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist sharing and discussing drafts for development of the paper, including status of the paper.

350	Lawrimore, Jay	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Huang, Boyin; Menne, Matthew; Vose, Russell	11/20/2014	10:39 AM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 273.
350	Karl, Thomas R.	Zhang, Huai-min; McMahon, James; Huang, Boyin; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/20/2014	7:59 AM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 273.
350	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/20/2014	7:53 AM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 274.
350-351	McMahon, James	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	3:51 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 265-266.
351	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:46 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 266.
351	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:47 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 266-267.
353-354	Zhang, Huai-min	Menne, Matthew; McMahon, James; Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Vose, Russell	12/3/2014	10:50 AM	Re: Trend plots	(b)(5)	Fully Withheld	Duplicate of pages 257-259.
362-363	Zhang, Huai-min	McMahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:42 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is discussing how to respond to reviewer feedback and is offering his opinion of the best approach to take in the paper as well as providing information on data for purposes of discussion.
363-364	Huang, Boyin	McMahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:48 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	NOAA scientist explaining data that he is sharing for development of the paper.

365-366	Zhang, Huai-min	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:42 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 362-363.
368	Huang, Boyin	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:48 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 363-364.
368-369	Zhang, Huai-min	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:24 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 362-363.
371	Huang, Boyin	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:48 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 363-364.
371-374	Zhang, Huai-min	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:42 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 362-363.
377-378	Zhang, Huai-min	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:42 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 362-363.
378	Huang, Boyin	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:48 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 363-364.

379	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	12:38 PM	Re: your new science paper	(b)(5)	Fully Withheld	Outside scientist contacts NOAA scientist, noting that he was contacted for comment on the paper, referencing prior work bearing on the issues reviewed in the paper, and explaining the analysis used in the outside scientist's work. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
379-380	Karl, Thomas R.	Trenberth, Kevin; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Arguez, Anthony	6/1/2015	1:19 PM	Re: your new science paper	(b)(5)	Fully Withheld	NOAA scientist explains scope of hiatus paper to outside scientist and noting relationship to existing literature. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
380	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	1:40 PM	Re: your new science paper	(b)(5)	Fully Withheld	Outside scientist provides comments in response to hiatus paper including evaluation of significance of the paper. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
380-381	Karl, Thomas R.	Trenberth, Kevin	6/1/2015	2:26 PM	Re: your new science paper	(b)(5)	Fully Withheld	NOAA scientist responds to various points made in the outside scientist's comments, including pointing to figure in paper. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
381-382	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	2:57 PM	Re: your new science paper	(b)(5)	Fully Withheld	Outside scientist clarifies data underlying prior work, clarifies one of his comments on hiatus paper, and explains that reason for sharing the comments was to help inform agency process of developing public communications relating to paper.

382	Karl, Thomas R.	Trenberth, Kevin	6/1/2015	3:14 PM	Re: your new science paper	(b)(5)	Fully Withheld	NOAA scientist compares conclusions in outside scientist's prior work with conclusions in hiatus paper. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
382	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	2:57 PM	Re: your new science paper	(b)(5)	Fully Withheld	Duplicate of pages 381-382.
382	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	3:37 PM	Re: your new science paper	(b)(5)	Fully Withheld	Outside scientist cites figure in prior work to support his position. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
382	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	3:40 PM	Re: your new science paper	(b)(5)	Fully Withheld	Outside scientist cites additional figures from another prior work to support his position. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
382-383	Karl, Thomas R.	Trenberth, Kevin	6/1/2015	3:49 PM	Re: your new science paper	(b)(5)	Fully Withheld	NOAA scientist requests clarification of finding from outside scientist's prior work and suggests potential explanation. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
383	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	3:37 PM	Re: your new science paper	(b)(5)	Fully Withheld	Duplicate of email at page 382.
383-384	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	3:57 PM	Re: your new science paper	(b)(5)	Fully Withheld	Outside scientist provides additional explanation and cites figures in prior work regarding Arctic temperatures. Outside scientist also opines on other scientists' work and notes possible interactions and questions for future research. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.

385-386	Peterson, Thomas	Kennedy, John; Huang, Boyin	3/9/2015	10:01 AM	Re: SST adjustment question	(b)(5)	Fully Withheld	NOAA scientist contacts outside scientist to request insight and clarification regarding the outside scientist's work on data corrections in sea surface temperature data set and how such corrections may relate to the alleged hiatus in order to better understand data analysis as related to the alleged hiatus for development of the paper.
389-390	Peterson, Thomas	Kennedy, John; Huang, Boyin	3/9/2015	3:41 PM	Re: SST adjustment question	(b)(5)	Partially Redacted	NOAA scientist responds to clarification and analysis from outside scientist by characterizing preliminary finding and discussing time scales.
396	Huang, Boyin	Cowtan, Kevin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	9:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 292.
396-397	Cowtan, Kevin	Huang, Boyin	06/02/2015	5:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 292-293.
398-399	Cowtan, Kevin	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	3:25 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 295.
399	Karl, Thomas R.	Huang, Boyin; Cowtan, Kevin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	14:37	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 294-295.
399	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:36 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
399-400	Karl, Thomas R.	Cowtan, Kevin; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Tanner, Michael; Privette, Jeff	06/02/2015	20:33	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 295-296.
400	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:57 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.

400	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; Lawrimore, Jay; Vose, Russell; Peterson, Thomas C.; Arguez, Anthony; Menne, Matthew; McMahan, James	06/02/2015	4:04 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
400	Cowtan, Kevin	Huang, Boyin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Ruedy, Reto	06/07/2015	3:08 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 296-297.
402	Peterson, Thomas	Kennedy, John; Huang, Boyin	3/9/2015	10:01 AM	Re: SST adjustment question	(b)(5)	Partially Redacted	Duplicate of pages 385-386.
403-404	Peterson, Thomas	Kennedy, John; Huang, Boyin	3/9/2015	3:41 PM	Re: SST adjustment question	(b)(5)	Partially Redacted	Duplicate of pages 389-390.
407, 412	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; Lawrimore, Jay; Vose, Russell; Peterson, Thomas C.; Arguez, Anthony; Menne, Matthew; McMahan, James	06/02/2015	4:04 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
407	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:57 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
407	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	20:36	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
407, 411	Karl, Thomas R.	Cowtan, Kevin; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Tanner, Michael; Privette, Jeff	06/02/2015	20:33	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 295-296.
407-408	Cowtan, Kevin	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	3:25 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 295.
408, 411	Karl, Thomas R.	Huang, Boyin; Cowtan, Kevin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	14:37	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 294.

408	Huang, Boyin	Cowtan, Kevin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	9:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 292.
408-409	Cowtan, Kevin	Huang, Boyin	06/02/2015	5:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 292-293.
413, 418	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; Lawrimore, Jay; Vose, Russell; Peterson, Thomas C.; Arguez, Anthony; Menne, Matthew; McMahon, James	06/02/2015	4:04 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
413	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:57 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
413	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	20:36	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
413, 417	Karl, Thomas R.	Cowtan, Kevin; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Tanner, Michael; Privette, Jeff	06/02/2015	20:33	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 295-296.
413-414	Cowtan, Kevin	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	3:25 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 295.
414, 417	Karl, Thomas R.	Huang, Boyin; Cowtan, Kevin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	14:37	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 294.
414	Huang, Boyin	Cowtan, Kevin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	9:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 292.
414-415	Cowtan, Kevin	Huang, Boyin	06/02/2015	5:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 292-293.

422	Karl, Thomas R.	Tepel, Mackenzie; Sessing, Janice; Vose, Russell; Vincent, Katy; Leslie, John;	5/21/2015	4:08 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA scientist discussing the agency's climate change research and developing the agency's presentation for Congress.
422	Tepel, Mackenzie	Karl, Thomas R.	5/21/2015	3:45 PM	Re: FYI . . . Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of 287.
422	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; O'Connor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	5/21/2015	2:54 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 116.
422	Sessing, Janice	Karl, Thomas R.	5/21/2015	2:41 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 287.
422	Karl, Thomas R.	Sessing, Janice	5/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 287.

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23-33	Category A	(b)(5)	
34-39	Category A	(b)(5)	
40-50	Category A	(b)(5)	
51-56	Category A	(b)(5)	
57	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
58-63	Category D	(b)(5)	
64	Category B	(b)(5)	
65-70	Category C	(b)(5)	
71-81	Category A	(b)(5)	
82-87	Category A	(b)(5)	
88-93	Category C	(b)(5)	
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111-116	Category A	(b)(5)	
117-127	Category A	(b)(5)	
128	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
129-134	Category D	(b)(5)	
135	Category B	(b)(5)	
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142 - 152	Category A	(b)(5)	
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633 - 634	Draft graphs of SST data created by NOAA scientists to be used in the paper.	(b)(5)	
635 - 650	Category A	(b)(5)	
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662 - 663	Draft graphs of SST data created by NOAA scientists to be used in the paper.	(b)(5)	
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799 - 808	Category A	(b)(5)	
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1096 - 1107	Author draft graphs and slides on SST data to be used in the paper.	(b)(5)	
1108	Author notes on draft graphs and slides on SST data to be used in the paper.	(b)(5)	
1109 - 1165	Category A	(b)(5)	
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1170 - 1173	Draft graphs of land and ocean temperature data created by NOAA scientists to be used in the paper.	(b)(5)	
1174 - 1223	Category A	(b)(5)	
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1234 - 1244	Category A	(b)(5)	
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1308 - 1309	Draft graphs of SST data created by NOAA scientists to be used in the paper.	(b)(5)	
1310 - 1325	Category A	(b)(5)	
1326 - 1336	Category C	(b)(5)	
1337 - 1338	Draft graphs of SST data created by NOAA scientists to be used in the paper.	(b)(5)	
1339 - 1355	Category A	(b)(5)	
1356 - 1366	Category C	(b)(5)	
1367 - 1386	Category A	(b)(5)	
1387 - 1397	Category C	(b)(5)	
1398 - 1402	Category E	(b)(5)	
1403 - 1412	Category A	(b)(5)	
1413 - 1422	Category E	(b)(5)	
1423 - 1437	Category A	(b)(5)	
1439 - 1449	Category C	(b)(5)	
1450 - 1467	Category A	(b)(5)	
1468 - 1470	Author's interpretations on data analysis of ERSST for development of the paper.	(b)(5)	
1471 - 1482	Category A	(b)(5)	
1483-1488	Category A	(b)(5)	
1489-1494	Category A	(b)(5)	
1495-1500	Category A	(b)(5)	
1501 - 1502	Category C	(b)(5)	
1503-1524	Category A	(b)(5)	
1525	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
1526 - 1531	Category D	(b)(5)	
1532 - 1548	Category A	(b)(5)	
1549	Category B	(b)(5)	
1550 - 1555	Category C	(b)(5)	
1556 - 1572	Category A	(b)(5)	
1573	Category B	(b)(5)	
1574 - 1579	Category C	(b)(5)	

1580-1607	Category A	(b)(5)	
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1619-1624	Category A	(b)(5)	
1625-1630	Category A	(b)(5)	
1631-1641	Category A	(b)(5)	
1642	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
1643-1648	Category C	(b)(5)	
1649-1658	Category A	(b)(5)	
1659-1668	Category A	(b)(5)	
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1838-1846	Category A	(b)(5)	
1847-1855	Category A	(b)(5)	
1856-1865	Category A	(b)(5)	
1866-1875	Category A	(b)(5)	
1876-1886	Draft powerpoint by author presenting information on global temperature and presenting data analysis conducted by NOAA scientists for the paper.	(b)(5)	
1887-1897	Category A	(b)(5)	

1898-1908	Category A	(b)(5)	
1909-1919	Category A	(b)(5)	
1920-1929	Category A	(b)(5)	
1930-1941	Category A	(b)(5)	
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1954-1966	Category A	(b)(5)	
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1980-1991	Category A	(b)(5)	
1992-2003	Category A	(b)(5)	
2004-2016	Category A	(b)(5)	
2017-2029	Category A	(b)(5)	
2041-2057	Category A	(b)(5)	
2058-2070	Category A	(b)(5)	
2071 2076	Draft graphs and charts of SST data to be used in development of the paper.	(b)(5)	
2097-2099	Category A	(b)(5)	
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2111-2129	Category C	(b)(5)	
2130-2138	Category E	(b)(5)	
2139-2143	Category A	(b)(5)	
2144-2153	Category A	(b)(5)	
2154-2164	Category C	(b)(5)	
2165-2176	Category A	(b)(5)	
2177-2189	Category A	(b)(5)	
2190-2195	Category A	(b)(5)	
2197-2202	Category A	(b)(5)	
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2213-2223	Category C	(b)(5)	
2224-2235	Category A	(b)(5)	
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2274-2284	Category C	(b)(5)	
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2330-2340	Category C	(b)(5)	
2341- 2360	Category E	(b)(5)	
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2787-2793	Category C	(b)(5)	
2793-2809	Category A	(b)(5)	
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2816	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
2817-2822	Category D	(b)(5)	
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2881	Category B	(b)(5)	
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2905	Category B	(b)(5)	
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2967-2977	Category A	(b)(5)	
2978-2988	Category A	(b)(5)	
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3012-3027	Category A	(b)(5)	
3028-3044	Category A	(b)(5)	
3045	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
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3129-3135	Category D	(b)(5)	
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3323-3333	Category A	(b)(5)	
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3621-3633	Category A	(b)(5)	
3638-3643	Draft graphs and charts of SST data to be used in development of the paper.	(b)(5)	
3669-3672	Category A	(b)(5)	
3672-3688	Category A	(b)(5)	
3689-3692	Draft graphs of SST and land temperature data to be used in development of the paper.	(b)(5)	
3693-3694	Duplicates of emails processed elsewhere	(b)(5)	
3695-3703	Category E	(b)(5)	
3705-3719	Category A	(b)(5)	
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4166-4175	Category C	(b)(5)	
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4197-4207	Category C	(b)(5)	
4208-4218	Category C	(b)(5)	
4219-4229	Category C	(b)(5)	

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4235-4245	Category A	(b)(5)	
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4257-4262	Category C	(b)(5)	
4263-4273	Category A	(b)(5)	
4274-4279	Category A	(b)(5)	
4280-4285	Category C	(b)(5)	
4286-4296	Category A	(b)(5)	
4297-4301	Category A	(b)(5)	
4302-4307	Category C	(b)(5)	
4308	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
4309-4314	Category D	(b)(5)	
4315-4321	Category C	(b)(5)	
4322-4332	Category A	(b)(5)	
4333-4343	Category A	(b)(5)	
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4373-4409	Category C	(b)(5)	
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4454-4464	Category C	(b)(5)	
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4476-4486	Category A	(b)(5)	
4487-4496	Category A	(b)(5)	
4497-4502	Category A	(b)(5)	
4503	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
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4520-4525	Category A	(b)(5)	
4533-4543	Category A	(b)(5)	
4544-4549	Category A	(b)(5)	

4550	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
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4557-4567	Category A	(b)(5)	
4568-4573	Category A	(b)(5)	
4574-4578	NOAA draft communications plan regarding publication of the paper.	(b)(5)	
4579-4589	Category A	(b)(5)	
4591-4599	Draft FAQs for communications plan related to release of paper.	(b)(5)	
4600-4607	Category A	(b)(5)	
4614-4619	Category C	(b)(5)	
4620-4630	Category A	(b)(5)	
4631-4636	Category A	(b)(5)	
4637-4639	Category A	(b)(5)	
4640-4650	Category C	(b)(5)	
4651-4654	Draft chart of MLOST data created by NOAA scientists to be used in development of the paper.	(b)(5)	
4655-4665	Category A	(b)(5)	
4666-4675	Category A	(b)(5)	
4676-4688	Category A	(b)(5)	
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4733-4736	Category E	(b)(5)	
4737-4750	Category A	(b)(5)	
4751-4761	Category E	(b)(5)	
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5689	Category B	(b)(5)	
5690-95	Category C	(b)(5)	
5696-5706	Category A	(b)(5)	
5707-5712	Category A	(b)(5)	
5713-5723	Category A	(b)(5)	
5724-5729	Category A	(b)(5)	
5730	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
5731-36	Category C	(b)(5)	
5738-41	Draft charts of annual global temperatures for use in development of the paper.	(b)(5)	
5742-5752	Category A	(b)(5)	
5753-5758	Category A	(b)(5)	
5781-5791	Category A	(b)(5)	
5792-5797	Category A	(b)(5)	
5798-5808	Draft powerpoint by author presenting information on global temperature and presenting data analysis conducted by NOAA scientists for the paper.	(b)(5)	
5809-11	Category C	(b)(5)	
5812-5822	Category A	(b)(5)	
5823-5828	Category A	(b)(5)	
5829-5837	Category A	(b)(5)	
5840-5849	Category C	(b)(5)	
5850-5858	Category C	(b)(5)	
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5866-5868	Category C	(b)(5)	
5869-5879	Category A	(b)(5)	
5880-5890	Category A	(b)(5)	
5891-5901	Category A	(b)(5)	
5902-5912	Category A	(b)(5)	
5913-5918	Category A	(b)(5)	
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5925-45	Category C	(b)(5)	
5946-5956	Category A	(b)(5)	
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5963-75	Category C	(b)(5)	

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6017-6027	Category A	(b)(5)	
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6034-44	Category C	(b)(5)	
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6062-67	Category D	(b)(5)	
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6072-6074	Category C	(b)(5)	
6075-6077	Category C	(b)(5)	
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6089-6099	Category A	(b)(5)	
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6203-6213	Category A	(b)(5)	
6214-15	Category C	(b)(5)	
6216-6226	Category C	(b)(5)	
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6250-52	Category C	(b)(5)	
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6279-6287	Category A	(b)(5)	
6288-6296	Category C	(b)(5)	
6299-6304	Category A	(b)(5)	
6305-6315	Category A	(b)(5)	
6316-29	Category C	(b)(5)	
6330-6338	Category A	(b)(5)	
6339-57	Category C	(b)(5)	

6358	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
6359-6364	Category C	(b)(5)	
6365-6370	Category C	(b)(5)	
6371-6472	Category C	(b)(5)	
6372-6378	Category D	(b)(5)	
6379-6384	Category C	(b)(5)	
6385-6390	Category A	(b)(5)	
6391-6401	Category A	(b)(5)	
6402-6407	Category A	(b)(5)	
6408-09	Category A	(b)(5)	
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6421-23	Category C	(b)(5)	
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6435-6440	Category A	(b)(5)	
6441-43	Category C	(b)(5)	
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6455-6460	Category A	(b)(5)	
6461-69	Category C	(b)(5)	
6470-6478	Category A	(b)(5)	
6479-6488	Category C	(b)(5)	
6489-6499	Draft graphs of SST data created by NOAA scientists to be used in development of the paper.	(b)(5)	
6500-6508	Category A	(b)(5)	
6509-6532	Category A	(b)(5)	
6533-6537	Category A	(b)(5)	
6538-6545	Category A	(b)(5)	
6546-6552	Category A	(b)(5)	
6553-6557	Category A	(b)(5)	
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6640-6649	Category A	(b)(5)	
6650-6671	Category A	(b)(5)	
6672-8882	Category E	(b)(5)	
6683-6699	Category A	(b)(5)	
6700-6710	Category C	(b)(5)	
6711	Category B	(b)(5)	
6712-6720	Category C	(b)(5)	
6721-6731	Category A	(b)(5)	
6732-6742	Category A	(b)(5)	
6743-6753	Category A	(b)(5)	
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6760-6765	Category A	(b)(5)	
6766-6761	Category A	(b)(5)	

6772	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
6773-6779	Category C	(b)(5)	
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6863-6875	Category C	(b)(5)	
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6890-6896	Category C	(b)(5)	
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7413-7423	Category C	(b)(5)	
7424-7434	Category C	(b)(5)	
7435-7445	Category C	(b)(5)	
7446-7450	Draft FAQs for communications plan related to publication of paper.	(b)(5)	
7451-7454	Category A	(b)(5)	
7455-7497	Category A	(b)(5)	
7498-7506	Category A	(b)(5)	
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7514-7521	Category A	(b)(5)	
7522-7535	Category A	(b)(5)	
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7861-7866	Category A	(b)(5)	
7867-7873	Category A	(b)(5)	
7874-7877	Category A	(b)(5)	

Categories	Descriptions
A	Draft of paper "Possible artifacts of data biases in the recent global surface warming hiatus" by Thomas Karl, et al. as well as the drafts of the "supplementary materials" that accompanied the paper and were made available for download by Science upon publication of the paper. Non-final, pre-decisional draft contains opinions and recommendations of one or more NOAA authors; draft language, data, and data interpretation for consideration by other NOAA authors; comments on previous drafts of the paper, and/or responses to other NOAA authors' or
B	Drafts of cover letter exchanged between authors, from Tom Karl to Science magazine, in response to peer review comments.

C	Draft responses to external peer review. Draft responses exchanged among NOAA authors to determine how best to respond to comments provided by external peer reviewers. Pre-decisional discussions that reflect proposed responses to peer review comments. Drafts contain opinions and recommendations of one or more NOAA authors; draft language, data, and data interpretation for consideration by other authors; comments on previous drafts of the responses to peer reviewers; and/or responses to other authors' comments on earlier drafts of the responses to peer reviewers.
D	Responses to external peer reviews. NOAA's Responses to constructive criticism and advice submitted by scientific experts as part of the confidential peer review process for papers submitted to scientific journals. Responses were submitted as part of process to assist in authors' deliberations whether and in what form to publish the paper.
E	Questions for discussion and draft graphs circulated by one author and created for author discussions during development of the paper.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

Exhibit 2 to Declaration of Mark Graff



May 27, 2016

Mr. Bill Marshall
425 Third St., SW
Suite 800
Washington, DC 20024

Re: FOIA Request No. DOC-NOAA-2016-000351

Dear Mr. Marshall:

This letter is in response to your Freedom of Information Act (FOIA) request entered into FOIAOnline on December 15, 2015, for certain records of the National Oceanic and Atmospheric Administration (NOAA). Pursuant to the Joint Status Report filed on March 22, 2016 in *Judicial Watch v. U.S. Department of Commerce*, 1:15-cv-2088-CRC (D.D.C.), and the Court's March 24, 2016 Minute Order in that action, on April 15, 2016, we released in their entirety 122 pages of records that are responsive to item 4 of your FOIA request, as modified by the March 1, 2016 Joint Status Report.

Pursuant to the March 22, 2016 Status Report and the Court's March 24, 2016 Minute Order, this letter responds to items 1-3 of your request, as modified by the March 1, 2016 Joint Status Report. We are providing 242 pages, including:

- 102 pages of records that we are releasing in their entirety.
- 57 pages of records that have been partially redacted under FOIA Exemption (b)(5), 5 U.S.C. 552(b)(5), which exempts from disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." The redacted material is protected by the deliberative process privilege.
- 13 pages of records that contain redactions of non-responsive material.
- 17 pages of records that have been partially redacted under FOIA Exemption (b)(5) (deliberative process) and also contain redactions of non-responsive material.
- 3 pages of records that are partially redacted under FOIA Exemption (b)(5) and FOIA Exemption (b)(6), 5 U.S.C. 552(b)(6), which protects "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

In this release, we have also noted, on 50 separate pages, where pages of email chains have been withheld in their entirety as non-responsive or under a FOIA exemption. We are withholding in their entirety 8,013 pages of records under FOIA Exemption (b)(5) that are pre-decisional and deliberative, and protected under the deliberative process privilege. 7,877 of these pages are drafts and other documents. 136 of these pages are deliberative email communications. Because the request sought records of multiple custodians, there is a significant amount of duplicative material in the responsive records.

If you have any questions, your attorney may contact Kevin Snell, Trial Attorney, at 202-305-0924. Please be sure to refer to the civil action number, 1:15-cv-2088-CRC, and the FOIA Request Number, DOC-NOAA-2016-00351, in all correspondence regarding this case.

Sincerely,

A handwritten signature in blue ink that reads "Mark S. Paese". The signature is fluid and cursive, with the first name "Mark" being the most prominent part.

Mark S. Paese
Deputy Assistant Administrator
NOAA Satellite and Information Service

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,)	
425 Third Street, SW, Suite 800)	
Washington, D.C. 20024)	
)	
Plaintiff,)	
)	
v.	)	Civil Action No. 15-2088 (CRC)
)	
U.S. DEPARTMENT OF)	
COMMERCE,)	
1401 Constitution Avenue, NW)	
Washington, D.C. 20230)	
)	
Defendant.)	
_____)	

DECLARATION OF DR. RICHARD W. SPINRAD

1. I am Dr. Richard W. Spinrad, and I have been the Chief Scientist of the National Oceanic and Atmospheric Administration (NOAA) since May 9, 2014. As Chief Scientist, I provide policy and program direction for the agency’s science and technology priorities. I have 30 years of scientific and executive experience. At different points in my career, I have worked as a research scientist, including for the Navy; held faculty appointments at three universities; directed a national non-profit organization; and presided over a private company.

2. I am aware that the pending litigation regards NOAA’s decision to withhold certain substantive communications among scientists from its response to a request under the Freedom of Information Act (FOIA), in light of the exception from disclosure under FOIA that applies to material generated in connection with a “deliberative process.” At issue are email

discussions among NOAA scientists at the National Centers for Environmental Information (NCEI) who authored a report published in June 2015 addressing climate trends, as well as communications between those NOAA scientists and scientists located outside the federal government. I am, further, aware that a separate declaration from the NOAA FOIA Officer (Mark H. Graff) will address the particular facts of the specific report and specific communications at issue in this litigation.

3. I submit this declaration to describe more generally the harm that would result to our agency and to federal scientists if the deliberative communications among NOAA's scientists, or between NOAA's scientists and outside experts providing input to the agency's processes, were to be released. Such harm would result from release of either deliberative communications among federal scientists, or of deliberative communications between federal scientists and scientists outside the federal government (whom I refer to as "outside scientists"). Such outside scientists may work, for example, in academia, international data-collecting organizations, non-governmental research organizations, state agencies, or private industry.

4. My education includes a Bachelor of Arts degree (1975) in Earth and Planetary Sciences from The Johns Hopkins University in Baltimore, Maryland, and Master of Science (1978) and Doctoral degrees (1982) in oceanography from Oregon State University.

5. Prior to joining NOAA, I served as a Program Manager and Division Director with the United States Navy Office of Naval Research (1987 - 1994); the Executive Director for the Consortium for Oceanographic Research and Education, a non-profit research advocacy organization (1994 - 1999); and Technical Director (senior civilian) at the United States Navy Office of the Oceanographer of the Navy (1999 - 2003). In connection with my service, I was

awarded the U.S. Navy Distinguished Civilian Service Award, which is the highest civilian award given by the Navy.

6. From 2003 to 2010, I served as Assistant Administrator at NOAA in two sequential capacities, as head of the National Ocean Service and as head of NOAA's Office of Oceanic and Atmospheric Research.

7. I then served as Vice President for Research at Oregon State University in Corvallis, Oregon (2010 - 2014) before being appointed as NOAA's Chief Scientist.

8. Among my other duties during my career at NOAA, I have served as co-lead of the White House committee that developed the first national set of ocean research priorities and as the representative from the Department of Commerce to the White House Office of Science and Technology Policy (OSTP) committee addressing scientific integrity, culminating in guidance from OSTP in December 2010.

9. As NOAA's Assistant Administrator for Oceanic and Atmospheric Research (2005 - 2010), I directed the agency's programs in oceanography, atmospheric science, and climate science. I directly supervised significant research efforts including those relating to ocean exploration, the National Sea Grant College Program, and the Climate Program Office. I also supervised seven NOAA laboratories around the United States.

10. As NOAA's Assistant Administrator for Ocean Services and Coastal Zone Management (2003 - 2005), I directed the agency's navigation and coastal services, including the National Geodetic Survey, the Office of National Marine Sanctuaries, and the Office of Coastal Resource Management. As part of my duties, I represented the interests of the United States in

the establishment of a global tsunami warning system. I also served as the United States permanent representative to the United Nations' Intergovernmental Oceanographic Commission.

11. I have received several high honors during my tenure at NOAA, including Presidential Rank Awards from Presidents George W. Bush and Barack H. Obama.

12. During my career, I have belonged to several professional societies designed to advance research and education and to promote communication among the scientific community. Such organizations bring together scientists from different settings, including government, academia, and industry, recognizing their shared goals. I am a fellow of the American Meteorological Society, the Marine Technology Society, and the Institute of Marine Engineering, Science and Technology. I am the past president of the Oceanography Society and president-elect of the Marine Technology Society.

13. Because I have worked as a scientist in multiple settings, including NOAA, the Navy and in academia, I have a broad perspective on the key importance of collaboration to the scientific community. My experiences have included a broad array of types and intensities of collaboration. I have worked alongside researchers in the field and at sea, and have co-authored dozens of peer-reviewed publications with collaborators from all of the sectors identified above.

14. The heart of the scientific method is the formulation, refining, and testing of hypotheses using available facts, which must be gathered through research and then analyzed. Scientists pursuing a research objective may begin with only rough ideas or ideas that are not yet fully formed. Those ideas are then developed, tested, and revised as data are collected and interpreted. The possible interpretations are generated and tested in part through exchanges and

candid debates with peers inside and outside the federal government. The set of available information, and our understanding of it, evolves through this process.

15. Focusing on the work we do at NOAA, I would point to the exchange and debate among peers as the mechanism that allows us to ensure that the scientific products we develop and release to the public are robustly developed and accurately tested. Such rigorous vetting is critical to developing and releasing scientific information of the highest possible quality to inform the public and decision-makers.

16. When we are developing and refining hypotheses, then, we value input and feedback from the community of scientists who have expertise in the field relating to a particular project. The relevant expertise will likely not be located in just one organization, but most often will be shared among several different scientists, each of whom may have a specialized focus.

17. In seeking out expert feedback and input, scientists generally do not distinguish between colleagues who work within federal agencies and scientists who work in other settings. Rather, our scientific peers who have expertise to offer are generally considered as belonging to one scientific community that shares the overall goal of advancing scientific understanding in their fields. Sometimes experts located outside the federal government have a specialized area of expertise that the agency lacks, or they may be respected peers who can offer a second opinion.

18. Indeed, in some scientific fields (including climate science) there are only a limited number of scientists with the relevant, specialized expertise. Many of them are federal employees, and having a strong scientific team in-house enables our agencies to produce very high quality scientific products. Integrating the perspectives and information from outside scientists allows us to produce even more robust scientific products.

19. It is therefore commonplace, as a research project proceeds, for federal scientists to reach out to request feedback and input from colleagues both inside and outside the federal government who have relevant knowledge and expertise. As I noted above (§ 3), these colleagues may be located in such settings as academia, international data-collecting organizations, non-governmental organizations, or private industry, and may have a common history of collaborating with federal scientists on working groups and panels. These requests for input often lead to candid discussions and debates that can be thought of as a type of informal peer review that fulfills a valuable role in developing scientific thought and promoting scientific understanding. In an earlier era, such discussions were limited to conversations among scientists at irregular intervals, such as at professional society gatherings. The advent of electronic communications has facilitated more frequent and regular discussions, to the great advancement of science.

20. There is a general and well-established presumption, often implied rather than explicit, that such discussions are not intended to be, and will not be, shared with a wider audience. Confidentiality is essential to ensuring the participants are free to propose new ideas or explanations without fear of misinterpretation or being taken out of context, and without slowing down the exchange of ideas. Sometimes the communications are very informal and are developed quickly, which is helpful particularly at the initial stages of project development when it is important to generate new ideas.

21. By allowing for the testing and refinement of ideas, such confidential discussions help ensure that scientific products are more well-developed and robust. If such discussions

could not take place, the exchange of scientific understanding would be hampered and the pace of scientific progress would slow.

22. I believe several types of harm would likely result to the agency, to federal scientists, and ultimately to the public if federal scientists could not engage in the type of confidential, candid discussions with each other or with outside experts that I have described. Federal scientists should be permitted the same opportunities for collegial collaboration that is the standard for scientists in other settings. This collaboration is particularly productive as new facts become available and we seek consensus in the scientific community on the appropriate interpretation and understanding of these facts.

23. First, there is the risk of chilling candid, informal exchanges and debates among scientists in the community of experts, leading to a less robust scientific process overall. This would adversely affect the agency's ability to produce high quality scientific products. Federal scientists obviously must communicate with one another in developing their agencies' products, and should have confidence that their preliminary views and suggestions will be treated as confidential. They should also feel free to reach out and express their ideas to qualified outside scientists for their feedback. If there is uncertainty as to whether their communications will be kept from public view, federal scientists would likely be less candid about expressing their views and seeking important feedback. They may be concerned, for example, about potential damage to their reputation from a statement being misconstrued or taken out of context or about the risk of harassment. In certain contexts, such as climate research and analysis, the potential for a chilling effect is particularly high because developments in this area typically generate a high

level of interest or controversy. The quality of our scientific products would greatly suffer if our scientists were unable to freely suggest, explore and test their ideas due to such considerations.

24. Similarly, outside scientists should have confidence that input they provide to their peers at federal agencies will be treated as confidential. If an outside scientist believed that their communications with federal scientists may become public, he or she may change the way they engage with federal colleagues in a way that slows the exchange of ideas, or they may choose not to engage in this type of valuable, informal peer review at all. This would narrow the range of perspectives taken into account in generating our scientific products and therefore reduce the overall robustness of the scientific process.

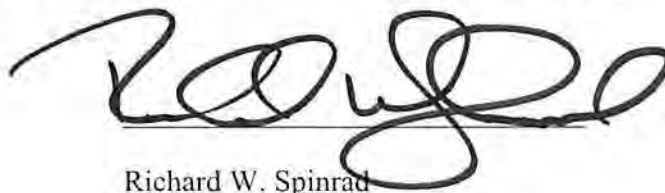
25. Second, there is a risk that the public may become confused by preliminary or incomplete information contained in the communications among scientists, or by information that is misinterpreted or taken out of context. Here also, the climate science context is one in which the risks of misinterpretation or confusion are somewhat elevated, in light of the degree of interest by various groups and the complex nature of the interpretations at issue. For example, because the community of experts is already familiar with the context of their communications and the current state of the science, they tend to use shorthand and informal language in sharing ideas that are actually highly technical and complex. I note, for example, that the use of the term "theory" has a very specific definition in scientific circles, but is interpreted in a vastly different manner by the lay public. While use of informal or short-hand language is useful and appropriate to expedite discussions among peers, more formal explanations and, in many cases, caveats, would be necessary for products that are intended to be shared with a public audience.

26. Third, there is the risk that federal agencies would be unable to attract and retain the best scientists if these scientists were unable to communicate in confidence with peers inside their agencies or with experts in the community outside the federal government. This was demonstrated dramatically as we improved the OSTP guidance on scientific integrity over the last several years; I have had many discussions with academic scientists who indicated that the scientific freedom reflected in the government's policies on scientific integrity have encouraged them to consider applying for and accepting positions in government laboratories. If instead federal scientists believed they must wall themselves off from confidential discussions with each other or with outside scientists, depriving their projects of valuable, informal input and expertise, they may conclude they can perform their work better in another setting.

27. In conclusion, upholding the expectations of confidentiality of scientists – whether employed in the federal government or outside of it – who have participated in candid exchanges and debates in the development of the agency's scientific products is critical to fostering a vigorous scientific process. This, in turn, is critical to ensuring the public receives the highest quality information from federal agencies.

Pursuant to 28 U.S.C. § 1746, I hereby affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 15 day of December, 2016, Washington, D.C.

A handwritten signature in black ink, appearing to read "R. Spinrad", written over a horizontal line.

Richard W. Spinrad

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

[PROPOSED] ORDER

Upon consideration of the U.S. Department of Commerce’s (“the Department’s”) motion for summary judgment, and any response and reply thereto, and the entire record here, and for good cause shown, it is hereby

ORDERED that, for the reasons set forth in the Department’s motion:

- 1. The Department’s motion is hereby **GRANTED**; and
- 2. Summary judgment is hereby **ENTERED** for the Department.

Dated: _____

CHRISTOPHER R. COOPER
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

MOTION FOR SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56, Defendant U.S. Department of Commerce hereby moves for summary judgment on all of Plaintiff's claims. This motion is supported by a statement of material facts as to which there is no genuine issue, a memorandum of points and authorities, the Declarations of Mark Graff and Dr. Richard Spinrad, and a *Vaughn* index. A proposed order is attached.

Dated: December 15, 2016

Respectfully submitted,

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

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U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

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INTRODUCTION

In this Freedom of Information Act (“FOIA”), Plaintiff Judicial Watch requested from the National Oceanographic and Atmospheric Administration (“NOAA”), a component of the Department of Commerce, records relating to different temperature metrics and datasets.¹ The parties conferred and reached an agreement regarding the scope of the request and relevant search parameters. Using those agreed-upon parameters, NOAA conducted a search and ultimately produced responsive, non-exempt material.

Plaintiff now challenges the adequacy of NOAA’s search and all of its redactions and withholdings. But as discussed more fully herein, NOAA conducted a search that was reasonably calculated to locate all non-duplicative records in its possession responsive to Plaintiff’s request. Moreover, all of the challenged information and records that NOAA withheld were properly exempt from production. The Court should therefore grant summary judgment in favor of the Department of Commerce.

FACTUAL BACKGROUND

I. The Hiatus Paper

The FOIA request at issue centers around a June 4, 2015 study authored by NOAA scientists and published in the journal *Science* entitled *Possible Artifacts of Data Biases in the Recent Global Surface Warming Hiatus* (“Hiatus Paper” or “the Paper”). Between September 2013 and November 2014, the Intergovernmental Panel on Climate Change (“IPCC”) released a report in stages that concluded that the upward global surface temperature trend from 1998-2012

¹ The FOIA request also sought communications between NOAA and the House of Representatives Committee on Science, Space, and Technology. The agency made a separate production of these records, which Plaintiff’s counsel indicated in writing that Plaintiff did not intend to challenge. Therefore, this motion for summary judgment and accompanying documents do not address the agency’s response to that aspect of the request.

was lower than that from 1951-2012. Declaration of Mark Graff (“Graff Decl.”) Decl. ¶ 9 (attached herein as Exhibit A). The apparent observed slowing of the global surface temperatures was dubbed the “hiatus.” *Id.* The Hiatus Paper, drafted after that report by a team of NOAA scientists, sought to properly account for the alleged “hiatus.”

NOAA’s National Centers for Environmental Information (“NCEI”) produces and maintains datasets for global ocean areas and global land areas. *Id.* ¶ 6. Scientists throughout the government, including scientists at agencies other than NOAA, and outside of the government, use the sea surface temperature and land surface temperature datasets for a variety of purposes, including for climatic research and climate assessments. *Id.* NCEI scientists continually work to improve the datasets to provide the public the most up-to-date and accurate information. *Id.* There were two significant developments related to the “hiatus” after the IPCC’s report. In particular, 2013 and 2014 were two of the five warmest years on record for the globe. *Id.* ¶ 10. Also, NOAA scientists made significant improvements to its sea surface temperature dataset, one of largest being a correction that accounted for the difference in data collected from ships and buoys. *Id.* Buoys have been increasingly used since the 1970s to measure sea surface temperatures, and scientists developed a method to correct for the difference between these two observing systems and incorporated those corrections into the dataset. *Id.*

NCEI scientists regularly interpret and analyze datasets and release to the public the most up-to-date climate science, often through publication in scientific journals. *Id.* ¶ 7. The Hiatus Paper is an example of analysis and interpretation of the updated underlying data. *Id.* ¶ 8.

Around late October 2014, Tom Karl, then the Director of NCEI, circulated a draft paper to a group of NOAA scientists that developed an idea for properly accounting for the alleged “hiatus” based on the additional two years of global temperature data and the improvements to

NOAA's sea surface temperature dataset. *Id.* ¶ 11. Karl sought feedback on the draft paper, and a team of scientists at NOAA worked to develop a manuscript. *See id.* ¶¶ 11-13. Many drafts and revisions were exchanged among these scientists, along with emails discussing various aspects of the paper or its content, including suggestions on how best to describe the data, opinions on statistical error uncertainty ranges, thoughts on the implications of other researchers' work, and so on. *Id.* ¶ 13. Such collaboration via discussions and drafts is standard practice at NCEI. *Id.* ¶ 13.

In December 2014, the authors submitted the draft paper to the journal *Science*. *Id.* ¶ 14. Once there, the draft paper went through the journal's peer review process, in which five anonymous peer reviewers weighed in on the manuscript. *Id.* ¶ 20. When the authors received feedback, they discussed internally how to respond in writing to the comments they received, and also revised the manuscript to address the questions and concerns raised. *See id.* ¶ 21. After a second round of peer review, NOAA received word that the article would be published, and *Science* published the Paper on its website on June 4, 2015. *Id.* ¶ 23.

II. The FOIA Request and NOAA's Response

Plaintiff's FOIA request, dated October 30, 2015, sought in relevant part:

1. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the methodology and utilization of Night Marine Air Temperatures to adjust ship and buoy temperature data.
2. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the use of other global temperature datasets for both NOAA's in-house dataset improvements and monthly press releases conveying information to the public about global temperatures.
3. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the

utilization and consideration of satellite bulk atmospheric temperature readings for use in global temperature datasets.

Graff Decl. ¶ 24; *see also* Answer, ECF No. 8-1.

Upon review of the request, NOAA officials determined that it did not reasonably describe the records requested. Graff Decl. ¶ 25. Through counsel, NOAA conferred with Plaintiff to negotiate a clear description of the material sought. *Id.* During the course of those discussions, NOAA indicated to Plaintiff that it understood the request to reflect an interest in the Hiatus Paper and accordingly suggested modifying the request to call for a search for all documents and communications referring to the Hiatus Paper from its nine authors. *Id.* ¶ 26. Plaintiff confirmed its interest in that study, but indicated that it sought only records referring to the topics listed in its initial FOIA request. *Id.*

The parties ultimately “reached an agreement regarding the scope of the request and relevant search parameters.” Second Joint Status Report, ECF No. 10 at 2. For Plaintiff’s FOIA request, NOAA agreed to search the records of the nine authors of the Hiatus Paper for records referring to that paper and that contain one of the following search terms: “NMAT,” “Night Marine Air Temperatures,” “ISTI,” “ICOADS,” “sea ice,” “satellite,” “Advanced Very High Resolution Radiometer,” “AVHRR,” “Advanced Microwave Scanning Radiometer,” and “AMSR.” *Id.*; Graff Decl. ¶ 27.

After NOAA directed those custodians to run the agreed-upon searches, it made a production on May 27, 2016 of 102 pages of material in its entirety and 90 partially redacted pages. *See* Graff Decl. ¶ 29; Fourth Joint Status Report, ECF No. 12 at 2. NOAA withheld in their entirety 8,013 pages of records, and informed Plaintiff that because it sought records from nine separate custodians, a significant amount of duplicative material existed in the responsive records. *See* Graff Decl. ¶ 29; Fourth Joint Status Report, ECF No. 12. The parties then

discussed the details of potential challenges to NOAA's production, and NOAA agreed to provide Plaintiff a draft *Vaughn* index in an attempt to narrow the issues in dispute. *See* Fifth & Sixth Joint Status Report, ECF Nos. 13 & 14. Upon further review of the withheld information, on September 16, 2016, NOAA released to Plaintiff an additional 44 pages of material (7 of those pages were partially redacted to exclude Mr. Karl's cell phone number), Graff Decl. ¶ 30, and contemporaneous with this filing on December 15, 2016, NOAA released an additional 62 records, Graff Decl. ¶ 31.

STANDARD OF REVIEW

A court reviews an agency's response to a FOIA request *de novo*. 5 U.S.C. § 552(a)(4)(B). "FOIA cases are typically and appropriately decided on motions for summary judgment." *Moore v. Bush*, 601 F. Supp. 2d 6, 12 (D.D.C. 2009). In deciding at the summary judgment stage whether an agency has fully discharged its obligations under FOIA, "the agency must show, viewing the facts in the light most favorable to the requester, that there is no genuine issue of material fact." *Steinberg v. U.S. Dep't of Justice*, 23 F.3d 548, 551 (D.C. Cir. 1994).

ARGUMENT

I. NOAA's Search Was Reasonable, Adequate, and Satisfies Its Obligation Under the FOIA

A. The Standard for an Adequate Search

The touchstone for determining whether an agency should prevail on a motion for summary judgment in FOIA litigation is whether the agency demonstrates that its "search for documents was adequate." *Larson v. Dep't of State*, 565 F.3d 857, 869 (D.C. Cir. 2009). An agency's search is adequate if "it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." *Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). The adequacy of a FOIA

search is thus gauged “not by the fruits of the search, but by the appropriateness of the methods used to carry out the search.” *Ancient Coin Collectors Guild v. U.S. Dep’t of State*, 641 F.3d 504, 514 (D.C. Cir. 2011) (quoting *Iturralde v. Comptroller of Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003)). In short, “[t]he adequacy of the search . . . is judged by a standard of reasonableness.” *Steinberg*, 23 F.3d at 551; *see also DiBacco v. U.S. Army*, 795 F.3d 178, 194 95 (D.C. Cir. 2015) (“A search need not be perfect, only adequate, and adequacy is measured by the reasonableness of the effort in light of the specific request.” (quoting *Meeropol v. Meese*, 790 F.2d 942, 956 (D.C. Cir. 1986))).

“In demonstrating the adequacy of the search, the agency may rely upon reasonably detailed, nonconclusory affidavits submitted in good faith.” *Id.* (quoting *Weisberg v. Dep’t of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984)). Such affidavits are sufficient if they “set[] forth the search terms and the type of search performed, and aver[] that all files likely to contain responsive materials (if such records exist) were searched.” *Chambers v. U.S. Dep’t of Interior*, 568 F.3d 998, 1003 (D.C. Cir. 2009) (quoting *McCready v. Nicholson*, 465 F.3d 1, 7 (D.C. Cir. 2006)). This standard does not require that “the affidavits of the responding agency set forth with meticulous documentation the details of an epic search for the requested records.” *Perry v. Block*, 684 F.2d 121, 127 (D.C. Cir. 1982). “Rather, in the absence of countervailing evidence or apparent inconsistency of proof, affidavits that explain in reasonable detail the scope and method of the search conducted by the agency will suffice” *Id.* Moreover, “[s]uch agency affidavits attesting to a reasonable search ‘are afforded a presumption of good faith,’ and ‘can be rebutted only with evidence that the agency’s search was not made in good faith.’” *Riccardi v. US Dep’t of Justice*, 32 F. Supp. 3d 59, 63 (D.D.C. 2014) (quoting *Def. of Wildlife v. U.S. Dep’t of Interior*, 314 F. Supp.2d 1, 8 (D.D.C. 2004)).

Finally, courts in this circuit recognize the “well-worn rule . . . that the adequacy of a FOIA search is not to be judged by its results.” *Rosenberg v. United States Dep’t of Immigration & Customs Enf’t*, 13 F. Supp. 3d 92, 104 (D.D.C. 2014). “The question is not ‘whether there might exist any other documents possibly responsive to the request, but rather whether the search for those documents was *adequate*.’” *Steinberg*, 23 F.3d at 551 (quoting *Weisberg v. Dep’t of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984)) (emphases in original). Thus, courts have rejected challenges to the adequacy of a search, even when a “slim yield may be intuitively unlikely” and a “reasonable observer would find th[e] result[s] unexpected.” *Ancient Coin Collectors Guild*, 641 F.3d at 514. Moreover, “mere speculation that as yet uncovered documents might exist[] does not undermine the determination that the agency conducted an adequate search for the requested records.” *Wilbur v. CIA*, 355 F.3d 675, 678 (D.C. Cir. 2004); *see also Sheffield v. Holder*, 951 F. Supp. 2d 98, 101 (D.D.C. 2013) (noting that a requester “cannot rest . . . on mere conjecture or ‘purely speculative claims about the existence and discoverability of other documents’” (quoting *Elec. Privacy Info. Ctr. v. Dep’t of Homeland Sec.*, 384 F. Supp. 2d 100, 107 (D.D.C. 2005))).

B. NOAA Conducted an Adequate Search

As set forth in Mark Graff’s Declaration, NOAA’s search for records responsive to Plaintiff’s FOIA request was more than adequate. *See Perry*, 684 F.2d at 127. Judicial Watch and NOAA reached an agreement as to how the search would be carried out. The agency would search the records of the nine Hiatus Paper authors for any record referring to that study and containing the term “NMAT,” “night marine air temperatures,” “ISTI,” “ICOADS,” “sea ice,” “satellite,” “advanced very high resolution radiometer,” “AVHRR,” “advanced microwave scanning radiometer,” and “AMSR.” Graff Decl. ¶ 27; Second Joint Status Report at 2, ECF No.

10. The timeframe for the search would be October 1, 2014 to June 4, 2015. *Id.* NOAA determined that the records requested resided within one office, NCEI, because all of the agreed-upon custodians work or had worked there during the time frame in which responsive records were created. *Id.* ¶ 33. NOAA then directed those custodians to search their email, electronic, and paper files for records referring to the Karl Study and containing the agreed-upon search terms. *Id.* ¶ 35. Those scientists searched their electronic files (including email) and non-electronic files, collected any potentially responsive material, and forwarded that material for responsiveness and exemption review. *Id.* ¶¶ 36-38.² There were no common areas at NCEI for NOAA to search. *Id.* ¶ 37. Thus, all files determined to be reasonably likely to contain responsive, non-duplicative material were searched. *Id.* ¶ 44.

On this record, NOAA's search should be upheld under FOIA. NOAA has provided "a reasonably detailed [declaration], setting forth the search terms and the type of search performed," and averred that all files likely to contain responsive, non-duplicative materials were searched. *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 326 (D.C. Cir. 1999) (quoting *Oglesby*, 920 F.2d at 68). NOAA has "made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." *Oglesby*, 920 F.2d at 68.

II. NOAA Properly Withheld Information Under Exemption 5

FOIA does not require disclosure of "matters that are . . . inter-agency or intra-agency memorandums or letters [which] would not be available by law to a party other than an agency in

² One custodian had retired from NCEI by the time the search was conducted and so that former employee's archived email was searched by another custodian. *See* Graff Decl. ¶ 36 n.1. No additional records responsive to this request from that author are known to have existed following his retirement. *See id.*

litigation with the agency.” 5 U.S.C. § 552(b)(5). “Exemption 5 . . . exempt[s] those documents, and only those documents, normally privileged in the civil discovery context.” *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975). Exemption 5 thus protects the attorney-client privilege, the attorney work product privilege, and the deliberative process privilege. *Id.*; see also *Rockwell Int’l Corp. v. Dep’t of Justice*, 235 F.3d 598, 601 (D.C. Cir. 2001).

The deliberative process privilege “allows the government to withhold documents and other materials that would reveal advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.” *In re Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997). According to the D.C. Circuit,

There are essentially three policy bases for this privilege. First, it protects creative debate and candid consideration of alternatives within an agency, and, thereby, improves the quality of agency policy decisions. Second, it protects the public from the confusion that would result from premature exposure to discussions occurring before the policies affecting it had actually been settled upon. And third, it protects the integrity of the decision-making process itself by confirming that officials should be judged by what they decided, not for matters they considered before making up their minds.

Russell v. Dep’t of the Air Force, 682 F.2d 1045, 1048 (D.C. Cir. 1982) (quoting *Jordan v. Dep’t of Justice*, 591 F.2d 753, 772-73 (D.C. Cir. 1978)).

The privilege is necessary because “those who expect public dissemination of their remarks may well temper candor with a concern for appearances . . . to the detriment of the decisionmaking process.” *Sears*, 421 U.S. at 150-51. “[E]fficiency of Government would be greatly hampered if, with respect to legal and policy matters, all Government agencies were prematurely forced to ‘operate in a fishbowl.’” *EPA v. Mink*, 410 U.S. 73, 87 (1973), *abrogated on other grounds*, Pub. L. No. 93-502, 88 Stat. 1561 (1974). There are “[t]wo requirements [that] are essential to the deliberative process privilege: the material must be predecisional and it must be deliberative.” *In re Sealed Case*, 121 F.3d at 737.

The agency is best situated “to know what confidentiality is needed ‘to prevent injury to the quality of agency decisions.’” *Chem. Mfrs. Ass’n v. Consumer Prod. Safety Comm’n*, 600 F. Supp. 114, 118 (D.D.C. 1984) (quoting *Sears*, 421 U.S. at 151). NOAA’s justification for asserting Exemption 5 is “sufficient if it appears ‘logical’ or ‘plausible.’” *Wolf v. CIA*, 473 F.3d 370, 374-75 (D.C. Cir. 2007).

Here, NOAA properly withheld information under Exemption 5 that is protected by the deliberative process privilege because the information withheld reflects deliberations in preparation for decisions of how to analyze and present data and theory, as well as decisions about how to respond to peer review comments and deliberations on developing public communications and congressional presentations. *See* Graff Decl. ¶¶ 50-63. Disclosure of such information, which is predecisional and deliberative, and contains selected factual material intertwined with opinion, would inhibit candid internal discussions and the expression of recommendations and judgments. *Id.* ¶ 64. Disclosure of the details of these confidential discussions and drafts could reasonably be expected to chill the open and frank exchange of comments and opinions that NOAA officials engage in, as well as inhibit candid internal discussions and recommendations regarding preferred courses of action for agency personnel. *Id.*

The documents withheld in full or in part under the deliberative process privilege fall generally into three categories: (1) drafts of the Hiatus Paper; (2) internal deliberations, including email exchanges; and (3) peer review materials, both formal and informal. As explained below and in the attached *Vaughn*, each redacted or withheld document contains both predecisional and deliberative information. Accordingly, NOAA properly asserted Exemption 5 based on the deliberative process privilege.

1. Drafts of the Hiatus Paper

NOAA withheld pursuant to Exemption 5 inter- or intra-agency, predecisional, and deliberative draft versions of the Hiatus Paper (including drafts of its accompanying figures and “supplementary materials”) that were produced while NOAA scientists were developing the Paper. Graff Decl. ¶ 51.³ “[D]raft documents by their very nature, are typically predecisional and deliberative, because they reflect only the tentative view of their authors; views that might be altered or rejected upon further deliberation either by their authors or by superiors.” *In re Apollo Grp., Inc. Sec. Litig.*, 251 F.R.D. 12, 31 (D.D.C. 2008) (non-FOIA case) (citation omitted). Accordingly, “drafts are commonly found exempt under the deliberative process exemption.” *People for the Am. Way Found. v. Nat’l Park Serv.*, 503 F. Supp. 2d 284, 303 (D.D.C. 2007). Among other reasons for this, disclosure of “decisions to insert or delete material or to change a draft’s focus or emphasis . . . would stifle the creative thinking and candid exchange of ideas necessary to produce good historical work.” *Dudman Commc’ns Corp. v. Dep’t of Air Force*, 815 F.2d 1565, 1569 (D.C. Cir. 1987). Indeed, drafts are ordinarily exempt regardless of whether or to what extent segments of the draft made their way into the final product: “If the segment appeared in the final version, it is already on the public record and need not be disclosed. If the segment did not appear in the final version, its omission reveals an agency deliberative process: for some reason, the agency decided not to rely on that fact or argument after having been invited to do so.” *Exxon Corp. v. Dep’t of Energy*, 585 F. Supp. 690, 698 (D.D.C. 1983) (quoting *Lead Industries Ass’n v. OSHA.*, 610 F.2d 70, 86 (2d Cir. 1979)); see *ViroPharma Inc. v. HHS*, 839 F. Supp. 2d 184, 193 (D.D.C. 2012) (“The choice of what factual

³ The fact that some draft versions were shared for peer review purposes outside of the federal government does not affect those drafts’ status as inter- or intra-agency. See *infra* at Section II.3.

material . . . to include or remove during the drafting process is itself often part of the deliberative process, and thus is properly exempt under Exemption 5.”); *cf. Marzen v. HHS*, 825 F.2d 1148, 1155 (7th Cir. 1987) (noting that privilege “protects not only the opinions, comments and recommendations in the draft, but also the process itself”).

These drafts are predecisional inasmuch as they were generated to assist the agency in preparing the final version of the Hiatus Paper. *See Quarles v. Dep’t of the Navy*, 893 F.2d 390, 392 (D.C. Cir. 1990) (explaining that materials are predecisional when “prepared in order to assist an agency decisionmaker in arriving at . . . decisions”). And they are deliberative in that they reflect the development of the final paper; these non-final, predecisional drafts contain opinions and recommendations of the NOAA authors; draft language, data, and data interpretation for consideration by other NOAA authors; comments on previous drafts of the paper; and/or responses to other NOAA authors’ or peer reviewers’ comments on earlier drafts of the paper. *See* Graff Decl. ¶ 51; *Vaughn* part 2 Category A. Withholding this material under Exemption 5 was proper, and the release of such drafts would inhibit agency scientists from expressing their views and deter NOAA scientists from participating candidly in the development of scientific products in the future. *See* Graff Decl. ¶ 51.⁴

2. Communications Among NOAA Personnel

Also integral to the drafting of the Hiatus Paper, the authors frequently communicated and exchanged ideas with one another via email during the Paper’s development. Here, NOAA

⁴ Equally appropriate, NOAA’s *Vaughn* also shows that the agency withheld draft documents that aided in or related to the development of the Paper, such as “[d]raft graphs of land and ocean temperature data created by NOAA scientists to be used in the paper,” *Vaughn* part 2 at bates pages 1170-73, “[d]raft graphs and charts of SST data to be used in [the] development of the paper,” *Vaughn* part 2 at bates pages 2071-76, and a “[d]raft powerpoint by [an] author presenting information on global temperature and presenting data analysis done by NOAA scientists for the paper,” *Vaughn* part 2 at bates pages 1876-86.

withheld inter- or intra-agency, predecisional, and deliberative communications. *See* Graff Decl. ¶ 50. In pursuing a research objective, scientists may begin with only a rough idea, and then develop, test, and revise that idea as data is collected and interpreted. Declaration of Richard W. Spinrad (“Spinrad Decl.”) ¶ 14 (attached herein as Exhibit B). Possible interpretations are generated and tested in part through candid debates and exchanges among peers. *Id.* ¶ 15. Indeed, the exchange and debate among peers is the mechanism that allows NOAA to ensure its scientific products are robustly developed and accurately tested. *Id.* ¶ 16. And there is a general and well-established presumption that such discussions are not intended to be, and will not be, shared with a wider audience, as confidentiality is essential to ensuring participants feel free to propose new ideas or explanations without fear of misinterpretation or being taken out of context. *Id.* ¶ 20. It is critical that this type of information be protected so as not to chill candid exchanges and debates, as well as to avoid the risk of confusing the public with preliminary or incomplete information. *See id.* ¶¶ 23-25.

NOAA’s *Vaughn* index reinforces that these types of predecisional and deliberative communications occurred here, were integral to the development of the Hiatus Paper, and were appropriately withheld or redacted. *See Abteu v. U.S. Dep’t of Homeland Sec.*, 808 F.3d 895, 898 (D.C. Cir. 2015) (“[O]fficials should be judged by what they decided, not for matters they considered before making up their minds” (citation and internal quotation mark omitted)). For example, NOAA is redacting or withholding communications between scientists in which authors asked for clarification on data analysis conducted for developing the Paper, *Vaughn* part 1 at bates pages 22-23, shared opinions on the results of a draft data analysis for developing the Paper, *Vaughn* part 1 at bates page 15, offered opinions as to the best approach to take in the Paper, *Vaughn* part 1 at bates pages 300, 335, 362-63, and provided opinions on statistical error

uncertainty ranges for development of the Paper, *Vaughn* part 1 at bates page 245. Moreover, NOAA withheld a document that presented questions and draft graphs to spur discussion among the NOAA scientists. This document was created and circulated for the purpose of author discussions during the development of the Hiatus Paper, and shows NOAA scientists considering what constitutes the best data analysis and presentation for the Paper. *See Vaughn* part 2 Category E; Graff Decl. ¶ 52.⁵

In addition to withholding communications concerning the development of the Hiatus Paper, NOAA also withheld communications and information reflecting the development of a plan by its officials for communications and press release in preparation for publication of the paper, *e.g. Vaughn* part 1 at bates page 289-90, *Vaughn* part 2 at bates page 7446-50, as well as the agency's development of a presentation to Congress, *e.g., Vaughn* part 1 at bates pages 143, 324 (explaining that redacted email reflected "NOAA scientist discussing climate change research and developing the agency's presentation for Congress"). This withheld information, which reflects NOAA's development of how to brief Congress and the public, is predecisional and deliberative and falls squarely within Exemption 5. *E.g., Judicial Watch, Inc. v. U.S. Dep't of the Treasury*, 796 F. Supp. 2d 13, 31 (D.D.C. 2011) (noting email discussing response to press inquiry protected under deliberative process privilege).

All of this material is precisely the sort of information that the deliberative process privilege is designed to protect. *See Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854,

⁵ Similarly, NOAA withheld information reflecting discussions among scientists concerning potential scientific inquiries. *See, e.g., Vaughn* part 1 at bates page 75 (discussing future climate research and asking for opinion on this research and on possible role of NOAA scientists in this research). Again, such material is predecisional and deliberative, and therefore is exempt from disclosure. *E.g., Sears*, 421 U.S. at 151 n.18 (explaining that protection extends to records that are part of decisionmaking process even where process does not produce actual decision by agency).

866 (D.C. Cir. 1980) (document is “predecisional” if it is “generated before the adoption of an agency policy” and “deliberative” if it “reflects the give-and-take of the consultative process”); *Dep’t of Interior v. Klamath Water Users Protective Ass’n*, 532 U.S. 1, 9 (2001) (explaining that deliberative process privilege’s “object is to enhance the quality of agency decisions by protecting open and frank discussion among those who make them within the Government”) (citation omitted); *Russell*, 682 F.2d at 1048 (“[T]he exemption protects not only communications which are themselves deliberative in nature, but all communications which, if revealed, would expose to public view the deliberative process of an agency.”). Moreover, any factual material in the withheld documents reflect the authors’ selection and presentation of factual material, Graff Decl. ¶ 65, and as such it too is covered by the deliberative process privilege. *See, e.g., Ancient Coin Collectors Guild*, 641 F.3d at 513 (explaining that factual material can be withheld where it reflects “an exercise of discretion and judgment calls” and that the “legitimacy of [the] withholding” turns on “whether the selection or organization of facts is part of an agency’s deliberative process”).

Because all of the redacted and withheld information is inter- or intra-agency, predecisional, and deliberative in nature, NOAA properly applied Exemption 5.

3. Peer Review Material

NOAA also withheld inter- or intra-agency material reflecting the different peer review processes its analyses and drafts underwent prior to publication of the Hiatus Paper. *Science* follows a formal peer review process in which subject matter experts evaluate the rigor and merit of the paper, and provide feedback on an array of issues. Graff Decl. ¶ 15. Those anonymous, impartial reviewers share their reviews with the authors, *Science*’s board, and potentially other reviewers (for cross-comment). *Id.* ¶ 17.

Here, *Science* sent the manuscript to five anonymous peer reviewers, and the scientists received two rounds of comments. Upon receiving these reviewers' comments, the NOAA scientists deliberated internally as to how to respond in writing to every comment received. NOAA properly withheld peer reviewer comments, the agency's internal draft responses to these peer reviewer comments, draft cover letters NOAA's scientists wrote to accompany their response, as well as the agency's final responses to peer reviewer comments. See Graff Decl. ¶¶ 53-54; *Vaughn* part 2 Category B, C, D.

The D.C. Circuit has specifically held that comments provided by peer reviewers during the peer review process for publication of scientific articles in scientific journals are covered by Exemption 5 because they are both "pre-decisional because it preceded the agency's decision whether and in what form to publish" the paper and were part of the agency's deliberative process "because the agency secured review commentary in order to make that decision." See *Formaldehyde Inst. v. U.S. Dep't of Health and Human Servs.*, 889 F.2d 1118, 1123-25 (D.C. Cir. 1989). As that Court recognized, agency scientists "must regularly rely on the comments of expert scientists to help them evaluate the readiness of agency work for publication [and i]n that sense they must rely on the opinions and recommendations of temporary consultants." *Id.* at 1125.

The scientists' draft responses to the peer reviewer comments are also covered by Exemption 5 since these materials, including personal opinions and recommendations, draft language, data, and data interpretation for consideration, as well as comments on previous drafts of the responses, reflect predecisional and deliberative discussions. See *Vaughn* part 2 Category C; Graff Decl. ¶ 54. Similarly, the final responses to peer review comments that NOAA submitted to *Science* during the peer review process reflect the agency's response to constructive

criticism and advice, and were part of the process to assist in the authors' deliberation as to whether and in what form to publish the paper. *See Vaughn* part 2 Category D; Graff Decl. ¶ 55. These final responses, then, fit comfortably within Exemption 5. *See Petroleum Info. Corp.*, 976 F.2d at 1434 (agency documents that were "prepared in order to assist an agency decisionmaker in arriving at his decision" are "predecisional" (citation omitted)); *Coastal States Gas Corp.*, 617 F.2d at 866. Finally, the draft cover letters to *Science* accompanying the scientists' responses to the peer review comments contain edits or otherwise do not include the final wording of the letter, reflecting that the scientists' final approach had not been finalized at that point. *Vaughn* part 2 Category B; Graff Decl. ¶ 53. Withholding such draft material was appropriate.

The fact that the peer review comments were sent by *Science*, and the responses to those peer reviewer comments were sent back to *Science*, does not affect their status as "intra-agency" materials that may be protected by Exemption 5. "Recognizing that the purpose of the exemption was to promote the quality of agency policy decisions and that often these policy decisions were best made by incorporating the advice of outside experts, [the D.C. Circuit] developed a 'consultant corollary' whereby communications with temporary consultants would be considered 'intra-agency' for the purposes of Exemption 5." *Judicial Watch v. U.S. Dep't of Transp.*, 950 F. Supp. 2d 213, 216 (D.D.C. 2013) (citing cases). "When communications between an agency and a non-agency aid the agency's decision-making process and the non-agency did not have an outside interest in obtaining a benefit that is at the expense of competitors, the communication must be considered an intra-agency communication for the purposes of FOIA Exemption 5." *Judicial Watch*, 950 F. Supp. 2d at 218-19 (citing *Nat'l Inst. of Military Justice v. U.S. Dep't of Defense*, 512 F.3d 677 680-85 (D.C. Cir. 2008) ("*NIMJ*"); *Lardner v. U.S. Dep't of Justice*, No. 03-0180, 2005 WL 758267, at *1 (D.D.C. Mar. 31, 2015);

see also, e.g., Hooker v. HHS, 887 F. Supp. 2d 40, 55 (D.D.C. 2012) (upholding agency’s withholding of predecisional and deliberative letter from former employee where he “played the same role in the agency’s process of deliberation after his departure that he would have played had he remained”), *aff’d*, No. 13-5280, 2014 WL 3014213 (D.C. Cir. May 13, 2014); *see also Elec. Privacy Info. Ctr. v. DHS*, 892 F. Supp. 2d 28, 46 (D.D.C. 2012) (“In order to be excluded from the exemption, the contractors must assume a position that is ‘necessarily adverse’ to the government.”).⁶

Moreover, maintaining the confidentiality of these communications is important, as disclosure would discourage the sharing of candid thoughts of the reviewers and scientists. Graff Decl. ¶ 55, 64; *see also* Spinrad Decl. ¶¶ 20-21 (explaining importance of confidentiality in developing scientific products). Here, as in *Formaldehyde*, it is “indisputable” that both “reviewers’ comments are expected to be confidential” and “disclosure of reviewers’ comments would seriously harm the deliberative process.” 889 F.2d at 1124 (internal citations and quotations omitted).

Outside of *Science*’s formal peer review process, NOAA scientists welcomed the informal peer review from a limited number of consultants in evaluating the underlying datasets

⁶ *Department of the Interior v. Klamath Water Users Protective Association*, 532 U.S. 1 (2001), holding that Exemption 5 did not protect documents submitted by American Indian Tribes to the Interior Department addressing tribal interests that were then the subject of state and federal water allocation proceedings, does not prevent the application of the consultant corollary here. Rather, the D.C. Circuit “has allowed any communication that aids the agency’s deliberative process to be protected as ‘intra-agency,’” and “*Klamath* only modifies this by requiring that we not protect communications with interested parties seeking a government benefit that is adverse to others seeking that benefit.” *Judicial Watch*, 950 F. Supp. 2d at 218 (footnote omitted).

Also, to fall within the consultant corollary, there is no requirement that an individual must possess a contractual relationship with the agency in question. *See, e.g., NIMJ*, 512 F.3d at 679-87 (deliberative process privilege exempted from disclosure comments received by Department of Defense, in the course of issuing regulations, from non-governmental lawyers who were former high ranking governmental officials or academics or both).

and developing the Hiatus Paper. Graff Decl. ¶ 56; *see also Formaldehyde Inst.*, 889 F.2d at 1125. In the field of climate science, only a small number of scientists have the relevant, specialized expertise, *see* Spinrad ¶ 17, and it is common for scientists to seek input from colleagues both inside and outside the federal government, *id.* ¶ 19. Sometimes experts that are located outside of the federal government have an expertise that can aid the agency. *See id.* ¶ 17. The consultants here, each of whom is highly regarded in his specialized field, Graff Decl. ¶ 58, share the common goal with NOAA of advancing scientific inquiry and developing accurate information on climate science, *see id.* ¶ 56; *see also Formaldehyde*, 889 F.2d at 1122, quoting *Ryan v. Dep't of Defense*, 617 F.2d 781, 789-90 (D.C. Cir. 1980) (“In the course of its day-to-day activities, an agency often needs to rely on the opinions and recommendations of temporary consultants, as well as its own employees. Such consultations are an integral part of its deliberative process; to conduct this process in public view would inhibit frank discussion of policy matters and likely impair the quality of decisions.”).

As the *Vaughn* and Mark Graff’s declaration make clear, withholding this informal peer review was also appropriate, as their input was used by NOAA to ensure that only the highest quality scientific product would be released. Tom Karl, for example, asked a scientist affiliated with the National Center for Atmospheric Research to comment on a draft while the paper was in development, and that scientist provided insights and feedback in response. Graff Decl. ¶ 59; *Vaughn* part 1 bates 66-67 (explaining redacted information contained feedback and review of a data analysis for the paper and raises issue for further discussion). Other climate science experts responded to the authors upon learning from *Science* of the pending publication, as commonly occurs after an author submits a high-profile scientific paper for publication. *See* Graff Decl. ¶ 60. Two other experts provided feedback on the Paper, discussed implications of the Hiatus

Paper’s conclusion, or provided and discussed data analyses, Graff Decl. ¶¶ 62-63, *Vaughn* part 1 at bates 292-93, which helped provide important feedback about the agency’s product and informed the agency’s continuous, ongoing work of updating agency datasets and trend analyses, Graff Decl. ¶¶ 62-63; *see Vaughn* part 1 at bates 295-96 (noting that expert’s work may be incorporated into a future NOAA analysis). With respect to these types of communications, a general and well-established presumption exists that these communications will not be shared with a wider audience, which is essential to scientific exchanges and the testing and refinement of ideas that help ensure that the agency’s scientific products are well developed and robust. *See Spinrad* Decl. ¶ 20. Disclosing this material could inhibit candid discussions and exchanges and chill the open and frank exchanges upon which NOAA scientists rely. *See Graff* Decl. ¶ 64.

In sum, NOAA’s *Vaughn* and declarations make plain that the agency appropriately applied Exemption 5 to redact and withhold information protected by the deliberative process privilege.

III. NOAA Properly Withheld Information Under Exemption 6

Exemption 6 protects the privacy of individuals from unwarranted invasion. Exemption 6 allows the withholding of information about individuals in “personnel and medical files and similar files” when the disclosure of such information would constitute a “clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). Exemption 6 requires the agency to balance the individual’s right to privacy against the public’s interest in disclosure. *See U.S. Dep’t of the Air Force v. Rose*, 425 U.S. 352, 372 (1976); *Reed v. NLRB*, 927 F.2d 1249, 1251 (D.C. Cir. 1991). When weighing the public interest involved in disclosure, the court considers: (1) whether disclosure would serve the “core purpose” for which Congress enacted the FOIA. *i.e.*, to show “what the government is up to,” and (2) the public interest in general, not particular interests of

the person or group seeking the information. *U.S. Dep't of Justice v. Reporters Comm. For Freedom of the Press*, 489 U.S. 749, 750, 775 (1989).

Here, Exemption 6 has been applied to protect information in which individuals have a recognized privacy interest, specifically, the phone numbers of NOAA scientists. *See, e.g., Vaughn* part 1 at bates 23. Because this information can be identified as applying to a specific individual, the information withheld under Exemption 6 constitutes “similar files” within the meaning of statute; courts have routinely held that phone numbers meet this threshold test. *See, e.g., Judicial Watch, Inc. v. U.S. Dep't of State*, 875 F. Supp. 2d 37, 47 (D.D.C. 2012); *Smith v. Dep't of Labor*, 798 F. Supp. 2d 274, 283 (D.D.C. 2011); *Lowy v. IRS*, No. C 10-767, 2011 WL 1211479, at *16 (N.D. Cal. Mar. 30, 2011).

This threshold test having been met, the next step is to compare the privacy interest at stake with the benefit disclosure would provide toward the public’s understanding of how government operates. *Dep't of Def. v. Fed. Labor Relations Auth.*, 510 U.S. 487, 495 (1994). Here, there is a substantial privacy interest at stake in preventing the burden of unsolicited phone calls and harassment. *See Moore v. Bush*, 601 F. Supp. 2d 6, 14 (D.D.C. 2009); *United Am. Fin., Inc. v. Potter*, 667 F. Supp. 2d 49, 65-66 (D.D.C. 2009); *cf. Shurtleff v. EPA*, 991 F. Supp. 2d 1, 18 (D.D.C. 2013) (protecting email address). By contrast, an individual’s phone number sheds no light on the operations and activities of the agency. NOAA balances the individual’s strong privacy interests against the fact that release of this information would fail to shed any light on the conduct of governmental business, and reasonably concluded that, with regard to the information withheld pursuant to Exemption 6, the individual privacy interests outweighed any public interest in disclosure. Graff Decl. ¶ 66. *See FLRA*, 510 U.S. at 497 (“We must weigh the privacy interest . . . in nondisclosure . . . against the only relevant public interest in the FOIA

balancing analysis the extent to which disclosure of the information sought would she[d] light on an agency's performance of its statutory duties' or otherwise let citizens know what their government is up to."). Accordingly, Exemption 6 was properly applied.

IV. NOAA Has Produced All Reasonably Segregable Information

The FOIA requires that, if a record contains information that is exempt from disclosure, any "reasonably segregable" information must be disclosed after deletion of the exempt information, 5 U.S.C. § 552(b), unless the non-exempt portions are "inextricably intertwined with exempt portions." *Mead Data Ctr. v. U.S. Dep't of Air Force*, 566 F.2d 242, 260 (D.C. Cir. 1977); *Kurdyukov v. U.S. Coast Guard*, 578 F. Supp. 2d 114, 128 (D.D.C. 2008). This provision does not, however, require disclosure of records in which the non-exempt information that remains is meaningless. *See Nat'l Sec. Archive Fund v. CIA*, 402 F. Supp. 2d 211, 221 (D.D.C. 2005) (concluding that no reasonably segregable information existed because "the non-exempt information would produce only incomplete, fragmented, unintelligible sentences composed of isolated, meaningless words"). Consistent with this obligation, NOAA has reviewed each of the documents redacted or withheld and has concluded that there is no additional non-exempt information that may reasonably be segregated and released. *See* Graff Decl. ¶ 67. Accordingly, no further non-exempt material is subject to release.

CONCLUSION

NOAA has conducted an adequate search for documents responsive to Plaintiff's request, and properly withheld information exempt from disclosure under Exemptions 5 and 6. Furthermore, all reasonably segregable information has been released to Plaintiff. For these reasons, the Department of Commerce respectfully requests that summary judgment be entered in its favor.

Dated: December 15, 2016

Respectfully submitted,

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

**STATEMENT OF MATERIAL FACTS IN SUPPORT OF UNITED STATES
DEPARTMENT OF COMMERCE’S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local Civil Rule 7(h)(1), the following is a statement of material facts as to which the movant, the United States Department of Commerce (“the Department”), contends there is no genuine issue:

1. Between September 2013 and November 2014, the Intergovernmental Panel on Climate Change released a report in stages that concluded that the upward global surface temperature trend from 1998-2012 was lower than that from 1951-2012. Declaration of Mark Graff (“Graff Decl.”) ¶ 9.
2. The apparent observed slowing of the global surface temperatures was dubbed the “hiatus.” Graff Decl. ¶ 9.
3. The National Centers for Environmental Information (“NCEI”) at NOAA produces and maintains datasets for global ocean areas and global land areas. Graff Decl. ¶ 6.
4. NCEI scientists continually work to improve the datasets to provide the public the most up-to-date and accurate information. Graff Decl. ¶ 5.

5. NCEI scientists regularly interpret and analyze datasets and release to the public the most up-to-date climate science, often through publication in scientific journals. Graff Decl. ¶ 7.
6. On June 4, 2015, a study authored by NOAA scientists was published in *Science* entitled *Possible Artifacts of Data Biases in the Recent Global Surface Warming Hiatus* (“Hiatus Paper” or “the Paper”). Graff Decl. ¶ 23.
7. The Hiatus Paper is an example of analysis and interpretation of the updated underlying data. Graff Decl. ¶ 10.
8. Around late October 2014, Tom Karl, then the Director of NCEI, circulated a draft paper to a group of NOAA scientists that developed an idea for properly accounting for the alleged “hiatus” based on the additional two years of global temperature data and the improvements to NOAA’s sea surface temperature dataset. Graff Decl. ¶ 11.
9. Karl sought feedback on the draft paper, and a team of scientists at NOAA formed to develop a manuscript. *See* Graff Decl. ¶¶ 11-13.
10. Many drafts and revisions were exchanged among these scientists, along with emails discussing various aspects of the paper or its content, including suggestions on how best to describe the data, opinions on statistical error uncertainty ranges, thoughts on implications of other researchers’ work, and so on. Graff Decl. ¶ 13.
11. Such collaboration via discussions and drafts is standard practice at NCEI. Graff Decl. ¶ 13.
12. In December 2014, the authors submitted the draft paper to the journal *Science*. Graff Decl. ¶ 14.

13. Once there, the draft paper went through the journal's peer review process, in which five anonymous peer reviewers weighed in on the manuscript. Graff Decl. ¶ 20.
14. When the authors received feedback, they discussed internally how to respond in writing to the comments they received, and also revised the manuscript to address the questions and concerns raised. *See* Graff Decl. ¶ 21.
15. After a second round of peer review, NOAA received word that the article would be published, and *Science* published the Paper on its website on June 4, 2015. Graff Decl. ¶ 23.
16. Plaintiffs' FOIA request, dated October 30, 2015, sought in relevant part:
 1. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the methodology and utilization of Night Marine Air Temperatures to adjust ship and buoy temperature data.
 2. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the use of other global temperature datasets for both NOAA's in-house dataset improvements and monthly press releases conveying information to the public about global temperatures.
 3. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the utilization and consideration of satellite bulk atmospheric temperature readings for use in global temperature datasets.Graff Decl. ¶ 24; *see also* ECF No. 8-1.
17. Upon review of the request, NOAA officials determined that it did not reasonably describe the records requested. Graff Decl. ¶ 25.
18. Through counsel, NOAA conferred with Plaintiff to negotiate a clear description of the material sought. Graff Decl. ¶ 25.

19. During the course of those discussions, NOAA indicated to Plaintiff that it understood the request to reflect an interest in the Hiatus Paper and accordingly suggested modifying the request to call for a search for all documents and communications referring to the Hiatus Paper from its nine authors. Graff Decl. ¶ 26.
20. Plaintiff confirmed its interest in that study, but indicated that it sought only records referring to the topics listed in its initial FOIA request. Graff Decl. ¶ 26.
21. The parties ultimately “reached an agreement regarding the scope of the request and relevant search parameters.” Second Joint Status Report, ECF No. 10 at 2.
22. For Plaintiff’s FOIA request, NOAA agreed to search the records of the nine authors of the Hiatus Paper for records referring to that paper and that contain one of the following search terms: “NMAT,” “Night Marine Air Temperatures,” “ISTI,” “ICOADS,” “sea ice,” “satellite,” “Advanced Very High Resolution Radiometer,” “AVHRR,” “Advanced Microwave Scanning Radiometer,” and “AMSR.” Second Joint Status Report, ECF No. 10 at 2; Graff Decl. ¶ 27.
23. NOAA determined that the records requested resided within one office, NCEI, because all of the agreed-upon custodians work or had worked there during the time frame in which responsive records were created. Graff Decl. ¶ 33.
24. NOAA then directed those custodians to search their email, electronic, and paper files for records referring to the Karl Study and containing the agreed-upon search terms. Graff Decl. ¶ 35.
25. Those scientists searched their electronic files (including email) and non-electronic files, collected any potentially responsive material, and forwarded that material for responsiveness and exemption review. Graff Decl. ¶¶ 36-38.

26. One custodian had retired from NCEI by the time the search was conducted and so that former employee's archived email was searched by another custodian. No additional records responsive to this request from that author are known to have existed following his retirement. *See* Graff Decl. ¶ 36 n.1.
27. There were no common areas at NCEI for NOAA to search. Graff Decl. ¶ 37.
28. Thus, all files determined to be reasonably likely to contain responsive, non-duplicative material were searched. Graff Decl. ¶ 44.
29. On May 27, 2016, NOAA produced 102 pages of material in its entirety and 90 partially redacted pages. Graff Decl. ¶ 29; Fourth Joint Status Report, ECF No. 12 at 2. NOAA withheld in their entirety 8,013 pages of records. Graff Decl. ¶ 29; Fourth Joint Status Report, ECF No. 12 at 2
30. NOAA informed Plaintiff at that time that because it sought records from nine separate custodians, a significant amount of duplicative material existed in the responsive records. *See* Graff Decl. ¶ 29
31. Upon further review of the withheld information, NOAA made two supplemental productions. *See* Graff Decl. ¶¶ 30-31.
32. On September 16, 2016, NOAA released to Plaintiff an additional 44 pages of material (7 of those pages were partially redacted to exclude Mr. Karl's phone number), Graff Decl. ¶ 30.
33. Contemporaneously with this filing (on December 15), NOAA is releasing an additional 62 records. Graff Decl. ¶ 31.
34. NOAA withheld information pursuant to FOIA Exemption 5 and the deliberative process privilege. *See Vaughn Index.*

35. NOAA withheld information pursuant to FOIA Exemption 6. *See Vaughn* Index.

Dated: December 15, 2016

Respectfully submitted,

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

ELIZABETH J. SHAPIRO
Deputy Director, Federal Programs Branch

/s/ Kevin M. Snell
KEVIN M. SNELL
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue N.W., Room 6108
Washington, D.C. 20530
Tel.: (202) 305-0924
Fax: (202) 616-8460
E-mail: Kevin.Snell@usdoj.gov

Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2016, I filed the attached electronically with the Clerk of the United States District Court for the District of Columbia through the CM/ECF system, which caused the following counsel of record to be served by electronic means:

Lauren Burke
Judicial Watch, Inc.
425 Third Street SW, Suite 800
Washington, DC 20024
(202) 646-5172
Lburke@judicialwatch.org

Attorney for Plaintiff

/s/ Kevin M. Snell

From: Al Stein <bugadi@comcast.net>
Sent: Monday, December 19, 2016 1:23 PM
To: Mark Graff - NOAA Federal; foia@noaa.gov
Subject: An error in your attachments Final Disposition, Request DOC-NOAA-2015-001774
Attachments: FOIA DOC-NOAA-2015-001774 final release letter signed.pdf; ATT00002.html; 1774 release final redacted.pdf; ATT00004.html; 1774 part 2 combined redacted.pdf; ATT00006.html

While the last pdf on the right is labeled 1774 part 2 combined, the contents are in fact the same as the middle PDF labeled 1774 release final.

Both are 19 pages long.

The Final Decision letter states there are 355 pages released in part 2 combined.

Since I am sure this is a labeling error, could you please email me the 355 page part 2 combined today?

Thank you

Alan Stein

Mark and Lola Merry Christmas and a Happy New Year.

Still waiting for the remaining documents on 439

On Dec 19, 2016, at 7:52 AM, foia@noaa.gov wrote:

DOC-NOAA-2015-001774 has been processed with the following final disposition: Partial grant/partial denial.

Records were released to the public as a result of this request. You may retrieve these records immediately using the following link: [View Records](#). Over the next 2 hours, these records are also being added to FOIAonline's search pages, further enabling you to retrieve these documents associated with your FOIA request at any time.

Please see attachments.

From: [Justin Kenney](#)
To: jane.lubchenco@noaa.gov
Subject: FINAL FOR IMMEDIATE REVIEW: Draft Eric Schwaab message
Date: Wednesday, February 10, 2010 1:47:19 PM
Attachments: [Eric Schwaab Announcement.Final.doc](#)
Importance: High

Hello Jane, please take a moment to review and approve this message. I would like to get it out as soon as possible. It includes comments by Monica (referenced below) and more text about Dr. Balsiger courtesy of Jeff.

Thank you

Justin Kenney
NOAA Director of Communications and External Affairs
Office: 202-482-6090 | Cell: 202-821-6310
Email: justin.kenney@noaa.gov
Facebook: www.facebook.com/noaa.lubchenco

-----Original Message-----

From: Monica Medina [<mailto:monica.medina@noaa.gov>]
Sent: Wednesday, February 10, 2010 1:23 PM
To: Jeff Payne; Justin Kenney
Cc: Jane Lubchenco; Monica Medina; Margaret.Spring@noaa.gov; Andrew Winer; John Gray; Amanda.Hallberg@noaa.gov; Lois Schiffer
Subject: RE: Draft Eric Schwaab message

Hi all - this looks fine to me but I am wondering whether we could add something about bringing change or modernization -- something that would subtly signal a new way of approaching problems. Something that would tie him to the themes of the Obama Administration. What this lacks is a sense of new dynamism or new ideas. It also does not say anything about communities per se. Here are my edits - they are just suggestions. Cheers, Monica

-----Original Message-----

From: Jeff Payne [<mailto:Jeff.Payne@noaa.gov>]
Sent: Wednesday, February 10, 2010 11:06 AM
To: Justin Kenney
Cc: Jane Lubchenco; Monica Medina; Margaret.Spring@noaa.gov; Andrew Winer; John Gray; Amanda.Hallberg@noaa.gov; Lois Schiffer
Subject: Re: Draft Eric Schwaab message

Justin and all - I worked from Margaret's mark up and added in the recommended emphasis for Jim. I have a call into Eddie's cell regarding his years of service acting, but inserted "over two years" for now.

See attached.

Jeff

Justin Kenney wrote:

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> Here is the draft as of now, with Balsiger language to come.
>
> Justin Kenney
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> NOAA Director of Communications and External Affairs
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> Office: 202-482-6090 | Cell: 202-821-6310

>

> Email: justin.kenney@noaa.gov

>

> Facebook: www.facebook.com/noaa.lubchenco

>

> ***DRAFT* *ALL-HANDS***

>

> ***For: Wednesday, February 10***

>

> ***From: Jane Lubchenco***

>

> ***To: All Staff***

>

> [Subject Line]: Announcing the Assistant Administrator for NOAA

> Fisheries

>

> It gives me great pleasure to announce ***Eric Schwaab*** as the assistant
> administrator for fisheries, starting February 16. We are excited to
> have someone with Eric's experience and proven leadership at the helm
> of NOAA's National Marine Fisheries Service. Eric will continue our
> efforts to rebuild our fisheries and the jobs and livelihoods that
> depend on them. His immediate priorities include improving
> relationships with recreational and commercial fishermen, better
> aligning federal and regional priorities, restoring confidence in
> fisheries law enforcement and promoting management approaches that
> support both fishery and community sustainability.

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> Eric brings more than 25 years of experience in local, state and
> federal natural resource management. He has spent the majority of his
> career at the Maryland Department of Natural Resources, where he began
> as a natural resources police law enforcement officer in 1983. He
> eventually served as director of the Maryland Forest Service; director
> of the Maryland Forest, Wildlife and Heritage Service; and director of
> the Maryland Fisheries Service. In 2003, Eric left the Maryland
> Department of Natural Resources to serve as resource director for the
> Association of Fish and Wildlife Agencies until 2007. He then returned
> to the Maryland Department of Natural Resources as the deputy
> secretary. Eric has also served as a member of the U.S. Department of
> Commerce Marine Fisheries Advisory Committee.

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> Eric is a proven manager and accomplished leader. He has developed and
> implemented solutions to address challenges in regional habitat
> restoration, including Chesapeake Bay restoration issues, fish and
> wildlife conservation, public lands management, natural resources law
> enforcement, public agency administration, strategic planning and
> leadership development. * *

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> I am excited to welcome Eric to the NOAA family. He will work with
> NOAA leadership, the fisheries service, his fellow assistant
> administrators and our many constituents to further our efforts to
> protect and manage the nation's fisheries, our other trust resources
> including marine mammals and sea turtles, and the ecosystems upon
> which they depend. Welcome Eric!

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> I would also like to take this opportunity to express my gratitude to
> Dr. Jim Balsiger, the acting assistant administrator, for his superb

> leadership. Dr. Balsiger will return to his position as NOAA
> Fisheries' regional administrator for Alaska. I'd also like to thank
> the entire team at NOAA Fisheries who have done an excellent job
> during this period of transition.

>
> Sincerely,

>
> JL

>

From: [Margaret Spring](#)
To: [Jane Lubchenco](#)
Subject: FW: Announcing the New Assistant Administrator for NOAA Fisheries
Date: Wednesday, February 10, 2010 6:17:50 PM

Jane, I know the NMFS leadership well from years past so sent them a personal note – I think they will mesh well with Eric and they have been very open to it.

Gloria Thompson will be Eric’s administrative assistant and she is a national treasure – so I told Eric he should treat her like gold!

:)

From: Margaret Spring
Sent: Wednesday, February 10, 2010 6:01 PM
To: Jim Balsiger; John Oliver; Samuel Rauch; Steven Murawski (Steve.Murawski@noaa.gov); alan.risenhoover@noaa.gov; gloria.thompson@noaa.gov; 'rebecca.lent@noaa.gov'
Subject: FW: Announcing the New Assistant Administrator for NOAA Fisheries

Jim, John, Sam, Steve, Rebecca, Alan, and Gloria –

I fear that during this snowstorm that I have not had the chance to reach out to each of you about the news that Jane has sent out below, though I spoke to Jim and a few others and I know you were all informed and ready as a team for this change. But tonight, I wanted to take a moment to personally not only recognize, but thank, you for your support and hard work. Your expertise and leadership is valued, and sometimes in the crush of business, that can get lost. So thanks for all you do and have done for NOAA. I speak not only from my current position, but from the years we have all worked together on fisheries issues (– I’ve known many of you since I was first a Sea Grant fellow in 1991!)

NMFS management and science is a huge part of what NOAA does and thus our HQ office has also relied heavily on the great workforce you have trained and attracted (indeed, as you have observed, we never want to give these great folks back!) So please accept my thanks for your very tangible contribution to our day to day work down here, which is a key part of the agency’s successful contribution to the interagency process, as well.

We are now entering an even more challenging time in 2010 – each of you will play a key role, as will our regional leadership. We appreciate how much you have been willing to help bring Eric into the fold and am particularly glad he will be able to meet with the leadership next week to help chart the course for 2010 (and beyond) with you.

Hope you all have power and heat – so you can enjoy the “epic” snow!

Thanks again, with sincere gratitude,

Margaret

From: Dr. Jane Lubchenco [mailto:Announcement@noaa.gov]
Sent: Wednesday, February 10, 2010 3:13 PM
Subject: Announcing the New Assistant Administrator for NOAA Fisheries

Message From the Under Secretary



February 10, 2010

It gives me great pleasure to announce Eric Schwaab as the new assistant administrator for fisheries, starting February 16. We are excited to have someone with Eric’s experience and proven leadership to bring a fresh perspective to the management of NOAA’s National Marine Fisheries Service. Eric will lead NOAA’s efforts to rebuild our fisheries and the jobs and livelihoods that depend on them. His immediate priorities include improving outreach and relationships with recreational and commercial fishermen, better aligning federal and regional fisheries priorities, restoring confidence in fisheries law enforcement, and promoting management approaches that will achieve both sustainable fisheries and vibrant coastal communities.

Eric brings more than 25 years of experience in local, state and federal natural resource management. He has spent the majority of his career at the Maryland Department of Natural Resources, where he began as a natural resources police law enforcement officer in 1983. He eventually served as director of the Maryland Forest Service; director of the Maryland Forest, Wildlife and Heritage Service; and director of the Maryland Fisheries Service. In 2003, Eric left the Maryland Department of Natural Resources to serve as resource director for the Association of Fish and Wildlife Agencies until 2007. He then returned to the Maryland Department of Natural Resources as the deputy secretary. Eric has also served as a member of the U.S. Department of Commerce Marine Fisheries Advisory Committee.

Eric is a creative and proven manager, consensus builder and leader. He has developed and implemented solutions to address challenges in regional habitat restoration, including Chesapeake Bay restoration issues, fish and wildlife conservation, public lands management, natural resources law enforcement, public agency administration, strategic planning and leadership development.

I am excited to welcome Eric to the NOAA family. He will work with NOAA leadership, the fisheries service, his fellow assistant administrators and our many constituents to further our efforts to protect and manage the nation's fisheries, our other trust resources including marine mammals and sea turtles, and the ecosystems upon which they depend. Welcome Eric!

I would also like to take this opportunity to express my deep appreciation to Dr. Jim Balsiger, the acting assistant administrator, for his superb and sustained leadership. Jim has led the fisheries service for over two years in this capacity, far from his home in Alaska, and done so with distinction. He was especially instrumental in engaging the fishery management councils in the process of developing the draft catch shares policy. Dr. Balsiger will soon return to his position as NOAA Fisheries' regional administrator for Alaska, but before doing so will assist Eric with his transition into the fisheries service and NOAA. I'd also like to thank the entire team at NOAA Fisheries who have done an excellent job during this period.

Dr. Jane Lubchenco's Signature



[Dr. Jane Lubchenco](#)

[Under Secretary of Commerce for Oceans and Atmosphere and NOAA Administrator](#)

This message was generated for the Under Secretary of Commerce for Oceans and Atmosphere and NOAA Administrator by the NOAA Information Technology Center/Financial and Administrative Computing Division

From: [Saving Seafood](#)
To: jane.lubchenco@noaa.gov
Subject: Incoming NMFS chief Eric Schwaab interviewed on Saving Seafood/WBSM Radio
Date: Thursday, February 11, 2010 7:23:49 PM

Eric Schwaab, who was appointed yesterday to head the National Marine Fisheries Service, and who takes on his new role next week, appeared this morning during the Saving Seafood Hour on "Morning Magazine with Phil Paleologos."

The program airs live at 11 a.m. Thursdays on WBSM in New Bedford, Massachusetts, and is hosted by Phil Paleologos and Bob Vanasse, executive director of Saving Seafood. It is recorded and made available on Saving Seafood.

Today's show is available here:

http://savingseafood.org/WBSM/WBSM_2010-02-11.html

The interview with Mr. Schwaab, currently deputy secretary at Maryland's Department of Natural Resources, begins at approximately the 12 minute mark.

Sign up for daily news updates <http://www.savingseafood.org/fishing-industry-alerts/subscribe-to-alerts.html>

Visit www.savingseafood.org for the latest industry news.

To be removed from this list, reply to this email with the word "unsubscribe" in the subject and body of the email.

To be added to this list, send an email to alerts@savingseafood.org with the word "subscribe" in the subject and body of the email.

The Project to Save Seafood and Ocean Resources

1050 Connecticut Avenue, N.W. Suite 1000
Washington, DC 20036

DC 202-595-1222 | Boston 617-507-3570 | New Bedford 508-717-3828
Toll Free 866-513-2601 | Fax 206-666-2628 | info@savingseafood.org

From: [Saving Seafood](#)
To: jane.lubchenco@noaa.gov
Subject: Maryland's Eric Schwaab appointed head of National Marine Fisheries Service
Date: Wednesday, February 10, 2010 10:01:21 PM

NOAA Chief appoints Eric Schwaab of Maryland to head National Marine Fisheries Service

The following message has been released by NOAA Administrator, Dr. Jane Lubchenco

February 10, 2010

It gives me great pleasure to announce Eric Schwaab as the new assistant administrator for fisheries, starting February 16. We are excited to have someone with Eric's experience and proven leadership to bring a fresh perspective to the management of NOAA's [National Marine Fisheries Service](#). Eric will lead NOAA's efforts to rebuild our fisheries and the jobs and livelihoods that depend on them. His immediate priorities include improving outreach and relationships with recreational and commercial fishermen, better aligning federal and regional fisheries priorities, restoring confidence in fisheries law enforcement, and promoting management approaches that will achieve both sustainable fisheries and vibrant coastal communities.

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Sign up for daily news updates <http://www.savingseafood.org/fishing-industry-alerts/subscribe-to-alerts.html>

Visit www.savingseafood.org for the latest industry news.

To be removed from this list, reply to this email with the word "unsubscribe" in the subject and body of the email.

To be added to this list, send an email to alerts@savingseafood.org with the word "subscribe" in the subject and body of the email.

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From: [Margaret Spring](#)
To: ["Jane.Lubchenco@noaa.gov"](#)
Cc: ["monica.medina@noaa.gov"; "Andrew.Winer@noaa.gov"](#)
Subject: NMFS
Date: Wednesday, November 25, 2009 11:17:59 AM
Attachments: [Schwaab Resume November 2009-1.rtf](#)

Jane,

Eric Schwab is interested - attached is his resume. He is currently Dep Secretary of MD Dept of Natural Resources and a strong candidate - good ties to states, nmfs, rec fishermen, habitat experts, and the Hill. He will be sending me more detailed information and times available to meet with us next week.

Don Boesch know him.

I really think this could work!

I hope you feel the same - I'd like to schedule something as soon as we can.

Margaret

b6



----- Original Message -----

From: Paul Sandifer <paul.sandifer@noaa.gov>
To: Margaret.spring@noaa.gov <Margaret.spring@noaa.gov>
Cc: [Amrit Mehra](mailto:Amrit.Mehra@noaa.gov) <Amrit.Mehra@noaa.gov>; [Jeff Payne](mailto:Jeff.Payne@noaa.gov) <Jeff.Payne@noaa.gov>
Sent: Thu Nov 05 12:54:04 2009
Subject: Resume re fish

Hi Margaret, Amrit and Jeff:

Please find attached Eric Schwab's resume. Also, please note that I know his situation is likely to be a bit sensitive due to the kind of political job he is in at present, so I'm guessing he would want any consideration held close for now.
Let me know if you need more.

B6



--

Paul A. Sandifer, Ph.D.
Senior Science Advisor to the NOAA Administrator
National Oceanic and Atmospheric Administration
1401 Constitution Ave NW, Rm. 5804
Washington, DC 20230

Tel. (202) 482-3567

Mobile (843) 297-6278
paul.sandifer@noaa.gov

From: [Donald F. Boesch](#)
To: ["Jane Lubchenco"](#)
Cc: ["Margaret Spring"](#)
Subject: Personal perspectives on NOAA Fisheries
Date: Sunday, December 06, 2009 10:55:07 AM

Jane,

I have heard that among those you are considering for AA for Fisheries is Eric Schwaab. I just wanted to let you know that I have known and worked effectively with Eric for more than 15 years, including during his various roles at Maryland Department of Natural Resources such as director of the Fisheries Service and Deputy Secretary. His commitment to sustainable management, skills, experience and integrity are hard to match. He has demonstrated progressive leadership, tact and resolve in dealing with fisheries management here in Maryland, including a key role in the recent historic and politically challenging blue crab harvest restrictions in Maryland and Virginia. At the same time, he gained important experience and perspective on national and international levels during the four years he was out of state government. He literally came up through the ranks after starting as a young Natural Resource Police officer and understands and respects the work of folks in the trenches. At the same time, he has a good grasp of the concepts of modern, ecosystem based management. In my view, he would be very helpful to you in the practical implementation of catch shares and MSP.

I would be happy to talk to you more about Eric if helpful to you.

We had a good meeting with Margaret on the Revelle Lecture and other NRC matters just before Thanksgiving. Looking forward to catching up,

Don

PS Saw the video your demonstration on ocean acidification to the House committee. Your very effective explanatory style reminded me of Mr. Wizard – remember him from our generation?

Donald F. Boesch, President
University of Maryland Center for Environmental Science
P.O. Box 775, Cambridge, MD 21613 USA
+1.410.221 2000 fax +1.410.228.3843
www.umces.edu/president

From: [Andrew Winer](#)
To: [Jeff Payne](#); [Justin Kenney](#)
Cc: [Jane Lubchenco](#); [Monica Medina](#); [Margaret.Spring@noaa.gov](#); [John Gray](#); [Amanda.Hallberg@noaa.gov](#); [Lois Schiffer](#)
Subject: RE: Draft Eric Schwaab message
Date: Wednesday, February 10, 2010 11:38:39 AM

Jeff: The revisions look good. I just spoke with Eric, and he has asked me to call him when the all hands is going out so he can notify Maryland DNR which will then send out a press release.

Andy

From: Jeff Payne [Jeff.Payne@noaa.gov]
Sent: Wednesday, February 10, 2010 11:06 AM
To: Justin Kenney
Cc: Jane Lubchenco; Monica Medina; Margaret.Spring@noaa.gov; Andrew Winer; John Gray; Amanda.Hallberg@noaa.gov; Lois Schiffer
Subject: Re: Draft Eric Schwaab message

Justin and all - I worked from Margaret's mark up and added in the recommended emphasis for Jim. I have a call into Eddie's cell regarding his years of service acting, but inserted "over two years" for now.

See attached.

Jeff

Justin Kenney wrote:

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> Here is the draft as of now, with Balsiger language to come.
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> Justin Kenney
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> NOAA Director of Communications and External Affairs
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> Office: 202-482-6090 | Cell: 202-821-6310
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> Email: justin.kenney@noaa.gov
>
> Facebook: www.facebook.com/noaa.lubchenco
>
> *DRAFT* *ALL-HANDS*
>
> *For: Wednesday, February 10*
>
> *From: Jane Lubchenco*
>
> *To: All Staff*
>
> [Subject Line]: Announcing the Assistant Administrator for NOAA Fisheries
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>

> Sincerely,

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> JL

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From: [Jeff Payne](#)
To: [Justin Kenney](#)
Cc: [Jane Lubchenco](#); [Monica Medina](#); [Margaret.Spring@noaa.gov](#); [Andrew Winer](#); [John Gray](#); [Amanda.Hallberg@noaa.gov](#); [Lois Schiffer](#)
Subject: Re: Draft Eric Schwaab message
Date: Wednesday, February 10, 2010 11:06:17 AM
Attachments: [All Hands NMFS Dir JL FINAL miller qc JLPed 02 10.doc](#)
[Jeff_Payne.vcf](#)

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> which they depend. Welcome Eric!

>

> I would also like to take this opportunity to express my gratitude to
> Dr. Jim Balsiger, the acting assistant administrator, for his superb
> leadership. Dr. Balsiger will return to his position as NOAA
> Fisheries' regional administrator for Alaska. I'd also like to thank
> the entire team at NOAA Fisheries who have done an excellent job
> during this period of transition.

>

> Sincerely,

>

> JL

>

From: [Monica Medina](#)
To: [Margaret Spring](#); "[Jane.Lubchenco@noaa.gov](#)"
Cc: "[monica.medina@noaa.gov](#)"; "[Andrew.Winer@noaa.gov](#)"
Subject: RE: NMFS
Date: Wednesday, November 25, 2009 11:41:19 AM

He looks like a very strong candidate!

-----Original Message-----

From: Margaret Spring [<mailto:margaret.spring@noaa.gov>]
Sent: Wednesday, November 25, 2009 11:18 AM
To: 'Jane.Lubchenco@noaa.gov'
Cc: 'monica.medina@noaa.gov'; 'Andrew.Winer@noaa.gov'
Subject: NMFS

Jane,

Eric Schwab is interested - attached is his resume. He is currently Dep Secretary of MD Dept of Natural Resources and a strong candidate - good ties to states, nmfs, rec fishermen, habitat experts, and the Hill. He will be sending me more detailed information and times available to meet with us next week.

Don Boesch know him.

I really think this could work!

I hope you feel the same - I'd like to schedule something as soon as we can.

Margaret

b6



----- Original Message -----

From: Paul Sandifer <paul.sandifer@noaa.gov>
To: Margaret.spring@noaa.gov <Margaret.spring@noaa.gov>
Cc: Amrit Mehra <Amrit.Mehra@noaa.gov>; Jeff Payne <Jeff.Payne@noaa.gov>
Sent: Thu Nov 05 12:54:04 2009
Subject: Resume re fish

Hi Margaret, Amrit and Jeff:

Please find attached Eric Schwab's resume. Also, please note that I know his situation is likely to be a bit sensitive due to the kind of political job he is in at present, so I'm guessing he would want any consideration held close for now.

Let me know if you need more.

b6



--

Paul A. Sandifer, Ph.D.
Senior Science Advisor to the NOAA Administrator National Oceanic and Atmospheric Administration

1401 Constitution Ave NW, Rm. 5804
Washington, DC 20230

Tel. (202) 482-3567
Mobile (843) 297-6278
paul.sandifer@noaa.gov

From: [John Oliver](#)
To: [Jane Lubchenco](#); [Margaret Spring](#)
Subject: THANKS Announcing the New Assistant Administrator for NOAA Fisheries
Date: Wednesday, February 10, 2010 7:42:58 PM

Dr Lubchenco & Margaret just back inside from guess what shoveling and your warm messages are much appreciated.

I plan to forward your messages to our Regional and Science Center Directors who are the back bone of NMFS. No one welcomes the addition of Eric to the NOAA Team more than me.

Stay safe and warm. jo

Jane Lubchenco wrote:

Dear NMFS leaders,

I strongly echo Margaret's words of thanks to each of you. You are a terrific team and I greatly value what each of you has done over the last year. I rely on each of you for your knowledge and guidance and judgment. And I look forward to continuing to benefit from your talents and knowledge. Thanks for helping Eric come up to speed, set priorities, and create a dynamic team.

I appreciate you!

Jane

From: Margaret Spring
Sent: Wednesday, February 10, 2010 6:01 PM
To: Jim Balsiger; John Oliver; Samuel Rauch; Steven Murawski (Steve.Murawski@noaa.gov); alan.risenhoover@noaa.gov; gloria.thompson@noaa.gov; 'rebecca.lent@noaa.gov'
Subject: FW: Announcing the New Assistant Administrator for NOAA Fisheries

Jim, John, Sam, Steve, Rebecca, Alan, and Gloria –

I fear that during this snowstorm that I have not had the chance to reach out to each of you about the news that Jane has sent out below, though I spoke to Jim and a few others and I know you were all informed and ready as a team for this change. But tonight, I wanted to take a moment to personally not only recognize, but thank, you for your support and hard work. Your expertise and leadership is valued, and sometimes in the crush of business, that can get lost. So thanks for all you do and have done for NOAA. I speak not only from my current position, but from the years we have all worked together on fisheries issues (– I've known many of you since I was first a Sea Grant fellow in 1991!)

NMFS management and science is a huge part of what NOAA does and thus our HQ office has also relied heavily on the great workforce you have trained and attracted (indeed, as you have observed, we never want to give these great folks back!) So please accept my thanks for your very tangible contribution to our day to day work down here, which is a key part of the agency's successful contribution to the interagency process, as well.

We are now entering an even more challenging time in 2010 – each of you will play a key role, as will our regional leadership. We appreciate how much you have been willing to help bring Eric into the fold and am particularly glad he will be able to meet with the leadership next week to help chart the course for 2010 (and beyond) with you.

Hope you all have power and heat – so you can enjoy the “epic” snow!

Thanks again, with sincere gratitude,

Margaret

From: Dr. Jane Lubchenco [<mailto:Announcement@noaa.gov>]
Sent: Wednesday, February 10, 2010 3:13 PM
Subject: Announcing the New Assistant Administrator for NOAA Fisheries

Message From the Under Secretary



February 10, 2010

It gives me great pleasure to announce Eric Schwaab as the new assistant administrator for fisheries, starting February 16. We are excited to have someone with Eric's experience and proven leadership to bring a fresh perspective to the management of NOAA's National Marine Fisheries Service. Eric will lead NOAA's efforts to rebuild our fisheries and the jobs and livelihoods that depend on them. His immediate priorities include improving outreach and relationships with recreational and commercial fishermen, better aligning federal and regional fisheries priorities, restoring confidence in fisheries law enforcement, and promoting management approaches that will achieve both sustainable fisheries and vibrant coastal communities.

Eric brings more than 25 years of experience in local, state and federal natural resource management. He has spent the majority of his career at the Maryland Department of Natural Resources, where he began as a natural resources police law enforcement officer in 1983. He eventually served as director of the Maryland Forest Service; director of the Maryland Forest, Wildlife and Heritage Service; and director of the Maryland Fisheries Service. In 2003, Eric left the Maryland Department of Natural Resources to serve as resource director for the Association of Fish and Wildlife Agencies until 2007. He then returned to the Maryland Department of Natural Resources as the deputy secretary. Eric has also served as a member of the U.S. Department of Commerce Marine Fisheries Advisory Committee.

Eric is a creative and proven manager, consensus builder and leader. He has developed and implemented solutions to address challenges in regional habitat restoration, including Chesapeake Bay restoration issues, fish and wildlife conservation, public lands management, natural resources law enforcement, public agency administration, strategic planning and leadership development.

I am excited to welcome Eric to the NOAA family. He will work with NOAA leadership, the fisheries service, his fellow assistant administrators and our many constituents to further our efforts to protect and manage the nation's fisheries, our other trust resources including marine mammals and sea turtles, and the ecosystems upon which they depend. Welcome Eric!

I would also like to take this opportunity to express my deep appreciation to Dr. Jim Balsiger, the acting assistant administrator, for his superb and sustained leadership. Jim has led the fisheries service for over two years in this capacity, far from his home in Alaska, and done so with distinction. He was especially instrumental in engaging the fishery management councils in the process of developing the draft catch shares policy. Dr. Balsiger will soon return to his position as NOAA Fisheries' regional administrator for Alaska, but before doing so will assist Eric with his transition into the fisheries service and NOAA. I'd also like to thank the entire team at NOAA Fisheries who have done an excellent job during this period.

Dr. Jane Lubchenco's Signature



Dr. Jane Lubchenco
Under Secretary of Commerce for Oceans and Atmosphere and NOAA Administrator

This message was generated for the Under Secretary of Commerce for Oceans and Atmosphere and NOAA Administrator by the NOAA Information Technology Center/Financial and Administrative Computing Division

DRAFT ALL-HANDS

For: Wednesday, February 10

From: Jane Lubchenco

To: All Staff

[Subject Line]: Announcing the New Assistant Administrator for NOAA Fisheries

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Alaska, but before doing so will assist Eric with his transition into the fisheries service and NOAA. I'd also like to thank the entire team at NOAA Fisheries who have done an excellent job during this period.

Sincerely,

JL

Eric C. Schwaab

**117 Oakdale Avenue
Catonsville, Maryland 21228**

**(410) 744-9050 home
(443) 534-3897 mobile
(410) 260-8102 work**

eschwaab@dnr.state.md.us

Professional Summary: Career natural resource professional with over 25 years of experience in natural resources conservation work at local, state and federal levels. Proven manager and accomplished leader who has developed and implemented innovative solutions to address challenges in regional habitat restoration, fish and wildlife conservation, public lands management, natural resources law enforcement, public agency administration, strategic planning and leadership development.

Work History:

February, 2007 to present - Deputy Secretary, Maryland Department of Natural Resources, Annapolis, MD

Directly support the Secretary of the principal Maryland state agency responsible for carrying out the Governor's natural resource policies and programs. Responsible for operations of a public natural resource agency with over 1400 employees and an annual operating budget of approximately \$200 million. Primary responsibilities include Chesapeake and coastal bays restoration, fish and wildlife management, forest and parks management, natural resource land planning and acquisition, natural resource law enforcement, budgeting, strategic planning, leadership development, legislative activities and interaction with diverse constituencies.

August, 2003 to February, 2007 - Resource Director, Association of Fish and Wildlife Agencies, Washington, DC

Managed a wide range of projects and issues for the Association, which primarily represents public fish and wildlife agencies across North America, including all 50 states. Worked with federal and state fish and wildlife leaders, national and regional conservation organizations, and other policy leaders to advance the work of public fish and wildlife agencies. Direct responsibilities included federal and state fisheries and water resources policy matters; natural resource science, information and research activities; various federal grant programs; Sportfish and Wildlife Trust funds and other agency funding priorities; agency leadership development activities; and automated licensing and information systems.

Accomplishments included lead responsibility for development of the National Fish Habitat Action Plan and the National Conservation Leadership Institute.

**May, 2003 to August, 2003 - Independent Natural Resource Consultant,
Catonsville, MD**

Provided consulting services to various clients related to fisheries and other natural resources management issues, including NOAA Fisheries' Office of Sustainable Fisheries.

**October, 1983 to May, 2003 - Maryland Department of Natural Resources,
Annapolis, MD**

Summary: Diverse experience in development, implementation and management of conservation policy and programs, including public lands management, forestry, fisheries, wildlife and natural resources law enforcement.

March, 1999 to May, 2003 - Director, Fisheries Service - Executive responsibility for Maryland's fishery management policy and programs. Led Maryland's efforts to manage marine and inland fisheries. Worked with diverse partners to integrate ecological, economic and social needs into fisheries management policy and work. Highlights included development of a regional action plan to restore Chesapeake Bay blue crabs, implementing several programs to investigate and integrate habitat impacts with fisheries management efforts, and extensive work to protect and manage striped bass stocks.

Served as Maryland Commissioner to the Atlantic States Marine Fisheries Commission, Council Member for the Mid Atlantic Fishery Management Council, and Member and Chairman of the Potomac River Fisheries Commission.

November 1995 to March, 1999 - Director, Forest, Wildlife & Heritage Service - Executive responsibility for forestry, wildlife and natural heritage policy and programs. Integrated scientific data and recommendations from foresters, wildlife biologists, ecologists and land managers to create and implement conservation policy and work plans. Led the Maryland effort to develop and gain approval of Maryland's Conservation Reserve Enhancement Program, a \$200 million federal commitment to establish streamside farm conservation practices through incentives to farmers, the first CREP program approved in the country.

August, 1992 to November, 1995 - Director, Forest Service - Executive responsibility for policies and programs related to forest conservation and management practices on private and public lands. Implemented the Maryland Forest Conservation Act, the first statewide law in the country to require developers to conserve forest habitat during the development process. Created Maryland's Stream ReLeaf program and helped lead the Chesapeake Bay program effort to establish ambitious new forest stream buffer planting goals. Directed traditional forest landowner assistance programs, urban and community forestry initiatives and management of public forest lands.

August, 1989 to August, 1992 - Chief, Resource Management, Maryland Forest & Park Service - Managed resource management and conservation programs for Maryland's forests and parks. Developed and implemented a new forest management planning process for public forest land. The new approach established a Maryland model for public involvement in land decision making and created an interdisciplinary team approach to land planning and management.

March, 1987 to August, 1989 - Manager, Deep Creek Lake - As the manager of Deep Creek Lake, Maryland's largest freshwater lake and the top tourist destination in western Maryland, developed and implemented a lake use plan in 1988 that significantly decreased user conflict among boaters, anglers and shoreline property owners, balanced shoreline development needs with lake carrying capacity concerns and remains substantially in place for lake management decisions 20 years later.

October, 1985 to March, 1987 - Park Ranger, Gunpowder Falls State Park

October, 1983 to October, 1985 - Natural Resource Police Officer

June, 1994 to August, 1999 - Chair, Council on Quality and Organizational Innovation - Concurrent to managing line units, led the Department of Natural Resources' quality improvement team. During that time period, the team worked throughout the agency to develop links between strategic planning, process improvement, employee development and progress measurement. This effort was instrumental in leading to the Department's assessment as a gold award performer under the Governor's Performance Excellence Assessment Program in 1999.

Education:

McDaniel College (formerly Western Maryland College), B.A. in Biology, 1982

Towson University, M.A. in Geography and Environmental Planning, 1992

Harvard University, Kennedy School of Government, Leadership Program for Senior Executives in State and Local Government, 1997

Kinship Conservation Institute Fellow, at PERC, Bozeman, Montana, June 2003

USDA Forest Service Management Policy Seminar, Washington, DC, 1994

Select Other Activities:

Board Member, Chesapeake Bay Trust (2007 to present)

Member, US Department of Commerce Marine Fisheries Advisory Committee (2005 to present)

Board Member, the Potomac Conservancy, Washington, DC (2001 to 2007)

Past member and first vice president, Eastern Lands and Resources Council (1990 to 1999)

DRAFT ALL-HANDS

For: Wednesday, February 10

From: Jane Lubchenco

To: All Staff

[Subject Line]: **Announcing the New Assistant Administrator for NOAA Fisheries**

It gives me great pleasure to announce **Eric Schwaab** as the assistant administrator for fisheries, starting February 16. We are excited to have someone with Eric's experience and proven leadership at the helm of NOAA's National Marine Fisheries Service. Eric will continue our efforts to rebuild our fisheries and the jobs and livelihoods that depend on them. His immediate priorities include improving relationships with recreational and commercial fishermen, better aligning federal and regional priorities, restoring confidence in fisheries law enforcement, and **promoting management approaches that support both fishery and community sustainability objectives**. [if you mention catch shares, you should also mention cooperative research and technology development; let's not provide a target if we can avoid it.]

Eric brings more than 25 years of experience in local, state and federal natural resource management. He has spent the majority of his career at the Maryland Department of Natural Resources, where he began as a natural resources police law enforcement officer in 1983. He eventually served as director of the Maryland Forest Service; director of the Maryland Forest, Wildlife and Heritage Service; and director of the Maryland Fisheries Service. In 2003, Eric left the Maryland Department of Natural Resources to serve as resource director for the Association of Fish and Wildlife Agencies until 2007. He then returned to the Maryland Department of Natural Resources as the deputy secretary. Eric has also served as a member of the U.S. Department of Commerce Marine Fisheries Advisory Committee.

Eric is a proven manager and accomplished leader. He has developed and implemented solutions to address challenges in regional habitat restoration, including Chesapeake Bay restoration issues, fish and wildlife conservation, public lands management, natural resources law enforcement, public agency administration, strategic planning and leadership development.

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Alaska, but before doing so will assist Eric with his transition into the fisheries service and NOAA. I'd also like to thank the entire team at NOAA Fisheries who have done an excellent job during this period.

Sincerely,

JL

Jeffrey L. Payne, Ph.D.
Acting Deputy Chief of Staff
NOAA
Department of Commerce

14th and Constitution, NW Room 5128
Washington, DC 20230
USA

202-482-1971 (Work)
202-408-9674 (Fax)
843-834-3511 (Cell)

jeff.payne@noaa.gov (Internet)

Formatted Name

Jeffrey L. Payne, Ph.D.

Name

Family: Payne, Ph.D.

First: Jeffrey L.

Middle:

Prefix:

Suffix:

Organization

NOAA

Department of Commerce

Address

P.O. Address:

Extended Address:

Street: 14th and Constitution, NW Room 5128

Locality: Washington

Region: DC

Postal Code: 20230

Country: USA

Electronic Mail Address (Internet)

jeff.payne@noaa.gov

Title

Acting Deputy Chief of Staff

Telephone Number (Work)

202-482-1971

Telephone Number (Fax)
202-408-9674

Telephone Number (Cell)
843-834-3511

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Version
2.1

From: [Justin Kenney](#)
To: jane.lubchenco@noaa.gov
Subject: FINAL FOR IMMEDIATE REVIEW: Draft Eric Schwaab message
Date: Wednesday, February 10, 2010 1:47:19 PM
Attachments: [Eric Schwaab Announcement.Final.doc](#)
Importance: High

Hello Jane, please take a moment to review and approve this message. I would like to get it out as soon as possible. It includes comments by Monica (referenced below) and more text about Dr. Balsiger courtesy of Jeff.

Thank you

Justin Kenney
NOAA Director of Communications and External Affairs
Office: 202-482-6090 | Cell: 202-821-6310
Email: justin.kenney@noaa.gov
Facebook: www.facebook.com/noaa.lubchenco

-----Original Message-----

From: Monica Medina [<mailto:monica.medina@noaa.gov>]
Sent: Wednesday, February 10, 2010 1:23 PM
To: Jeff Payne; Justin Kenney
Cc: Jane Lubchenco; Monica Medina; Margaret.Spring@noaa.gov; Andrew Winer; John Gray; Amanda.Hallberg@noaa.gov; Lois Schiffer
Subject: RE: Draft Eric Schwaab message

Hi all - this looks fine to me but I am wondering whether we could add something about bringing change or modernization -- something that would subtly signal a new way of approaching problems. Something that would tie him to the themes of the Obama Administration. What this lacks is a sense of new dynamism or new ideas. It also does not say anything about communities per se. Here are my edits - they are just suggestions. Cheers, Monica

-----Original Message-----

From: Jeff Payne [<mailto:Jeff.Payne@noaa.gov>]
Sent: Wednesday, February 10, 2010 11:06 AM
To: Justin Kenney
Cc: Jane Lubchenco; Monica Medina; Margaret.Spring@noaa.gov; Andrew Winer; John Gray; Amanda.Hallberg@noaa.gov; Lois Schiffer
Subject: Re: Draft Eric Schwaab message

Justin and all - I worked from Margaret's mark up and added in the recommended emphasis for Jim. I have a call into Eddie's cell regarding his years of service acting, but inserted "over two years" for now.

See attached.

Jeff

Justin Kenney wrote:

>
> Here is the draft as of now, with Balsiger language to come.
>
> Justin Kenney
>
> NOAA Director of Communications and External Affairs
>

> Office: 202-482-6090 | Cell: 202-821-6310

>

> Email: justin.kenney@noaa.gov

>

> Facebook: www.facebook.com/noaa.lubchenco

>

> ***DRAFT* *ALL-HANDS***

>

> ***For: Wednesday, February 10***

>

> ***From: Jane Lubchenco***

>

> ***To: All Staff***

>

> [Subject Line]: Announcing the Assistant Administrator for NOAA

> Fisheries

>

> It gives me great pleasure to announce ***Eric Schwaab*** as the assistant
> administrator for fisheries, starting February 16. We are excited to
> have someone with Eric's experience and proven leadership at the helm
> of NOAA's National Marine Fisheries Service. Eric will continue our
> efforts to rebuild our fisheries and the jobs and livelihoods that
> depend on them. His immediate priorities include improving
> relationships with recreational and commercial fishermen, better
> aligning federal and regional priorities, restoring confidence in
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> support both fishery and community sustainability.

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> Eric brings more than 25 years of experience in local, state and
> federal natural resource management. He has spent the majority of his
> career at the Maryland Department of Natural Resources, where he began
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> Department of Natural Resources to serve as resource director for the
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> implemented solutions to address challenges in regional habitat
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> leadership development. * *

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> I am excited to welcome Eric to the NOAA family. He will work with
> NOAA leadership, the fisheries service, his fellow assistant
> administrators and our many constituents to further our efforts to
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> leadership. Dr. Balsiger will return to his position as NOAA
> Fisheries' regional administrator for Alaska. I'd also like to thank
> the entire team at NOAA Fisheries who have done an excellent job
> during this period of transition.

>
> Sincerely,

>
> JL
>

From: [Margaret Spring](#)
To: [Jane Lubchenco](#)
Subject: FW: Announcing the New Assistant Administrator for NOAA Fisheries
Date: Wednesday, February 10, 2010 6:17:50 PM

Jane, I know the NMFS leadership well from years past so sent them a personal note – I think they will mesh well with Eric and they have been very open to it.

Gloria Thompson will be Eric’s administrative assistant and she is a national treasure – so I told Eric he should treat her like gold!

:)

From: Margaret Spring
Sent: Wednesday, February 10, 2010 6:01 PM
To: Jim Balsiger; John Oliver; Samuel Rauch; Steven Murawski (Steve.Murawski@noaa.gov); alan.risenhoover@noaa.gov; gloria.thompson@noaa.gov; 'rebecca.lent@noaa.gov'
Subject: FW: Announcing the New Assistant Administrator for NOAA Fisheries

Jim, John, Sam, Steve, Rebecca, Alan, and Gloria –

I fear that during this snowstorm that I have not had the chance to reach out to each of you about the news that Jane has sent out below, though I spoke to Jim and a few others and I know you were all informed and ready as a team for this change. But tonight, I wanted to take a moment to personally not only recognize, but thank, you for your support and hard work. Your expertise and leadership is valued, and sometimes in the crush of business, that can get lost. So thanks for all you do and have done for NOAA. I speak not only from my current position, but from the years we have all worked together on fisheries issues (– I’ve known many of you since I was first a Sea Grant fellow in 1991!)

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Hope you all have power and heat – so you can enjoy the “epic” snow!

Thanks again, with sincere gratitude,

Margaret

From: Dr. Jane Lubchenco [mailto:Announcement@noaa.gov]
Sent: Wednesday, February 10, 2010 3:13 PM
Subject: Announcing the New Assistant Administrator for NOAA Fisheries

Message From the Under Secretary



February 10, 2010

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Dr. Jane Lubchenco's Signature



[Dr. Jane Lubchenco](#)

[Under Secretary of Commerce for Oceans and Atmosphere and NOAA Administrator](#)

This message was generated for the Under Secretary of Commerce for Oceans and Atmosphere and NOAA Administrator by the NOAA Information Technology Center/Financial and Administrative Computing Division

From: [Saving Seafood](#)
To: jane.lubchenco@noaa.gov
Subject: Incoming NMFS chief Eric Schwaab interviewed on Saving Seafood/WBSM Radio
Date: Thursday, February 11, 2010 7:23:49 PM

Eric Schwaab, who was appointed yesterday to head the National Marine Fisheries Service, and who takes on his new role next week, appeared this morning during the Saving Seafood Hour on "Morning Magazine with Phil Paleologos."

The program airs live at 11 a.m. Thursdays on WBSM in New Bedford, Massachusetts, and is hosted by Phil Paleologos and Bob Vanasse, executive director of Saving Seafood. It is recorded and made available on Saving Seafood.

Today's show is available here:

http://savingseafood.org/WBSM/WBSM_2010-02-11.html

The interview with Mr. Schwaab, currently deputy secretary at Maryland's Department of Natural Resources, begins at approximately the 12 minute mark.

Sign up for daily news updates <http://www.savingseafood.org/fishing-industry-alerts/subscribe-to-alerts.html>

Visit www.savingseafood.org for the latest industry news.

To be removed from this list, reply to this email with the word "unsubscribe" in the subject and body of the email.

To be added to this list, send an email to alerts@savingseafood.org with the word "subscribe" in the subject and body of the email.

The Project to Save Seafood and Ocean Resources

1050 Connecticut Avenue, N.W. Suite 1000
Washington, DC 20036

DC 202-595-1222 | Boston 617-507-3570 | New Bedford 508-717-3828
Toll Free 866-513-2601 | Fax 206-666-2628 | info@savingseafood.org

From: [Saving Seafood](#)
To: jane.lubchenco@noaa.gov
Subject: Maryland's Eric Schwaab appointed head of National Marine Fisheries Service
Date: Wednesday, February 10, 2010 10:01:21 PM

NOAA Chief appoints Eric Schwaab of Maryland to head National Marine Fisheries Service

The following message has been released by NOAA Administrator, Dr. Jane Lubchenco

February 10, 2010

It gives me great pleasure to announce Eric Schwaab as the new assistant administrator for fisheries, starting February 16. We are excited to have someone with Eric's experience and proven leadership to bring a fresh perspective to the management of NOAA's [National Marine Fisheries Service](#). Eric will lead NOAA's efforts to rebuild our fisheries and the jobs and livelihoods that depend on them. His immediate priorities include improving outreach and relationships with recreational and commercial fishermen, better aligning federal and regional fisheries priorities, restoring confidence in fisheries law enforcement, and promoting management approaches that will achieve both sustainable fisheries and vibrant coastal communities.

Eric brings more than 25 years of experience in local, state and federal natural resource management. He has spent the majority of his career at the Maryland Department of Natural Resources, where he began as a natural resources police law enforcement officer in 1983. He eventually served as director of the Maryland Forest Service; director of the Maryland Forest, Wildlife and Heritage Service; and director of the Maryland Fisheries Service. In 2003, Eric left the Maryland Department of Natural Resources to serve as resource director for the Association of Fish and Wildlife Agencies until 2007. He then returned to the Maryland Department of Natural Resources as the deputy secretary. Eric has also served as a member of the U.S. Department of Commerce Marine Fisheries Advisory Committee.

Eric is a creative and proven manager, consensus builder and leader. He has developed and implemented solutions to address challenges in regional habitat restoration, including Chesapeake Bay restoration issues, fish and wildlife conservation, public lands management, natural resources law enforcement, public agency administration, strategic planning and leadership development.

I am excited to welcome Eric to the NOAA family. He will work with NOAA leadership, the fisheries service, his fellow assistant administrators and our many constituents to further our efforts to protect and manage the nation's fisheries, our other trust resources including marine mammals and sea turtles, and the ecosystems upon which they depend. Welcome Eric!

I would also like to take this opportunity to express my deep appreciation to Dr. Jim Balsiger, the acting assistant administrator, for his superb and sustained leadership. Jim has led the fisheries service for over two years in this capacity, far from his home in Alaska, and done so with distinction. He was especially instrumental in engaging the fishery management councils in the process of developing the draft catch shares policy. Dr. Balsiger will soon return to his position as NOAA Fisheries' regional administrator for Alaska, but before doing so will assist Eric with his transition into the fisheries service and NOAA. I'd also like to thank the entire team at NOAA Fisheries who have done an excellent job during this period.

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From: [Margaret Spring](#)
To: ["Jane.Lubchenco@noaa.gov"](#)
Cc: ["monica.medina@noaa.gov"; "Andrew.Winer@noaa.gov"](#)
Subject: NMFS
Date: Wednesday, November 25, 2009 11:17:59 AM
Attachments: [Schwaab Resume November 2009-1.rtf](#)

Jane,

Eric Schwab is interested - attached is his resume. He is currently Dep Secretary of MD Dept of Natural Resources and a strong candidate - good ties to states, nmfs, rec fishermen, habitat experts, and the Hill. He will be sending me more detailed information and times available to meet with us next week.

Don Boesch know him.

I really think this could work!

I hope you feel the same - I'd like to schedule something as soon as we can.

Margaret

B6



----- Original Message -----

From: Paul Sandifer <paul.sandifer@noaa.gov>
To: Margaret.spring@noaa.gov <Margaret.spring@noaa.gov>
Cc: [Amrit Mehra](mailto:Amrit.Mehra@noaa.gov) <Amrit.Mehra@noaa.gov>; [Jeff Payne](mailto:Jeff.Payne@noaa.gov) <Jeff.Payne@noaa.gov>
Sent: Thu Nov 05 12:54:04 2009
Subject: Resume re fish

Hi Margaret, Amrit and Jeff:

Please find attached Eric Schwab's resume. Also, please note that I know his situation is likely to be a bit sensitive due to the kind of political job he is in at present, so I'm guessing he would want any consideration held close for now.
Let me know if you need more.

B6



--

Paul A. Sandifer, Ph.D.
Senior Science Advisor to the NOAA Administrator
National Oceanic and Atmospheric Administration
1401 Constitution Ave NW, Rm. 5804
Washington, DC 20230

Tel. (202) 482-3567

Mobile (843) 297-6278
paul.sandifer@noaa.gov

From: [Donald F. Boesch](#)
To: ["Jane Lubchenco"](#)
Cc: ["Margaret Spring"](#)
Subject: Personal perspectives on NOAA Fisheries
Date: Sunday, December 06, 2009 10:55:07 AM

Jane,

I have heard that among those you are considering for AA for Fisheries is Eric Schwaab. I just wanted to let you know that I have known and worked effectively with Eric for more than 15 years, including during his various roles at Maryland Department of Natural Resources such as director of the Fisheries Service and Deputy Secretary. His commitment to sustainable management, skills, experience and integrity are hard to match. He has demonstrated progressive leadership, tact and resolve in dealing with fisheries management here in Maryland, including a key role in the recent historic and politically challenging blue crab harvest restrictions in Maryland and Virginia. At the same time, he gained important experience and perspective on national and international levels during the four years he was out of state government. He literally came up through the ranks after starting as a young Natural Resource Police officer and understands and respects the work of folks in the trenches. At the same time, he has a good grasp of the concepts of modern, ecosystem based management. In my view, he would be very helpful to you in the practical implementation of catch shares and MSP.

I would be happy to talk to you more about Eric if helpful to you.

We had a good meeting with Margaret on the Revelle Lecture and other NRC matters just before Thanksgiving. Looking forward to catching up,

Don

PS Saw the video your demonstration on ocean acidification to the House committee. Your very effective explanatory style reminded me of Mr. Wizard – remember him from our generation?

Donald F. Boesch, President
University of Maryland Center for Environmental Science
P.O. Box 775, Cambridge, MD 21613 USA
+1.410.221 2000 fax +1.410.228.3843
www.umces.edu/president

From: [Andrew Winer](#)
To: [Jeff Payne](#); [Justin Kenney](#)
Cc: [Jane Lubchenco](#); [Monica Medina](#); [Margaret.Spring@noaa.gov](#); [John Gray](#); [Amanda.Hallberg@noaa.gov](#); [Lois Schiffer](#)
Subject: RE: Draft Eric Schwaab message
Date: Wednesday, February 10, 2010 11:38:39 AM

Jeff: The revisions look good. I just spoke with Eric, and he has asked me to call him when the all hands is going out so he can notify Maryland DNR which will then send out a press release.

Andy

From: Jeff Payne [Jeff.Payne@noaa.gov]
Sent: Wednesday, February 10, 2010 11:06 AM
To: Justin Kenney
Cc: Jane Lubchenco; Monica Medina; Margaret.Spring@noaa.gov; Andrew Winer; John Gray; Amanda.Hallberg@noaa.gov; Lois Schiffer
Subject: Re: Draft Eric Schwaab message

Justin and all - I worked from Margaret's mark up and added in the recommended emphasis for Jim. I have a call into Eddie's cell regarding his years of service acting, but inserted "over two years" for now.

See attached.

Jeff

Justin Kenney wrote:

>
> Here is the draft as of now, with Balsiger language to come.
>
> Justin Kenney
>
> NOAA Director of Communications and External Affairs
>
> Office: 202-482-6090 | Cell: 202-821-6310
>
> Email: justin.kenney@noaa.gov
>
> Facebook: www.facebook.com/noaa.lubchenco
>
> *DRAFT* *ALL-HANDS*
>
> *For: Wednesday, February 10*
>
> *From: Jane Lubchenco*
>
> *To: All Staff*
>
> [Subject Line]: Announcing the Assistant Administrator for NOAA Fisheries
>
> It gives me great pleasure to announce *Eric Schwaab* as the assistant
> administrator for fisheries, starting February 16. We are excited to
> have someone with Eric's experience and proven leadership at the helm
> of NOAA's National Marine Fisheries Service. Eric will continue our

> efforts to rebuild our fisheries and the jobs and livelihoods that
> depend on them. His immediate priorities include improving
> relationships with recreational and commercial fishermen, better
> aligning federal and regional priorities, restoring confidence in
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> the Maryland Fisheries Service. In 2003, Eric left the Maryland
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> implemented solutions to address challenges in regional habitat
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> protect and manage the nation's fisheries, our other trust resources
> including marine mammals and sea turtles, and the ecosystems upon
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> I would also like to take this opportunity to express my gratitude to
> Dr. Jim Balsiger, the acting assistant administrator, for his superb
> leadership. Dr. Balsiger will return to his position as NOAA
> Fisheries' regional administrator for Alaska. I'd also like to thank
> the entire team at NOAA Fisheries who have done an excellent job
> during this period of transition.

>

> Sincerely,

>

> JL

>

From: [Jeff Payne](#)
To: [Justin Kenney](#)
Cc: [Jane Lubchenco](#); [Monica Medina](#); [Margaret.Spring@noaa.gov](#); [Andrew Winer](#); [John Gray](#); [Amanda.Hallberg@noaa.gov](#); [Lois Schiffer](#)
Subject: Re: Draft Eric Schwaab message
Date: Wednesday, February 10, 2010 11:06:17 AM
Attachments: [All Hands NMFS Dir JL FINAL miller qc JLPed 02 10.doc](#)
[Jeff_Payne.vcf](#)

Justin and all - I worked from Margaret's mark up and added in the recommended emphasis for Jim. I have a call into Eddie's cell regarding his years of service acting, but inserted "over two years" for now.

See attached.

Jeff

Justin Kenney wrote:

>
> Here is the draft as of now, with Balsiger language to come.
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> Justin Kenney
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> NOAA Director of Communications and External Affairs
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> Office: 202-482-6090 | Cell: 202-821-6310
>
> Email: justin.kenney@noaa.gov
>
> Facebook: www.facebook.com/noaa.lubchenco
>
> *DRAFT* *ALL-HANDS*
>
> *For: Wednesday, February 10*
>
> *From: Jane Lubchenco*
>
> *To: All Staff*
>
> [Subject Line]: Announcing the Assistant Administrator for NOAA Fisheries
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> the entire team at NOAA Fisheries who have done an excellent job
> during this period of transition.

>

> Sincerely,

>

> JL

>

From: [Monica Medina](#)
To: [Margaret Spring](#); "[Jane.Lubchenco@noaa.gov](#)"
Cc: "[monica.medina@noaa.gov](#)"; "[Andrew.Winer@noaa.gov](#)"
Subject: RE: NMFS
Date: Wednesday, November 25, 2009 11:41:19 AM

He looks like a very strong candidate!

-----Original Message-----

From: Margaret Spring [<mailto:margaret.spring@noaa.gov>]
Sent: Wednesday, November 25, 2009 11:18 AM
To: 'Jane.Lubchenco@noaa.gov'
Cc: 'monica.medina@noaa.gov'; 'Andrew.Winer@noaa.gov'
Subject: NMFS

Jane,

Eric Schwab is interested - attached is his resume. He is currently Dep Secretary of MD Dept of Natural Resources and a strong candidate - good ties to states, nmfs, rec fishermen, habitat experts, and the Hill. He will be sending me more detailed information and times available to meet with us next week.

Don Boesch know him.

I really think this could work!

I hope you feel the same - I'd like to schedule something as soon as we can.

Margaret

B6



----- Original Message -----

From: Paul Sandifer <paul.sandifer@noaa.gov>
To: Margaret.spring@noaa.gov <Margaret.spring@noaa.gov>
Cc: Amrit Mehra <Amrit.Mehra@noaa.gov>; Jeff Payne <Jeff.Payne@noaa.gov>
Sent: Thu Nov 05 12:54:04 2009
Subject: Resume re fish

Hi Margaret, Amrit and Jeff:

Please find attached Eric Schwab's resume. Also, please note that I know his situation is likely to be a bit sensitive due to the kind of political job he is in at present, so I'm guessing he would want any consideration held close for now.

Let me know if you need more.

B6



--

Paul A. Sandifer, Ph.D.

Senior Science Advisor to the NOAA Administrator National Oceanic and Atmospheric Administration

1401 Constitution Ave NW, Rm. 5804
Washington, DC 20230

Tel. (202) 482-3567
Mobile (843) 297-6278
paul.sandifer@noaa.gov

From: [John Oliver](#)
To: [Jane Lubchenco](#); [Margaret Spring](#)
Subject: THANKS Announcing the New Assistant Administrator for NOAA Fisheries
Date: Wednesday, February 10, 2010 7:42:58 PM

Dr Lubchenco & Margaret just back inside from guess what shoveling and your warm messages are much appreciated.

I plan to forward your messages to our Regional and Science Center Directors who are the back bone of NMFS. No one welcomes the addition of Eric to the NOAA Team more than me.

Stay safe and warm. jo

Jane Lubchenco wrote:

Dear NMFS leaders,

I strongly echo Margaret's words of thanks to each of you. You are a terrific team and I greatly value what each of you has done over the last year. I rely on each of you for your knowledge and guidance and judgment. And I look forward to continuing to benefit from your talents and knowledge. Thanks for helping Eric come up to speed, set priorities, and create a dynamic team.

I appreciate you!

Jane

From: Margaret Spring
Sent: Wednesday, February 10, 2010 6:01 PM
To: Jim Balsiger; John Oliver; Samuel Rauch; Steven Murawski (Steve.Murawski@noaa.gov); alan.risenhoover@noaa.gov; gloria.thompson@noaa.gov; 'rebecca.lent@noaa.gov'
Subject: FW: Announcing the New Assistant Administrator for NOAA Fisheries

Jim, John, Sam, Steve, Rebecca, Alan, and Gloria –

I fear that during this snowstorm that I have not had the chance to reach out to each of you about the news that Jane has sent out below, though I spoke to Jim and a few others and I know you were all informed and ready as a team for this change. But tonight, I wanted to take a moment to personally not only recognize, but thank, you for your support and hard work. Your expertise and leadership is valued, and sometimes in the crush of business, that can get lost. So thanks for all you do and have done for NOAA. I speak not only from my current position, but from the years we have all worked together on fisheries issues (– I've known many of you since I was first a Sea Grant fellow in 1991!)

NMFS management and science is a huge part of what NOAA does and thus our HQ office has also relied heavily on the great workforce you have trained and attracted (indeed, as you have observed, we never want to give these great folks back!) So please accept my thanks for your very tangible contribution to our day to day work down here, which is a key part of the agency's successful contribution to the interagency process, as well.

We are now entering an even more challenging time in 2010 – each of you will play a key role, as will our regional leadership. We appreciate how much you have been willing to help bring Eric into the fold and am particularly glad he will be able to meet with the leadership next week to help chart the course for 2010 (and beyond) with you.

Hope you all have power and heat – so you can enjoy the “epic” snow!

Thanks again, with sincere gratitude,

Margaret

From: Dr. Jane Lubchenco [<mailto:Announcement@noaa.gov>]
Sent: Wednesday, February 10, 2010 3:13 PM
Subject: Announcing the New Assistant Administrator for NOAA Fisheries

Message From the Under Secretary



February 10, 2010

It gives me great pleasure to announce Eric Schwaab as the new assistant administrator for fisheries, starting February 16. We are excited to have someone with Eric's experience and proven leadership to bring a fresh perspective to the management of NOAA's National Marine Fisheries Service. Eric will lead NOAA's efforts to rebuild our fisheries and the jobs and livelihoods that depend on them. His immediate priorities include improving outreach and relationships with recreational and commercial fishermen, better aligning federal and regional fisheries priorities, restoring confidence in fisheries law enforcement, and promoting management approaches that will achieve both sustainable fisheries and vibrant coastal communities.

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Dr. Jane Lubchenco's Signature



Dr. Jane Lubchenco
Under Secretary of Commerce for Oceans and Atmosphere and NOAA Administrator

This message was generated for the Under Secretary of Commerce for Oceans and Atmosphere and NOAA Administrator by the NOAA Information Technology Center/Financial and Administrative Computing Division

DRAFT ALL-HANDS

For: Wednesday, February 10

From: Jane Lubchenco

To: All Staff

[Subject Line]: Announcing the New Assistant Administrator for NOAA Fisheries

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Sincerely,

JL

Eric C. Schwaab

**117 Oakdale Avenue
Catonsville, Maryland 21228**

**(410) 744-9050 home
(443) 534-3897 mobile
(410) 260-8102 work**

eschwaab@dnr.state.md.us

Professional Summary: Career natural resource professional with over 25 years of experience in natural resources conservation work at local, state and federal levels. Proven manager and accomplished leader who has developed and implemented innovative solutions to address challenges in regional habitat restoration, fish and wildlife conservation, public lands management, natural resources law enforcement, public agency administration, strategic planning and leadership development.

Work History:

February, 2007 to present - Deputy Secretary, Maryland Department of Natural Resources, Annapolis, MD

Directly support the Secretary of the principal Maryland state agency responsible for carrying out the Governor's natural resource policies and programs. Responsible for operations of a public natural resource agency with over 1400 employees and an annual operating budget of approximately \$200 million. Primary responsibilities include Chesapeake and coastal bays restoration, fish and wildlife management, forest and parks management, natural resource land planning and acquisition, natural resource law enforcement, budgeting, strategic planning, leadership development, legislative activities and interaction with diverse constituencies.

August, 2003 to February, 2007 - Resource Director, Association of Fish and Wildlife Agencies, Washington, DC

Managed a wide range of projects and issues for the Association, which primarily represents public fish and wildlife agencies across North America, including all 50 states. Worked with federal and state fish and wildlife leaders, national and regional conservation organizations, and other policy leaders to advance the work of public fish and wildlife agencies. Direct responsibilities included federal and state fisheries and water resources policy matters; natural resource science, information and research activities; various federal grant programs; Sportfish and Wildlife Trust funds and other agency funding priorities; agency leadership development activities; and automated licensing and information systems.

Accomplishments included lead responsibility for development of the National Fish Habitat Action Plan and the National Conservation Leadership Institute.

**May, 2003 to August, 2003 - Independent Natural Resource Consultant,
Catonsville, MD**

Provided consulting services to various clients related to fisheries and other natural resources management issues, including NOAA Fisheries' Office of Sustainable Fisheries.

**October, 1983 to May, 2003 - Maryland Department of Natural Resources,
Annapolis, MD**

Summary: Diverse experience in development, implementation and management of conservation policy and programs, including public lands management, forestry, fisheries, wildlife and natural resources law enforcement.

March, 1999 to May, 2003 - Director, Fisheries Service - Executive responsibility for Maryland's fishery management policy and programs. Led Maryland's efforts to manage marine and inland fisheries. Worked with diverse partners to integrate ecological, economic and social needs into fisheries management policy and work. Highlights included development of a regional action plan to restore Chesapeake Bay blue crabs, implementing several programs to investigate and integrate habitat impacts with fisheries management efforts, and extensive work to protect and manage striped bass stocks.

Served as Maryland Commissioner to the Atlantic States Marine Fisheries Commission, Council Member for the Mid Atlantic Fishery Management Council, and Member and Chairman of the Potomac River Fisheries Commission.

November 1995 to March, 1999 - Director, Forest, Wildlife & Heritage Service - Executive responsibility for forestry, wildlife and natural heritage policy and programs. Integrated scientific data and recommendations from foresters, wildlife biologists, ecologists and land managers to create and implement conservation policy and work plans. Led the Maryland effort to develop and gain approval of Maryland's Conservation Reserve Enhancement Program, a \$200 million federal commitment to establish streamside farm conservation practices through incentives to farmers, the first CREP program approved in the country.

August, 1992 to November, 1995 - Director, Forest Service - Executive responsibility for policies and programs related to forest conservation and management practices on private and public lands. Implemented the Maryland Forest Conservation Act, the first statewide law in the country to require developers to conserve forest habitat during the development process. Created Maryland's Stream ReLeaf program and helped lead the Chesapeake Bay program effort to establish ambitious new forest stream buffer planting goals. Directed traditional forest landowner assistance programs, urban and community forestry initiatives and management of public forest lands.

August, 1989 to August, 1992 - Chief, Resource Management, Maryland Forest & Park Service - Managed resource management and conservation programs for Maryland's forests and parks. Developed and implemented a new forest management planning process for public forest land. The new approach established a Maryland model for public involvement in land decision making and created an interdisciplinary team approach to land planning and management.

March, 1987 to August, 1989 - Manager, Deep Creek Lake - As the manager of Deep Creek Lake, Maryland's largest freshwater lake and the top tourist destination in western Maryland, developed and implemented a lake use plan in 1988 that significantly decreased user conflict among boaters, anglers and shoreline property owners, balanced shoreline development needs with lake carrying capacity concerns and remains substantially in place for lake management decisions 20 years later.

October, 1985 to March, 1987 - Park Ranger, Gunpowder Falls State Park

October, 1983 to October, 1985 - Natural Resource Police Officer

June, 1994 to August, 1999 - Chair, Council on Quality and Organizational Innovation - Concurrent to managing line units, led the Department of Natural Resources' quality improvement team. During that time period, the team worked throughout the agency to develop links between strategic planning, process improvement, employee development and progress measurement. This effort was instrumental in leading to the Department's assessment as a gold award performer under the Governor's Performance Excellence Assessment Program in 1999.

Education:

McDaniel College (formerly Western Maryland College), B.A. in Biology, 1982

Towson University, M.A. in Geography and Environmental Planning, 1992

Harvard University, Kennedy School of Government, Leadership Program for Senior Executives in State and Local Government, 1997

Kinship Conservation Institute Fellow, at PERC, Bozeman, Montana, June 2003

USDA Forest Service Management Policy Seminar, Washington, DC, 1994

Select Other Activities:

Board Member, Chesapeake Bay Trust (2007 to present)

Member, US Department of Commerce Marine Fisheries Advisory Committee (2005 to present)

Board Member, the Potomac Conservancy, Washington, DC (2001 to 2007)

Past member and first vice president, Eastern Lands and Resources Council (1990 to 1999)

DRAFT ALL-HANDS

For: Wednesday, February 10

From: Jane Lubchenco

To: All Staff

[Subject Line]: **Announcing the New Assistant Administrator for NOAA Fisheries**

It gives me great pleasure to announce **Eric Schwaab** as the assistant administrator for fisheries, starting February 16. We are excited to have someone with Eric's experience and proven leadership at the helm of NOAA's National Marine Fisheries Service. Eric will continue our efforts to rebuild our fisheries and the jobs and livelihoods that depend on them. His immediate priorities include improving relationships with recreational and commercial fishermen, better aligning federal and regional priorities, restoring confidence in fisheries law enforcement, and **promoting management approaches that support both fishery and community sustainability objectives**. [if you mention catch shares, you should also mention cooperative research and technology development; let's not provide a target if we can avoid it.]

Eric brings more than 25 years of experience in local, state and federal natural resource management. He has spent the majority of his career at the Maryland Department of Natural Resources, where he began as a natural resources police law enforcement officer in 1983. He eventually served as director of the Maryland Forest Service; director of the Maryland Forest, Wildlife and Heritage Service; and director of the Maryland Fisheries Service. In 2003, Eric left the Maryland Department of Natural Resources to serve as resource director for the Association of Fish and Wildlife Agencies until 2007. He then returned to the Maryland Department of Natural Resources as the deputy secretary. Eric has also served as a member of the U.S. Department of Commerce Marine Fisheries Advisory Committee.

Eric is a proven manager and accomplished leader. He has developed and implemented solutions to address challenges in regional habitat restoration, including Chesapeake Bay restoration issues, fish and wildlife conservation, public lands management, natural resources law enforcement, public agency administration, strategic planning and leadership development.

I am excited to welcome Eric to the NOAA family. He will work with NOAA leadership, the fisheries service, his fellow assistant administrators and our many constituents to further our efforts to protect and manage the nation's fisheries, our other trust resources including marine mammals and sea turtles, and the ecosystems upon which they depend. Welcome Eric!

I would also like to take this opportunity to express my deep appreciation to Dr. Jim Balsiger, the acting assistant administrator, for his superb and sustained leadership. Jim has led the fisheries service for over two years in this capacity, far from his home in Alaska, and done so with distinction. He was especially instrumental in engaging the fishery management councils in the process of developing the draft catch shares policy. Dr. Balsiger will soon return to his position as NOAA Fisheries' regional administrator for

Alaska, but before doing so will assist Eric with his transition into the fisheries service and NOAA. I'd also like to thank the entire team at NOAA Fisheries who have done an excellent job during this period.

Sincerely,

JL

Jeffrey L. Payne, Ph.D.
Acting Deputy Chief of Staff
NOAA
Department of Commerce

14th and Constitution, NW Room 5128
Washington, DC 20230
USA

202-482-1971 (Work)
202-408-9674 (Fax)
843-834-3511 (Cell)

jeff.payne@noaa.gov (Internet)

Formatted Name

Jeffrey L. Payne, Ph.D.

Name

Family: Payne, Ph.D.

First: Jeffrey L.

Middle:

Prefix:

Suffix:

Organization

NOAA

Department of Commerce

Address

P.O. Address:

Extended Address:

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Locality: Washington

Region: DC

Postal Code: 20230

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Electronic Mail Address (Internet)

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Title

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UNITED STATES DEPARTMENT OF COMMERCE
The Deputy Under Secretary for
Operations
Washington, D.C. 20230

VIA FOIA ONLINE

December 19, 2016

Alan Stein
14301 Hanson Circle
Mendocino, CA 95460

Re: DOC-NOAA-2015-001774

Dear Mr. Stein,

This is in reference to the above-captioned FOIA request # DOC-NOAA-2015-001774 to NOAA dated 08/20/2015, in which you requested:

1. *All records relating to, or consisting of, communications — in any format — generated or received by Jane Lubchenco, the former Administrator of NOAA, regarding promotion, implementation, management or defense of a catch share or limited entry program in any area of the U.S. which has a Fisheries Management Council. Specifically included within the scope of this request, are any communications Ms Lubchenco or members of her office had with the following persons or during which she was present in the following :*
 - a. *Jim Balsiger*
 - b. *Arne Fuglvog*
 - c. *Senators Lisa Murkowski, Mark Begich, John Kerry, or Scott Brown*
 - d. *Monica Medina*
 - e. *Press Conferences or interviews*
 - f. *Congressional Hearings or meetings with members of Congress*
 - g. *Meetings with Brian Rothschild*

2. *All records relating to, or consisting of, communications — in any format² — generated or received by Jane Lubchenco, the former Administrator of NOAA, regarding the search for a candidate to be the National Marine Fisheries Services including the professional, scientific, or experiential criteria required for the job that was used for selection of candidates to interview; a listing of interviewees; communication about potential candidates; recommendations from anyone in the White House, Environmental Defense Fund, Green Peace, or Pew Charitable Trusts concerning qualified applicants; scheduling of interviews with candidates; evaluation of them; recommendations from any interest group or politician concerning potential candidates; concerns about any legal or criminal problem any candidate had; and final determination documents concerning the decision to select either a temporary or permanent head of the NMFS.*

You further clarified your request in subsequent conversations with NOAA FOIA Officer Mark Graff. On July 29, 2016, we issued our first interim response, consisting of 706 pages of records released in full. We issued our second interim response on August 25, 2016 consisting of 132 pages of records released in their entirety.



Enclosed is our final release, consisting of 355 pages of responsive records for Part 1 and 19 pages for Part 2.

In this response:

- 355 pages for Part 1 and 19 pages for Part 2 are being released in their entirety.
- 2 pages of Part 1 have been partially redacted under FOIA Exemption 6, 5 U.S.C. § 552(b) (6), because the individuals' right to privacy outweighs the general public's interest in seeing personally identifying information.

You have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this release must be received within 90 calendar days of the date of this response letter at the following address:

**Assistant General Counsel for Litigation, Employment, and Oversight
U.S. Department of Commerce
Office of General Counsel
Room 5875
14th Street and Constitution Avenue, N.W.
Washington, DC 20230**

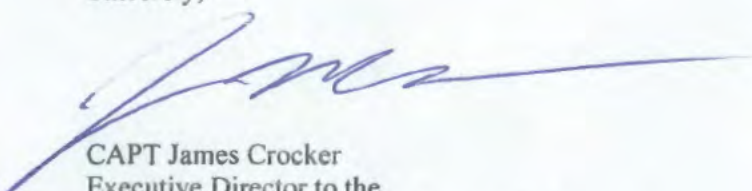
An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to 202-482-2552, or by FOIAonline at <https://foiaonline.regulations.gov/foia/action/public/home#>.

For your appeal to be complete, it must include the following items:

- A copy of the original request.
- Our response to your request.
- Your statement explaining why the determination was in error.
- "Freedom of Information Act Appeal" must appear on your appeal letter. It should also be written on your envelope, e-mail subject line, or your fax cover sheet.

FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

Sincerely,



CAPT James Crocker
Executive Director to the
Deputy Under Secretary for Operations
National Oceanic and Atmospheric Administration
1401 Constitution Ave., NW
Washington, D.C. 20230

From: John Almeida - NOAA Federal <john.almeida@noaa.gov>
Sent: Tuesday, December 20, 2016 8:25 AM
To: Deborah Ben-David - NOAA Federal; Mark Graff - NOAA Federal
Subject: New FOIA Lawsuit--Cook Inlet beluga whale
Attachments: 20161208 FOA v. NOAA Complaint.pdf

As you have probably seen, we have a new FOIA lawsuit (attached). Can we touch base on this today so I can brief Lois?

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
District of Colorado

FRIENDS OF ANIMALS, a New York non-profit corporation, and
SEA SHEPHERD LEGAL, a Washington non-profit corporation
Plaintiff(s)
v.

Civil Action No. 16-3007

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, an agency of the United States
Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Bob Troyer
United States Attorney
1225 17th Street
Suit 700
Denver, CO 80202

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Michael Harris
Wildlife Law Program
Friends of Animals
7500 E. Arapahoe Road, Suite 385
Centennial, CO 80112

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 16-3007

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):*

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
FRIENDS OF ANIMALS, a New York non-profit corporation, and SEA SHEPHERD LEGAL, a Washington non-profit corporation
(b) County of Residence of First Listed Plaintiff Arapahoe County
(c) Attorneys Michael Harris, Friends of Animals, Wildlife Law Program, 7500 E. Arapahoe Rd., Suite 385, Centennial, CO 80112; Tel: (720) 949-7791

DEFENDANTS
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, an agency of the United States
County of Residence of First Listed Defendant District of Columbia
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

II. BASIS OF JURISDICTION
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question
4 Diversity

III. CITIZENSHIP OF PRINCIPAL PARTIES
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district
6 Multidistrict litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing: 5 U.S.C 552- Failure to respond to request under the Freedom of Information Act
Brief description of cause: AP Docket

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMANDS
JURY DEMAND: Yes No

DATE: 12/08/2016
SIGNATURE OF ATTORNEY OF RECORD: /s/ Michael Ray Harris

FOR OFFICE USE ONLY
RECEIPT #
AMOUNT
APPLYING IFP
JUDGE
MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows.

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment noting, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example:

U.S. Civil Statute: 47 USC 553

Brief Description:

Unauthorized reception of cable service

Or:

"AP Docket"

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

FRIENDS OF ANIMALS, and
SEA SHEPHERD LEGAL;

Plaintiffs,

v.

NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION
an agency of the United States,

Defendant.

Civ. No. 16-3007

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF
(FREEDOM OF INFORMATION ACT)**

INTRODUCTION

1. This action is brought to remedy violations of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et. seq.* Specifically, it challenges the failure of the National Oceanic and Atmospheric Administration (“Federal Defendant”) to provide a final determination, including all responsive documents, within the time required by FOIA in regard to Plaintiffs Friends of Animals’ and Sea Shepherd Legal’s (“Plaintiffs”) April 14, 2016 request for information (“Request”).

2. In the Request, Plaintiffs asked for all documents in Federal Defendant’s possession related to pending or final approvals under the Marine Mammal Protection Act, National Environmental Policy Act and the Endangered Species Act for anthropogenic activities affecting the Cook Inlet beluga whale. Plaintiffs also sought all documents related to biological analyses and threats to the Cook Inlet beluga whale. *See* Exhibit A.

3. As of the date on this Complaint, Federal Defendant has not made a final determination regarding the release of documents, nor has Federal Defendant provided a timeline or other plan for compliance with the requirements of FOIA to indicate when or whether the Request will be fully satisfied.

4. Federal Defendant is unlawfully withholding public disclosure of information that Plaintiffs are entitled to receive under FOIA. By failing to make either a timely determination or timely and complete releases after the initial tranche of documents, Federal Defendant failed to comply with the statutory mandates and deadlines imposed by FOIA.

5. Accordingly, Plaintiffs seek declaratory relief establishing that Federal Defendant has violated FOIA. Plaintiffs also seek injunctive relief directing Federal Defendant to make a determination on the Request, provide a timeline for the release of the remaining documents, and promptly provide the requested material free of cost.

6. Plaintiffs bring this lawsuit to obtain timely disclosure of critical information related to authorized takes, and to pending authorizations of requested takes, of hundreds of Cook Inlet beluga whales from multiple and geographically overlapping oil and gas projects in the Cook Inlet. Given the significant potential impact upon the rapidly diminishing population of Cook Inlet beluga whales and the strong public interest in disclosure of information that may directly assist Plaintiffs' ongoing efforts to protect this population, Plaintiffs seek expeditious treatment of their Complaint pursuant to 28 U.S.C. § 1657.

JURISDICTION AND VENUE

7. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA) and 28 U.S.C. § 1331 (federal question). This Court may grant the declaratory relief under 28 U.S.C. §§ 2201, *et seq.* (Declaratory Judgment Act) and injunctive relief under 5 U.S.C. § 552(a)(4)(B) (FOIA). An actual, justiciable controversy exists within the meaning of the Declaratory Judgment Act between Plaintiffs and Federal Defendant. The Court has jurisdiction, upon receipt of a complaint, "to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B).

8. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B), which provides venue for FOIA cases in this district as the district in which a plaintiff resides. Friends of Animals maintains a principle office here in Colorado. Venue is also proper under 28 U.S.C. § 1391(b) because the defendant is subject to personal jurisdiction in this federal district.

PARTIES

9. Friends of Animals is a nonprofit international advocacy organization with nearly 200,000 members, incorporated in the state of New York since 1957. Friends of Animals seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living and domestic animals. Friends of Animals engages in a variety of advocacy programs in support of these goals. Friends of Animals informs its members about animal advocacy issues as well as the organization's progress in addressing these issues through its magazine called *ActionLine*, its website, and other reports. Friends of Animals has published articles and information advocating for the protection of wild species so that they can live unfettered in their natural habitats.

10. In 2013, Friends of Animals created a federal wildlife law program. The program established its principle office in Centennial, Colorado. The office consists of four full-time employees and one part-time employee. Through this office, Friends of Animals submitted the Request at issue in this action.

11. Sea Shepherd Legal is a nonprofit public interest law organization dedicated to its mission to end the destruction of habitat and slaughter of wildlife in the world's oceans in order to conserve and protect ecosystems and species. In furtherance of that mission, Sea Shepherd Legal has been involved in protecting marine life throughout the world. Sea Shepherd Legal uses public outreach and education to advocate for and motivate the creation of greater protections for cetaceans and other marine life.

12. The interests of Plaintiffs and their members are harmed by Federal Defendant's failure to release the requested documents in a timely manner, which prevents Plaintiffs

from obtaining, analyzing, disseminating and using the requested information to advance Plaintiffs' missions of ensuring the protection of marine wildlife and, in particular here, the Cook Inlet beluga whale.

13. Federal Defendant is an agency within the meaning of 5 U.S.C. § 552(f)(1). Federal Defendant is responsible for fulfilling Plaintiffs' Request and complying with all federal laws.

STATUTORY BACKGROUND

14. Congress enacted FOIA to ensure public access to U.S. government records. FOIA carries a presumption of disclosure. *Dep't of State v Ray*, 502 U.S. 164 (1991). Upon receipt of a written request that "reasonably describes" the records sought and complies with "published rules . . . and procedures to be followed," agencies of the United States government are required to "promptly" disclose their records, unless they can be lawfully withheld from disclosure under one of nine specific exemptions in FOIA. 5 U.S.C. § 552(a)(3)(A). The burden is on the government—not the requestor or public—to justify why particular information may be withheld. *Ray*, 502 U.S. at 164.

15. FOIA requires agencies to "determine within 20 days . . . after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefore, and of the right of such person to appeal to the head of the agency any adverse determination." *Id.* at § 552(a)(6)(A)(i).

16. On determination by an agency to comply with the request, the records shall be made "promptly available." *Id.* at § 552(a)(6)(C).

17. In "unusual circumstances," an agency may extend the time limits for up to 10 working days by providing written notice to the requester setting forth the unusual circumstance(s) and the date on which the determination is expected to be dispatched. *Id.* at § 552(a)(6)(B).

18. In some limited circumstances, FOIA allows an agency to seek an extension potentially beyond 10 days. Specifically, FOIA requires an agency to provide written notification to the requester: (1) offering an opportunity to limit the scope of the request so that it may be processed within the 20 work-day limit, or (2) offering an opportunity to arrange with the agency an “alternative time frame” for processing the request. *Id.* at § 552(a)(6)(B)(ii). If the agency elects this option, it must make its FOIA Public Liaison available to the requester to assist in any disputes with the agency. *Id.*

19. If the agency fails to make a determination on a document request within 20 work-days, or within the limited additional time permitted upon proper notification of “unusual circumstances,” the requester is deemed to have constructively exhausted administrative remedies and may seek judicial review. *Id.* at § 552(a)(6)(C). *Oglesby v. Dep’t of Army*, 920 F.2d 57(D.C. Cir 1990), *Nurse v. Sec’y of the Air Force*, 231 F. Supp. 2d 323, 328 (D.D.C. 2002) (“The FOIA is considered a unique statute because it recognizes a constructive exhaustion doctrine for purposes of judicial review upon the expiration of certain relevant FOIA deadlines.”)

20. FOIA requires that the agency “shall make the records promptly available to any person” and may not defer release of responsive documents indefinitely. *Id.* at § 552 (a)(3)(A). Failure to issue a determination and to complete the release of documents in a timely fashion is a violation of FOIA even if the initial response and releases may have been prompt. *Munger, Tolles, Olsen v. Dept. of Army*, 58 F. Supp. 3d 1050 (C.D. Cal 2014). *See also Fiduccia v. U.S. Dep’t of Justice*, 185 F.3d 1035, 1041 (9th Cir. 1999)(“Congress gave agencies 20 days, not years, to decide whether to comply with requests and notify the requesters”); *Long v. IRS*, 693 F.2d 907, 910 (9th Cir. 1982) (“[U]nreasonable delays in disclosing non-exempt documents violate the intent and purpose of the FOIA, and the courts have a duty to prevent these abuses.”).

FACTUAL BACKGROUND

21. On April 12, 2016, Plaintiffs submitted the Request under FOIA to Federal Defendant reasonably describing all documents of which Plaintiffs sought disclosure.

22. On April 21, 2016, Federal Defendant provided written notification confirming receipt of the Request and disclosing that the Request had been assigned for processing on April 14, 2016.

23. In the confirmation, Federal Defendant did not request any additional information needed to clarify the Request. Federal Defendant did request a Scope Conference with Friends of Animals.

24. On April 29, 2016, Federal Defendant and Friends of Animals conducted the Scope Conference. During this conference, Federal Defendant did not request any additional information needed to clarify the Request but asked Plaintiffs to prioritize the individual document categories identified in the Request. Friends of Animals instructed Federal Defendant to proceed with the original FOIA request, but agreed to send a letter outlining the priorities of the original FOIA request.

25. On May 10, 2016, Friends of Animals submitted a letter to Federal Defendant outlining the top priorities of the original FOIA request. In that letter, Friends of Animals stated as follows: "As discussed on the April 29, 2016 conference call, Friends of Animals has not changed or altered the original request, nor are we waiving under [sic] rights under FOIA. We provide the following priorities merely to assist the agency in processing our request."

26. On May 16, 2016, Federal Defendant confirmed receipt of Friends of Animals' May 10 letter outlining the top priorities of the original FOIA request and indicated the need for a 10-day extension due to "unusual circumstances." Federal Defendant further stated that the first interim release of records could be anticipated on May 25, 2016.

27. The 20 work-day time limit for providing a determination on the Request commenced on April 14 and, thus, expired on May 12, 2016.

28. Federal Defendant made two interim releases of documents. The first release was dated June 9, 2016. The second was dated July 26, 2016 (but not received until August 29, 2016).

29. Since August 29, 2016, no further documents have been released.

30. Since August 29, 2016, Federal Defendant has not provided any timeline for the release of any remaining documents.

31. As of the date of this complaint, Plaintiffs have not received a final determination on their Request.

32. Plaintiffs believe and allege that Federal Defendant is unlawfully withholding public disclosure of information sought by Plaintiffs, information to which they are entitled to receive promptly, and for which Federal Defendant has not provided a valid disclosure exemption.

33. Federal Defendant has offered no reasonable explanation for its delay, and it has failed to estimate when it will finally be able to comply with its obligations under FOIA.

34. Since Federal Defendant has neither produced responsive documents nor provided an appealable final determination, Plaintiffs have constructively exhausted their administrative remedies with respect to the requested documents.

CLAIM FOR RELIEF
Violation of Freedom of Information Act
Failure to Respond with a Determination

35. Plaintiffs herein incorporate all allegations contained in the proceeding paragraphs.

36. FOIA provides that any person may obtain those agency records that are not subject to the FOIA disclosure exemptions promptly. 5 U.S.C. § 552 (a)(3)(A).

37. Plaintiffs properly requested records within the control of Federal Defendant.

38. Federal Defendant failed to provide Plaintiffs with a final determination as to whether Federal Defendant has any non-exempt records responsive to the Request and whether it intended to release such records within the required timeframe. *Id.* § 552(a)(6)(A)(i) and § 552(a)(6)(B).

39. Federal Defendant failed to properly invoke and comply with FOIA's provision allowing a 10 working day extension for "unusual circumstances." *Id.* at § 552(a)(6)(B)(i).

40. Federal Defendant failed to properly invoke and comply with FOIA's provision permitting an extension of potentially greater than 10 working days by offering Plaintiffs an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. *Id.* at § 552(a)(6)(B)(ii).

41. Federal Defendant has failed to promptly make available responsive documents without unreasonable delay.

42. Federal Defendant's failures to comply with FOIA are subject to judicial review under 5 U.S.C. § 552 (a)(4)(B). Federal Defendant's failure to issue a determination within the statutory deadlines violates 5 U.S.C. § 552 (a)(3)(A).

43. Accordingly, Plaintiffs are entitled to injunctive and declaratory relief with respect to a determination on the Request.

PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court enter judgment providing the following relief:

1. Declare that Federal Defendant violated FOIA by failing to (1) make a determination on Plaintiffs' Request and (2) make records responsive to Plaintiffs' Request available within the statutory deadlines.
2. Order Federal Defendant to (1) provide Plaintiffs with a final determination and (2) process and release all records responsive to the Request at no cost to Plaintiffs within 10 days from the date of such order;

3. Retain jurisdiction of this action to ensure the processing of the Request, and to ensure that no agency records are wrongfully withheld;
4. Award Plaintiffs costs, including reasonable attorney fees and litigation costs in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
5. Grant Plaintiffs any other relief that the Court deems just and proper.

Dated: December 08, 2016

Respectfully Submitted,

/s/ Michael Harris
Michael Ray Harris
Director, Wildlife Law Program
Friends of Animals
7500 E. Arapahoe Road, Suite 385
Centennial, CO 80112
720-949-7791
michaelharris@friendsofanimals.org

Attorney for Plaintiff Friends of Animals

/s/ Brett Sommermeyer
Brett Sommermeyer (admission pending)
Legal Director
Sea Shepherd Legal
2226 Eastlake Ave., E.
No. 108
Seattle, WA 98102
brett@seashepherdlegal.org

Attorney for Plaintiff Sea Shepherd Legal

EXHIBIT A

~~EXPLOITERS~~
FRIENDS
of ANIMALS

April 12, 2016

Submitted Via U.S Certified Mail and FOIAonline

National Oceanic and Atmospheric Administration
Public Reference Facility (SOU1000)
1315 East-West Highway (SSMC3)
Room 9719
Silver Spring, Maryland 20910

Re: FOIA Request for Records Relating to Incidental Harassment Authorizations
Issued for Activities Impacting Cook Inlet Beluga Whales in Federal Waters
Administered by the National Oceanic and Atmospheric Administration

Dear FOIA Officer:

I am writing on behalf of Friends of Animals, Sea Shepherd Legal, and the Turtle Island Restoration Network (collectively, the "Requesters"). Pursuant to 43 C.F.R. Part 2, and the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, Requesters seek the disclosure of all documents¹ in the categories listed below regarding the harassment of the distinct population segment of Cook Inlet beluga whales in waters managed by the National Oceanic and Atmospheric Administration ("NOAA"). Unless otherwise specified, Requesters seek all documents for the time period starting January 26th, 2007 and ending April 11, 2016. Requesters also request a full waiver of all search and duplication fees.

¹ The terms "document(s)" and "records" are used in the broadest sense contemplated by Federal Rule of Civil Procedure 34. It means all written, transcribed, recorded or graphic matters, however produced or reproduced. This definition includes, but is not limited to, any and all original copies or drafts of any and all of the following: records; notes; nonconforming copies that contain deletions, insertions, corrections, handwritten notes or comment summaries; memoranda; schedules; contracts; binders; work papers; logs; diaries; work sheets; files; letters; correspondence; summaries of memoranda; reports or memoranda of telephone conversations or records of personal conversations or interviews; handwritten notes; telephone logs; facsimiles; summaries; invoices; promissory notes; contracts; loan agreements; vouchers; billing statements; tape recordings or transcripts of tape recordings; photographs; videotapes; computerized output or data bases; electronic files; computer disks; computer CDs; electronic mail transmittals; data and all other writings; calculations; and figures or symbols of any kind which, in any manner mentioned, relate to the subjects of the specific requests contained below. This request includes all documents that have ever been within your custody or control, including all inter and intra agency documents, whether they exist in agency working, investigative, retired, electronic mail, or other files currently or at any other time.

A. FOIA Request.

Over the course of several years, NOAA has issued multiple Letters of Authorization (“LoA”) and Incidental Harassment Authorizations (“IHA”) for Level B takes of Cook Inlet beluga whales under the Marine Mammal Protection Act (“MMPA”) incidental to anthropogenic activities in Cook Inlet. Under the MMPA, Level B takes have “the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, feeding, or sheltering.” 16 U.S.C. § 1362(18).

Please provide the following documents in your possession, whether received, created, and/or distributed by NOAA:

- (1) All documents regarding the status of any pending anthropogenic activities in the Cook Inlet area for which IHAs or LoAs have been requested for takes of Cook Inlet belugas;
- (2) All documents regarding the final IHAs or LoAs issued for anthropogenic activities in Cook Inlet, including all documents supporting a “negligible” impact finding pursuant to the MMPA;
- (3) All documents, including research or commentary, not currently available to the public concerning the specific effects of anthropogenic noise or cumulative effects of Level B takes on the Cook Inlet beluga population;
- (4) All documents regarding the cumulative or synergistic effects of Level B takes of Cook Inlet beluga whales resulting from anthropogenic development activities over the past ten years (2007-2016);
- (5) All documents regarding Level A² takes of Cook Inlet belugas resulting from anthropogenic activities;
- (6) All documents regarding the status of NOAA’s preparation of the programmatic EA and EIS analyzing takes of marine mammals of Cook Inlet incidental to anthropogenic activities and all records of anticipated new agency actions or research pertaining to Cook Inlet belugas;
- (7) All documents regarding the preparation of the final recovery plan for Cook Inlet belugas under the federal Endangered Species Act (“ESA”);
- (8) All documents regarding any limiting factors analysis completed or in progress for Cook Inlet belugas;
- (9) All documents regarding any prioritization of threats to Cook Inlet belugas;
- (10) All documents of any accounting(s) of anthropogenic activities in the Cook Inlet that may result in the taking of a beluga whale;

² As defined as having “the potential to injure a marine mammal or marine mammal stock in the wild.” 16 U.S.C. § 1362(18)(A)(i).

- (11) All documents regarding any population monitoring for Cook Inlet belugas planned or in progress for 2016;
- (12) All documents regarding any population monitoring for Cook Inlet belugas conducted within the last three years, including any population surveys (or similar activities) in proposed project areas conducted by the applicant(s) for an IHA or LoA;
- (13) All documents regarding any formal or informal consultations involving Cook Inlet belugas under Section 7 of the ESA.

The items specifically requested are not meant to be exclusive of any other documents that, although not specially requested, have a reasonable relationship to the subject matter of this request.

For purposes of this request, "anthropogenic activities" are defined to encompass any activity wholly or substantially relating to vessel or aircraft noise (if vessel or aircraft movements are products of an anthropogenic project), ship traffic, including strikes, dredging, pile driving, explosions, demolition, sonar use, oil and gas exploration (including seismic operations, drilling, platform noise, airguns, multibeam echosounders, and sub-bottom profilers), shore construction, military testing activities (i.e. explosions, sonar), pipe and cable laying, water pollution and any other activities reasonably affiliated with anthropogenic projects.

The Supreme Court has stated that FOIA establishes a "strong presumption in favor of disclosure" of requested information, and that the burden is on the government to substantiate why information may not be released under the act's various exemptions. *Department of State v. Ray*, 502 U.S. 164, 173 (1991). Congress affirmed these tenets of FOIA in the Open Government Act of 2007, finding that "the Government [should] remain open and accessible to the American people" and always be based "not upon the need to know but upon the fundamental right to know." Public Law 110-175, 121 Stat. 2524, 2525 (Dec. 31, 2007) (internal citations omitted). President Obama has also directed that "[t]he presumption of disclosure should be applied to all decisions involving FOIA." 74 Fed. Reg. 4683 (Jan. 26, 2009). Please consider the foregoing before withholding any documents that are responsive to this request.

The Requesters anticipate that you will make the requested materials available within the statutorily prescribed period. We also request that you waive any applicable fees since disclosure meets the statutory standard for a fee waiver in that it is clearly "in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii).

B. Fee Waiver Request.

FOIA provides that "documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). The legislative history of FOIA, as well as the case law interpreting the Act, indicates that the statute's fee waiver provision is to be liberally construed favoring the public interest. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 Cong. Rec. S14298 (Sept. 30, 1986) (Sen. Leahy)).

This request for information qualifies for a fee waiver under this standard and, accordingly, we request that all fees be waived. This request satisfies both statutory and regulatory requirements for granting a fee waiver. Below we explain how the request and the Requesters meet each of requirements for a fee waiver delineated in NOAA's FOIA regulations (under its parent agency, the Department of Commerce) 15 CFR § 4.11(k).

1. Disclosure of the Information Requested is in the Public Interest.

(i) *"The subject of the request: whether the subject of the requested records concerns the operations or activities of the Government."*

The requested records concern the operations and activities of NOAA, a federal agency. Specifically, they concern the operation of this federal agency, its management of federally protected Cook Inlet beluga whales, and its permitting decision-making process.

(ii) *"The informative value of the information to be disclosed: whether the disclosure is 'likely to contribute' to an understanding of Government operations or activities."*

(a) How the contents of the records are meaningfully informative;

The requested documents would have substantive, meaningfully informative value and would be likely to contribute to a better understanding of NOAA and its actions. The documents will illuminate in a clear and direct way the operations and activities of the federal government and the activities that it undertakes in regards to management of Cook Inlet beluga whales and the anthropogenic projects that affect them. Although Cook Inlet beluga whales have been in the public spotlight in recent years due to their dwindling numbers and Endangered Species Act listing in 2008, not much is definitively known about the Level B take, cumulative, and noise pollution impacts on Cook Inlet beluga whales from anthropogenic activities. The information requested concerns the operations of the agency responsible for approving activities that have the potential to seriously injure or even kill Cook Inlet

beluga whales and the details of NOAA's past and current permitting decisions and decision-making process in regards to these whales.

- (b) The logical connection between the content of the records and the operations or activities;

The release of the requested documents will significantly contribute to public understanding and oversight of the federal government's operations. For example, the records will help the public understand the status of current Cook Inlet projects, how often and to which activities the federal government authorizes Level B takes, how the government evaluates the significance of cumulative and noise impacts, and the process by which the government makes decisions that affect Cook Inlet beluga whales.

- (iii) *"The contribution to an understanding of the subject by the public likely to result from disclosure: whether disclosure of the requested information will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester."*

Friends of Animals:

Friends of Animals is a nonprofit, international animal advocacy organization incorporated in the state of New York since 1957. Friends of Animals seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living, and domestic animals. The public impact of this disclosed information would be magnified through Friends of Animals' public engagement mechanisms. Friends of Animals has a proven track record of contributing to public understanding of issues surrounding animal advocacy and human-wildlife interactions.

Friends of Animals informs its members about animal advocacy issues, as well as the organization's progress in addressing such issues, through its quarterly magazine called *ActionLine*, its website, and other reports. Friends of Animals has published articles and information advocating for the protection of animals so that they can live unfettered in their natural habitat. In particular, Friends of Animals has a long-standing commitment to protecting animals imperiled due to human-caused activities. Friends of Animals regularly publicizes information about wildlife. Friends of Animals employs several experts who are able to quickly digest and circulate the information obtained from this request, including attorneys and media correspondents.

Friends of Animals plans to disseminate the requested information to Friends of Animals' members, members of other conservation organizations, and other interested members of the public through its website, its quarterly magazine,

and through outreach to other media outlets. By disseminating and distributing this information, Friends of Animals will significantly contribute to the public's understanding of how the government manages harassment of Cook Inlet beluga whales. Friends of Animals also informs its members about animal advocacy issues—including government management of birds, wild horses, and other wildlife—through lawsuits.

Friends of Animals staff has the ability to review, consolidate, and disseminate this information to the public. By consolidating and releasing the information, Friends of Animals will significantly enhance the public's understanding of how the government is currently operating. Additionally, the requested information will constitute a significant contribution to public understanding because it will allow Friends of Animals and the public to determine how the federal government's actions are impacting Cook Inlet beluga whales and whether the federal government has met its obligations under the National Environmental Policy Act, the Marine Mammal Protection Act, and Endangered Species Act.

Sea Shepherd Legal

Sea Shepherd Legal is an international, nonprofit, public interest environmental law firm with a mission to save marine wildlife and habitats by enforcing, strengthening, and developing protective laws, treaties, policies, and practices worldwide. Sea Shepherd Legal works on a range of matters from ensuring proper governmental agency action to developing innovative policy approaches, in order to encourage greater protections for marine wildlife and ecosystems. Public outreach is a key aspect of Sea Shepherd Legal's work.

Sea Shepherd Legal engages in public outreach in order to raise awareness about marine conservation facts, law, resources and tools. Through outreach and education, Sea Shepherd Legal promotes public understanding regarding the importance of biodiversity conservation and how members of the public can play an essential role in protecting marine wildlife and habitats.

Sea Shepherd Legal's general public outreach work involves the bi-weekly publication of a blog, disseminating information regarding marine wildlife protection through social media, and initiating calls to action through online campaign petitions. Related Sea Shepherd entities selectively disseminate these materials to more than one million followers.

The public has a right to know which wildlife species and habitats are at risk, the nature of such risk – including anthropogenic impacts, the role the government is required to play in assessing and mitigating risks, and the government's official response thereto. Through its extensive public outreach endeavors, Sea Shepherd

Legal will ensure that the public acquires this knowledge.

Turtle Island Restoration Network

Turtle Island Restoration Network (“TIRN”) is an international public interest non-profit with a strong track record of disseminating information from FOIA requests to its own membership, decision-makers, the media and the general public. TIRN is a non-profit organization that informs, educates, and counsels the public regarding environmental issues, policies, and laws relating to imperiled species, including marine species. TIRN has been substantially involved in the management activities of numerous government agencies for years, and has consistently displayed its ability to disseminate information granted to it through FOIA requests. As a long established advocacy organization, our informational publications supply information not only to our membership, but also to the memberships of most other conservation organizations, locally as well as nationally. Our informational publications continue to contribute information to public media outlets, as well. TIRN routinely disseminates such information through e-mail alerts and newsletters, which are sent to over 200,000 members and activists. In addition, we disseminate information through our websites, which receives over 100,000 page views per month. Furthermore, we bring such information to our partner organizations and to the media for dissemination to the membership of other organizations and the public at large. Information and our analyses of NMFS’s compliance with the MSA, the MMPA and the ESA will likely be disseminated through all of these means.

TIRN will publicize the results of any analysis of the data to inform the public about the policy choices and information regarding the management of anthropogenic impacts to the Cook Inlet Beluga Whale. This is certain to result in a significant increase in public understanding of government agency activity, especially NOAA’s approach to the conservation of marine species. In addition to informing the public about information relevant to policy and management, TIRN has a proven track record of enforcing environmental laws and publicizing agency compliance with the provisions of various environmental laws through information gained from FOIA requests like this one. TIRN intends to use the documents requested in this request in a similar manner, as appropriate.

- (iv) *“The significance of the contribution to public understanding: whether the disclosure is likely to contribute ‘significantly’ to public understanding of Government operations or activities.”*

Requesters seek the requested documents to increase their understanding, and subsequently contribute to public understanding, of how the federal government is managing activities that affect Cook Inlet beluga whales in Alaska. Many anthropogenic projects are approved by NOAA each year, many of them

granted Level B takes of marine mammals, and the government claims that these actions have a negligible effect on marine mammals. However, the public does not have access to all of the documents available to NOAA and thus cannot understand exactly how NOAA makes its non-negligible impact determinations during agency review of project applications. Additionally, the public cannot understand the justifications used by NOAA staff, its decision-making process, or how risks associated with permitting are assessed without more information about the operations of NOAA.

If the information is not disclosed to the Requesters, the public will remain uninformed about what activities the federal government conducts and authorizes. Disclosure, however, will permit the Requesters to disseminate information to the public, and it will increase transparency surrounding the federal government's activities. This is particularly important because NEPA grants the public a right to this information and a right to participate in federal decisions, such as commenting on proposed anthropogenic activities in Cook Inlet.

The information requested is not, to our knowledge, publicly available. The government may omit sending us requested records that are available in publicly accessible forums (e.g. Internet) or in published materials that are routinely available at public or university libraries. If the government chooses to omit such information, please provide the Requesters with adequate references and/or website links so that we may obtain these materials on our own. We would request that the government provide us with an index of such omitted documents, so that we may have reasonable certainty that we have access to the complete record regarding the management and protection of the Cook Inlet Beluga whales. However, we suspect that the majority of requested materials will not be available unless we receive them from the government in satisfaction of this FOIA request.

2. Disclosure of the Information is Not Primarily in the Commercial Interest of the Requester

When considering whether a request for a fee waiver meets the second prong of the fee waiver requirement, the agency is directed to consider: (1) "whether or not the requester has a commercial interest that would be furthered by the requested disclosure," and (2) "the primary interest in disclosure," i.e. whether the interest of the requester is primarily commercial or public.

None of the Requesters have a commercial, trade, or profit interest in the requested records. In fact, the Requesters do not have any commercial, trade, or profit interests.

Friends of Animals is a non-profit, international animal advocacy organization, incorporated in the state of New York since 1957. It serves the public interest by increasing the general public's awareness of animal advocacy issues and

by teaching how to end animal cruelty and exploitation around the world. Friends of Animals seeks to promote a respectful view of nonhuman, free-living and domestic animals. The Internal Revenue Service recognizes Friends of Animals as a 501(c)(3) tax-exempt organization (IRS Employer Identification#: 13-6018549). Friends of Animals' successful and well-orchestrated public education programs on animal advocacy issues and government operations merit granting a fee waiver for the requested records.

Sea Shepherd Legal was established in 2014 for the purpose of saving marine wildlife and habitats by enforcing, strengthening, and developing protective laws, treaties, policies, and practices worldwide. Sea Shepherd Legal works on a range of matters to ensure greater protections for marine wildlife and ecosystems, via the use of tools including litigation, policy development and public outreach. The IRS recognizes Sea Shepherd Legal as a public interest environmental law firm. Sea Shepherd Legal's EIN number is 47-2272507.

Turtle Island Restoration Network is a 501(c)(3) that has been working to protect marine wildlife, especially sea turtles, but also marine mammals and other endangered species, since the early 1980s. TIRN works through a combination of legal and advocacy strategies and grassroots organizing and education to strengthen protections worldwide. TIRN's EIN is 91-1818080.

CONCLUSION

Please produce the records regarding this FOIA request by electronic mail to wlp_admin@friendsofanimals.org or to the physical address listed below:

Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112

Please produce the records on a rolling basis to the extent possible; at no point should the search for—or the deliberation concerning—certain records delay the production of others that the federal government has already retrieved and elected to produce.

Thank you for your attention to this request. If you have any questions about the requested documents or the requested fee waiver, please do not hesitate to contact me at 720-949-7791 or at wlp_admin@friendsofanimals.org.

Sincerely,



Kaylee Dolen, Administrative Assistant

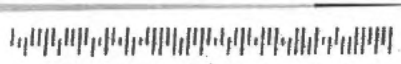
Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112
720-949-7791
wlp_admin@friendsofanimals.org

RECEIVED

2016 DEC 12 PM 1:48

U.S. DISTRICT COURT
DISTRICT OF COLORADO
CENTENNIAL

harris
Law P
Animal
Arapahoe Rd. Suite 385
A, CO 80112



MAIL



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MAILED DEC 09 2016
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RETURN RECEIPT
REQUESTED

T.D.
12/11/2016

Bob Troyer
United States Attorney
1225 17th Street
Suite 700
Denver, CO 80202

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Tuesday, December 20, 2016 8:37 AM
To: Dennis Morgan - NOAA Federal; Robert Swisher - NOAA Federal
Subject: Fwd: New FOIA Lawsuit--Cook Inlet beluga whale
Attachments: 20161208 FOA v. NOAA Complaint.pdf

FYI, we have a new FOIA Lawsuit--

I'll have a teleconference with GC later in the day.

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) (C)

Confidentiality Notice: This e mail message is intended only for the named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.

----- Forwarded message -----

From: John Almeida - NOAA Federal <john.almeida@noaa.gov>
Date: Tue, Dec 20, 2016 at 8:25 AM
Subject: New FOIA Lawsuit--Cook Inlet beluga whale
To: Deborah Ben-David - NOAA Federal <deborah.ben-david@noaa.gov>, Mark Graff - NOAA Federal <mark.graff@noaa.gov>

As you have probably seen, we have a new FOIA lawsuit (attached). Can we touch base on this today so I can brief Lois?

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Colorado

FRIENDS OF ANIMALS, a New York non-profit corporation, and SEA SHEPHERD LEGAL, a Washington non-profit corporation
Plaintiff(s)
v.

Civil Action No. 16-3007

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, an agency of the United States
Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Bob Troyer
United States Attorney
1225 17th Street
Suit 700
Denver, CO 80202

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Michael Harris
Wildlife Law Program
Friends of Animals
7500 E. Arapahoe Road, Suite 385
Centennial, CO 80112

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 16-3007

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
FRIENDS OF ANIMALS, a New York non-profit corporation, and
SEA SHEPHERD LEGAL, a Washington non-profit corporation
(b) County of Residence of First Listed Plaintiff Arapahoe County
(c) Attorneys (Firm Name, Address, and Telephone Number)
Michael Harris
Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Suite 385, Centennial, CO 80112; Tel: (720) 949-7791

DEFENDANTS
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, an agency of the
United States
County of Residence of First Listed Defendant District of Columbia
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question
4 Diversity

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country

IV. NATURE OF SUIT (Place an "X" in One Box Only)
Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, TAX SUITS, OTHER STATUTES

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district
6 Multidistrict litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
5 U.S.C 552- Failure to respond to request under the Freedom of Information Act
Brief description of cause: AP Docket

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMANDS
CHECK YES only if demanded in complaint.
JURY DEMAND: Yes No

DATE: 12/08/2016
SIGNATURE OF ATTORNEY OF RECORD: /s/ Michael Ray Harris

FOR OFFICE USE ONLY
RECEIPT #
AMOUNT
APPLYING IFP
JUDGE
MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows.

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment noting, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example:

U.S. Civil Statute: 47 USC 553

Brief Description:

Unauthorized reception of cable service

Or:

"AP Docket"

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

FRIENDS OF ANIMALS, and
SEA SHEPHERD LEGAL;

Plaintiffs,

v.

NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION
an agency of the United States,

Defendant.

Civ. No. 16-3007

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF
(FREEDOM OF INFORMATION ACT)**

INTRODUCTION

1. This action is brought to remedy violations of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et. seq.* Specifically, it challenges the failure of the National Oceanic and Atmospheric Administration (“Federal Defendant”) to provide a final determination, including all responsive documents, within the time required by FOIA in regard to Plaintiffs Friends of Animals’ and Sea Shepherd Legal’s (“Plaintiffs”) April 14, 2016 request for information (“Request”).

2. In the Request, Plaintiffs asked for all documents in Federal Defendant’s possession related to pending or final approvals under the Marine Mammal Protection Act, National Environmental Policy Act and the Endangered Species Act for anthropogenic activities affecting the Cook Inlet beluga whale. Plaintiffs also sought all documents related to biological analyses and threats to the Cook Inlet beluga whale. *See* Exhibit A.

3. As of the date on this Complaint, Federal Defendant has not made a final determination regarding the release of documents, nor has Federal Defendant provided a timeline or other plan for compliance with the requirements of FOIA to indicate when or whether the Request will be fully satisfied.

4. Federal Defendant is unlawfully withholding public disclosure of information that Plaintiffs are entitled to receive under FOIA. By failing to make either a timely determination or timely and complete releases after the initial tranche of documents, Federal Defendant failed to comply with the statutory mandates and deadlines imposed by FOIA.

5. Accordingly, Plaintiffs seek declaratory relief establishing that Federal Defendant has violated FOIA. Plaintiffs also seek injunctive relief directing Federal Defendant to make a determination on the Request, provide a timeline for the release of the remaining documents, and promptly provide the requested material free of cost.

6. Plaintiffs bring this lawsuit to obtain timely disclosure of critical information related to authorized takes, and to pending authorizations of requested takes, of hundreds of Cook Inlet beluga whales from multiple and geographically overlapping oil and gas projects in the Cook Inlet. Given the significant potential impact upon the rapidly diminishing population of Cook Inlet beluga whales and the strong public interest in disclosure of information that may directly assist Plaintiffs' ongoing efforts to protect this population, Plaintiffs seek expeditious treatment of their Complaint pursuant to 28 U.S.C. § 1657.

JURISDICTION AND VENUE

7. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA) and 28 U.S.C. § 1331 (federal question). This Court may grant the declaratory relief under 28 U.S.C. §§ 2201, *et seq.* (Declaratory Judgment Act) and injunctive relief under 5 U.S.C. § 552(a)(4)(B) (FOIA). An actual, justiciable controversy exists within the meaning of the Declaratory Judgment Act between Plaintiffs and Federal Defendant. The Court has jurisdiction, upon receipt of a complaint, "to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B).

8. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B), which provides venue for FOIA cases in this district as the district in which a plaintiff resides. Friends of Animals maintains a principle office here in Colorado. Venue is also proper under 28 U.S.C. § 1391(b) because the defendant is subject to personal jurisdiction in this federal district.

PARTIES

9. Friends of Animals is a nonprofit international advocacy organization with nearly 200,000 members, incorporated in the state of New York since 1957. Friends of Animals seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living and domestic animals. Friends of Animals engages in a variety of advocacy programs in support of these goals. Friends of Animals informs its members about animal advocacy issues as well as the organization's progress in addressing these issues through its magazine called *ActionLine*, its website, and other reports. Friends of Animals has published articles and information advocating for the protection of wild species so that they can live unfettered in their natural habitats.

10. In 2013, Friends of Animals created a federal wildlife law program. The program established its principle office in Centennial, Colorado. The office consists of four full-time employees and one part-time employee. Through this office, Friends of Animals submitted the Request at issue in this action.

11. Sea Shepherd Legal is a nonprofit public interest law organization dedicated to its mission to end the destruction of habitat and slaughter of wildlife in the world's oceans in order to conserve and protect ecosystems and species. In furtherance of that mission, Sea Shepherd Legal has been involved in protecting marine life throughout the world. Sea Shepherd Legal uses public outreach and education to advocate for and motivate the creation of greater protections for cetaceans and other marine life.

12. The interests of Plaintiffs and their members are harmed by Federal Defendant's failure to release the requested documents in a timely manner, which prevents Plaintiffs

from obtaining, analyzing, disseminating and using the requested information to advance Plaintiffs' missions of ensuring the protection of marine wildlife and, in particular here, the Cook Inlet beluga whale.

13. Federal Defendant is an agency within the meaning of 5 U.S.C. § 552(f)(1). Federal Defendant is responsible for fulfilling Plaintiffs' Request and complying with all federal laws.

STATUTORY BACKGROUND

14. Congress enacted FOIA to ensure public access to U.S. government records. FOIA carries a presumption of disclosure. *Dep't of State v Ray*, 502 U.S. 164 (1991). Upon receipt of a written request that "reasonably describes" the records sought and complies with "published rules . . . and procedures to be followed," agencies of the United States government are required to "promptly" disclose their records, unless they can be lawfully withheld from disclosure under one of nine specific exemptions in FOIA. 5 U.S.C. § 552(a)(3)(A). The burden is on the government—not the requestor or public—to justify why particular information may be withheld. *Ray*, 502 U.S. at 164.

15. FOIA requires agencies to "determine within 20 days . . . after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefore, and of the right of such person to appeal to the head of the agency any adverse determination." *Id.* at § 552(a)(6)(A)(i).

16. On determination by an agency to comply with the request, the records shall be made "promptly available." *Id.* at § 552(a)(6)(C).

17. In "unusual circumstances," an agency may extend the time limits for up to 10 working days by providing written notice to the requester setting forth the unusual circumstance(s) and the date on which the determination is expected to be dispatched. *Id.* at § 552(a)(6)(B).

18. In some limited circumstances, FOIA allows an agency to seek an extension potentially beyond 10 days. Specifically, FOIA requires an agency to provide written notification to the requester: (1) offering an opportunity to limit the scope of the request so that it may be processed within the 20 work-day limit, or (2) offering an opportunity to arrange with the agency an “alternative time frame” for processing the request. *Id.* at § 552(a)(6)(B)(ii). If the agency elects this option, it must make its FOIA Public Liaison available to the requester to assist in any disputes with the agency. *Id.*

19. If the agency fails to make a determination on a document request within 20 work-days, or within the limited additional time permitted upon proper notification of “unusual circumstances,” the requester is deemed to have constructively exhausted administrative remedies and may seek judicial review. *Id.* at § 552(a)(6)(C). *Oglesby v. Dep’t of Army*, 920 F.2d 57(D.C. Cir 1990), *Nurse v. Sec’y of the Air Force*, 231 F. Supp. 2d 323, 328 (D.D.C. 2002) (“The FOIA is considered a unique statute because it recognizes a constructive exhaustion doctrine for purposes of judicial review upon the expiration of certain relevant FOIA deadlines.”)

20. FOIA requires that the agency “shall make the records promptly available to any person” and may not defer release of responsive documents indefinitely. *Id.* at § 552(a)(3)(A). Failure to issue a determination and to complete the release of documents in a timely fashion is a violation of FOIA even if the initial response and releases may have been prompt. *Munger, Tolles, Olsen v. Dept. of Army*, 58 F. Supp. 3d 1050 (C.D. Cal 2014). *See also Fiduccia v. U.S. Dep’t of Justice*, 185 F.3d 1035, 1041 (9th Cir. 1999)(“Congress gave agencies 20 days, not years, to decide whether to comply with requests and notify the requesters”); *Long v. IRS*, 693 F.2d 907, 910 (9th Cir. 1982) (“[U]nreasonable delays in disclosing non-exempt documents violate the intent and purpose of the FOIA, and the courts have a duty to prevent these abuses.”).

FACTUAL BACKGROUND

21. On April 12, 2016, Plaintiffs submitted the Request under FOIA to Federal Defendant reasonably describing all documents of which Plaintiffs sought disclosure.

22. On April 21, 2016, Federal Defendant provided written notification confirming receipt of the Request and disclosing that the Request had been assigned for processing on April 14, 2016.

23. In the confirmation, Federal Defendant did not request any additional information needed to clarify the Request. Federal Defendant did request a Scope Conference with Friends of Animals.

24. On April 29, 2016, Federal Defendant and Friends of Animals conducted the Scope Conference. During this conference, Federal Defendant did not request any additional information needed to clarify the Request but asked Plaintiffs to prioritize the individual document categories identified in the Request. Friends of Animals instructed Federal Defendant to proceed with the original FOIA request, but agreed to send a letter outlining the priorities of the original FOIA request.

25. On May 10, 2016, Friends of Animals submitted a letter to Federal Defendant outlining the top priorities of the original FOIA request. In that letter, Friends of Animals stated as follows: "As discussed on the April 29, 2016 conference call, Friends of Animals has not changed or altered the original request, nor are we waiving under [sic] rights under FOIA. We provide the following priorities merely to assist the agency in processing our request."

26. On May 16, 2016, Federal Defendant confirmed receipt of Friends of Animals' May 10 letter outlining the top priorities of the original FOIA request and indicated the need for a 10-day extension due to "unusual circumstances." Federal Defendant further stated that the first interim release of records could be anticipated on May 25, 2016.

27. The 20 work-day time limit for providing a determination on the Request commenced on April 14 and, thus, expired on May 12, 2016.

28. Federal Defendant made two interim releases of documents. The first release was dated June 9, 2016. The second was dated July 26, 2016 (but not received until August 29, 2016).

29. Since August 29, 2016, no further documents have been released.

30. Since August 29, 2016, Federal Defendant has not provided any timeline for the release of any remaining documents.

31. As of the date of this complaint, Plaintiffs have not received a final determination on their Request.

32. Plaintiffs believe and allege that Federal Defendant is unlawfully withholding public disclosure of information sought by Plaintiffs, information to which they are entitled to receive promptly, and for which Federal Defendant has not provided a valid disclosure exemption.

33. Federal Defendant has offered no reasonable explanation for its delay, and it has failed to estimate when it will finally be able to comply with its obligations under FOIA.

34. Since Federal Defendant has neither produced responsive documents nor provided an appealable final determination, Plaintiffs have constructively exhausted their administrative remedies with respect to the requested documents.

CLAIM FOR RELIEF
Violation of Freedom of Information Act
Failure to Respond with a Determination

35. Plaintiffs herein incorporate all allegations contained in the proceeding paragraphs.

36. FOIA provides that any person may obtain those agency records that are not subject to the FOIA disclosure exemptions promptly. 5 U.S.C. § 552 (a)(3)(A).

37. Plaintiffs properly requested records within the control of Federal Defendant.

38. Federal Defendant failed to provide Plaintiffs with a final determination as to whether Federal Defendant has any non-exempt records responsive to the Request and whether it intended to release such records within the required timeframe. *Id.* § 552(a)(6)(A)(i) and § 552(a)(6)(B).

39. Federal Defendant failed to properly invoke and comply with FOIA's provision allowing a 10 working day extension for "unusual circumstances." *Id.* at § 552(a)(6)(B)(i).

40. Federal Defendant failed to properly invoke and comply with FOIA's provision permitting an extension of potentially greater than 10 working days by offering Plaintiffs an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. *Id.* at § 552(a)(6)(B)(ii).

41. Federal Defendant has failed to promptly make available responsive documents without unreasonable delay.

42. Federal Defendant's failures to comply with FOIA are subject to judicial review under 5 U.S.C. § 552 (a)(4)(B). Federal Defendant's failure to issue a determination within the statutory deadlines violates 5 U.S.C. § 552 (a)(3)(A).

43. Accordingly, Plaintiffs are entitled to injunctive and declaratory relief with respect to a determination on the Request.

PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court enter judgment providing the following relief:

1. Declare that Federal Defendant violated FOIA by failing to (1) make a determination on Plaintiffs' Request and (2) make records responsive to Plaintiffs' Request available within the statutory deadlines.
2. Order Federal Defendant to (1) provide Plaintiffs with a final determination and (2) process and release all records responsive to the Request at no cost to Plaintiffs within 10 days from the date of such order;

3. Retain jurisdiction of this action to ensure the processing of the Request, and to ensure that no agency records are wrongfully withheld;
4. Award Plaintiffs costs, including reasonable attorney fees and litigation costs in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
5. Grant Plaintiffs any other relief that the Court deems just and proper.

Dated: December 08, 2016

Respectfully Submitted,

/s/ Michael Harris
Michael Ray Harris
Director, Wildlife Law Program
Friends of Animals
7500 E. Arapahoe Road, Suite 385
Centennial, CO 80112
720-949-7791
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Attorney for Plaintiff Friends of Animals

/s/ Brett Sommermeyer
Brett Sommermeyer (admission pending)
Legal Director
Sea Shepherd Legal
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No. 108
Seattle, WA 98102
brett@seashepherdlegal.org

Attorney for Plaintiff Sea Shepherd Legal

EXHIBIT A

~~EXPLOITERS~~
FRIENDS
of ANIMALS

April 12, 2016

Submitted Via U.S Certified Mail and FOIAonline

National Oceanic and Atmospheric Administration
Public Reference Facility (SOU1000)
1315 East-West Highway (SSMC3)
Room 9719
Silver Spring, Maryland 20910

Re: FOIA Request for Records Relating to Incidental Harassment Authorizations
Issued for Activities Impacting Cook Inlet Beluga Whales in Federal Waters
Administered by the National Oceanic and Atmospheric Administration

Dear FOIA Officer:

I am writing on behalf of Friends of Animals, Sea Shepherd Legal, and the Turtle Island Restoration Network (collectively, the "Requesters"). Pursuant to 43 C.F.R. Part 2, and the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, Requesters seek the disclosure of all documents¹ in the categories listed below regarding the harassment of the distinct population segment of Cook Inlet beluga whales in waters managed by the National Oceanic and Atmospheric Administration ("NOAA"). Unless otherwise specified, Requesters seek all documents for the time period starting January 26th, 2007 and ending April 11, 2016. Requesters also request a full waiver of all search and duplication fees.

¹ The terms "document(s)" and "records" are used in the broadest sense contemplated by Federal Rule of Civil Procedure 34. It means all written, transcribed, recorded or graphic matters, however produced or reproduced. This definition includes, but is not limited to, any and all original copies or drafts of any and all of the following: records; notes; nonconforming copies that contain deletions, insertions, corrections, handwritten notes or comment summaries; memoranda; schedules; contracts; binders; work papers; logs; diaries; work sheets; files; letters; correspondence; summaries of memoranda; reports or memoranda of telephone conversations or records of personal conversations or interviews; handwritten notes; telephone logs; facsimiles; summaries; invoices; promissory notes; contracts; loan agreements; vouchers; billing statements; tape recordings or transcripts of tape recordings; photographs; videotapes; computerized output or data bases; electronic files; computer disks; computer CDs; electronic mail transmittals; data and all other writings; calculations; and figures or symbols of any kind which, in any manner mentioned, relate to the subjects of the specific requests contained below. This request includes all documents that have ever been within your custody or control, including all inter and intra agency documents, whether they exist in agency working, investigative, retired, electronic mail, or other files currently or at any other time.

A. FOIA Request.

Over the course of several years, NOAA has issued multiple Letters of Authorization (“LoA”) and Incidental Harassment Authorizations (“IHA”) for Level B takes of Cook Inlet beluga whales under the Marine Mammal Protection Act (“MMPA”) incidental to anthropogenic activities in Cook Inlet. Under the MMPA, Level B takes have “the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, feeding, or sheltering.” 16 U.S.C. § 1362(18).

Please provide the following documents in your possession, whether received, created, and/or distributed by NOAA:

- (1) All documents regarding the status of any pending anthropogenic activities in the Cook Inlet area for which IHAs or LoAs have been requested for takes of Cook Inlet belugas;
- (2) All documents regarding the final IHAs or LoAs issued for anthropogenic activities in Cook Inlet, including all documents supporting a “negligible” impact finding pursuant to the MMPA;
- (3) All documents, including research or commentary, not currently available to the public concerning the specific effects of anthropogenic noise or cumulative effects of Level B takes on the Cook Inlet beluga population;
- (4) All documents regarding the cumulative or synergistic effects of Level B takes of Cook Inlet beluga whales resulting from anthropogenic development activities over the past ten years (2007-2016);
- (5) All documents regarding Level A² takes of Cook Inlet belugas resulting from anthropogenic activities;
- (6) All documents regarding the status of NOAA’s preparation of the programmatic EA and EIS analyzing takes of marine mammals of Cook Inlet incidental to anthropogenic activities and all records of anticipated new agency actions or research pertaining to Cook Inlet belugas;
- (7) All documents regarding the preparation of the final recovery plan for Cook Inlet belugas under the federal Endangered Species Act (“ESA”);
- (8) All documents regarding any limiting factors analysis completed or in progress for Cook Inlet belugas;
- (9) All documents regarding any prioritization of threats to Cook Inlet belugas;
- (10) All documents of any accounting(s) of anthropogenic activities in the Cook Inlet that may result in the taking of a beluga whale;

² As defined as having “the potential to injure a marine mammal or marine mammal stock in the wild.” 16 U.S.C. § 1362(18)(A)(i).

- (11) All documents regarding any population monitoring for Cook Inlet belugas planned or in progress for 2016;
- (12) All documents regarding any population monitoring for Cook Inlet belugas conducted within the last three years, including any population surveys (or similar activities) in proposed project areas conducted by the applicant(s) for an IHA or LoA;
- (13) All documents regarding any formal or informal consultations involving Cook Inlet belugas under Section 7 of the ESA.

The items specifically requested are not meant to be exclusive of any other documents that, although not specially requested, have a reasonable relationship to the subject matter of this request.

For purposes of this request, "anthropogenic activities" are defined to encompass any activity wholly or substantially relating to vessel or aircraft noise (if vessel or aircraft movements are products of an anthropogenic project), ship traffic, including strikes, dredging, pile driving, explosions, demolition, sonar use, oil and gas exploration (including seismic operations, drilling, platform noise, airguns, multibeam echosounders, and sub-bottom profilers), shore construction, military testing activities (i.e. explosions, sonar), pipe and cable laying, water pollution and any other activities reasonably affiliated with anthropogenic projects.

The Supreme Court has stated that FOIA establishes a "strong presumption in favor of disclosure" of requested information, and that the burden is on the government to substantiate why information may not be released under the act's various exemptions. *Department of State v. Ray*, 502 U.S. 164, 173 (1991). Congress affirmed these tenets of FOIA in the Open Government Act of 2007, finding that "the Government [should] remain open and accessible to the American people" and always be based "not upon the need to know but upon the fundamental right to know." Public Law 110-175, 121 Stat. 2524, 2525 (Dec. 31, 2007) (internal citations omitted). President Obama has also directed that "[t]he presumption of disclosure should be applied to all decisions involving FOIA." 74 Fed. Reg. 4683 (Jan. 26, 2009). Please consider the foregoing before withholding any documents that are responsive to this request.

The Requesters anticipate that you will make the requested materials available within the statutorily prescribed period. We also request that you waive any applicable fees since disclosure meets the statutory standard for a fee waiver in that it is clearly "in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii).

B. Fee Waiver Request.

FOIA provides that "documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). The legislative history of FOIA, as well as the case law interpreting the Act, indicates that the statute's fee waiver provision is to be liberally construed favoring the public interest. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 Cong. Rec. S14298 (Sept. 30, 1986) (Sen. Leahy)).

This request for information qualifies for a fee waiver under this standard and, accordingly, we request that all fees be waived. This request satisfies both statutory and regulatory requirements for granting a fee waiver. Below we explain how the request and the Requesters meet each of requirements for a fee waiver delineated in NOAA's FOIA regulations (under its parent agency, the Department of Commerce) 15 CFR § 4.11(k).

1. Disclosure of the Information Requested is in the Public Interest.

(i) *"The subject of the request: whether the subject of the requested records concerns the operations or activities of the Government."*

The requested records concern the operations and activities of NOAA, a federal agency. Specifically, they concern the operation of this federal agency, its management of federally protected Cook Inlet beluga whales, and its permitting decision-making process.

(ii) *"The informative value of the information to be disclosed: whether the disclosure is 'likely to contribute' to an understanding of Government operations or activities."*

(a) How the contents of the records are meaningfully informative;

The requested documents would have substantive, meaningfully informative value and would be likely to contribute to a better understanding of NOAA and its actions. The documents will illuminate in a clear and direct way the operations and activities of the federal government and the activities that it undertakes in regards to management of Cook Inlet beluga whales and the anthropogenic projects that affect them. Although Cook Inlet beluga whales have been in the public spotlight in recent years due to their dwindling numbers and Endangered Species Act listing in 2008, not much is definitively known about the Level B take, cumulative, and noise pollution impacts on Cook Inlet beluga whales from anthropogenic activities. The information requested concerns the operations of the agency responsible for approving activities that have the potential to seriously injure or even kill Cook Inlet

beluga whales and the details of NOAA's past and current permitting decisions and decision-making process in regards to these whales.

- (b) The logical connection between the content of the records and the operations or activities;

The release of the requested documents will significantly contribute to public understanding and oversight of the federal government's operations. For example, the records will help the public understand the status of current Cook Inlet projects, how often and to which activities the federal government authorizes Level B takes, how the government evaluates the significance of cumulative and noise impacts, and the process by which the government makes decisions that affect Cook Inlet beluga whales.

- (iii) *"The contribution to an understanding of the subject by the public likely to result from disclosure: whether disclosure of the requested information will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester."*

Friends of Animals:

Friends of Animals is a nonprofit, international animal advocacy organization incorporated in the state of New York since 1957. Friends of Animals seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living, and domestic animals. The public impact of this disclosed information would be magnified through Friends of Animals' public engagement mechanisms. Friends of Animals has a proven track record of contributing to public understanding of issues surrounding animal advocacy and human-wildlife interactions.

Friends of Animals informs its members about animal advocacy issues, as well as the organization's progress in addressing such issues, through its quarterly magazine called *ActionLine*, its website, and other reports. Friends of Animals has published articles and information advocating for the protection of animals so that they can live unfettered in their natural habitat. In particular, Friends of Animals has a long-standing commitment to protecting animals imperiled due to human-caused activities. Friends of Animals regularly publicizes information about wildlife. Friends of Animals employs several experts who are able to quickly digest and circulate the information obtained from this request, including attorneys and media correspondents.

Friends of Animals plans to disseminate the requested information to Friends of Animals' members, members of other conservation organizations, and other interested members of the public through its website, its quarterly magazine,

and through outreach to other media outlets. By disseminating and distributing this information, Friends of Animals will significantly contribute to the public's understanding of how the government manages harassment of Cook Inlet beluga whales. Friends of Animals also informs its members about animal advocacy issues—including government management of birds, wild horses, and other wildlife—through lawsuits.

Friends of Animals staff has the ability to review, consolidate, and disseminate this information to the public. By consolidating and releasing the information, Friends of Animals will significantly enhance the public's understanding of how the government is currently operating. Additionally, the requested information will constitute a significant contribution to public understanding because it will allow Friends of Animals and the public to determine how the federal government's actions are impacting Cook Inlet beluga whales and whether the federal government has met its obligations under the National Environmental Policy Act, the Marine Mammal Protection Act, and Endangered Species Act.

Sea Shepherd Legal

Sea Shepherd Legal is an international, nonprofit, public interest environmental law firm with a mission to save marine wildlife and habitats by enforcing, strengthening, and developing protective laws, treaties, policies, and practices worldwide. Sea Shepherd Legal works on a range of matters from ensuring proper governmental agency action to developing innovative policy approaches, in order to encourage greater protections for marine wildlife and ecosystems. Public outreach is a key aspect of Sea Shepherd Legal's work.

Sea Shepherd Legal engages in public outreach in order to raise awareness about marine conservation facts, law, resources and tools. Through outreach and education, Sea Shepherd Legal promotes public understanding regarding the importance of biodiversity conservation and how members of the public can play an essential role in protecting marine wildlife and habitats.

Sea Shepherd Legal's general public outreach work involves the bi-weekly publication of a blog, disseminating information regarding marine wildlife protection through social media, and initiating calls to action through online campaign petitions. Related Sea Shepherd entities selectively disseminate these materials to more than one million followers.

The public has a right to know which wildlife species and habitats are at risk, the nature of such risk – including anthropogenic impacts, the role the government is required to play in assessing and mitigating risks, and the government's official response thereto. Through its extensive public outreach endeavors, Sea Shepherd

Legal will ensure that the public acquires this knowledge.

Turtle Island Restoration Network

Turtle Island Restoration Network (“TIRN”) is an international public interest non-profit with a strong track record of disseminating information from FOIA requests to its own membership, decision-makers, the media and the general public. TIRN is a non-profit organization that informs, educates, and counsels the public regarding environmental issues, policies, and laws relating to imperiled species, including marine species. TIRN has been substantially involved in the management activities of numerous government agencies for years, and has consistently displayed its ability to disseminate information granted to it through FOIA requests. As a long established advocacy organization, our informational publications supply information not only to our membership, but also to the memberships of most other conservation organizations, locally as well as nationally. Our informational publications continue to contribute information to public media outlets, as well. TIRN routinely disseminates such information through e-mail alerts and newsletters, which are sent to over 200,000 members and activists. In addition, we disseminate information through our websites, which receives over 100,000 page views per month. Furthermore, we bring such information to our partner organizations and to the media for dissemination to the membership of other organizations and the public at large. Information and our analyses of NMFS’s compliance with the MSA, the MMPA and the ESA will likely be disseminated through all of these means.

TIRN will publicize the results of any analysis of the data to inform the public about the policy choices and information regarding the management of anthropogenic impacts to the Cook Inlet Beluga Whale. This is certain to result in a significant increase in public understanding of government agency activity, especially NOAA’s approach to the conservation of marine species. In addition to informing the public about information relevant to policy and management, TIRN has a proven track record of enforcing environmental laws and publicizing agency compliance with the provisions of various environmental laws through information gained from FOIA requests like this one. TIRN intends to use the documents requested in this request in a similar manner, as appropriate.

- (iv) *“The significance of the contribution to public understanding: whether the disclosure is likely to contribute ‘significantly’ to public understanding of Government operations or activities.”*

Requesters seek the requested documents to increase their understanding, and subsequently contribute to public understanding, of how the federal government is managing activities that affect Cook Inlet beluga whales in Alaska. Many anthropogenic projects are approved by NOAA each year, many of them

granted Level B takes of marine mammals, and the government claims that these actions have a negligible effect on marine mammals. However, the public does not have access to all of the documents available to NOAA and thus cannot understand exactly how NOAA makes its non-negligible impact determinations during agency review of project applications. Additionally, the public cannot understand the justifications used by NOAA staff, its decision-making process, or how risks associated with permitting are assessed without more information about the operations of NOAA.

If the information is not disclosed to the Requesters, the public will remain uninformed about what activities the federal government conducts and authorizes. Disclosure, however, will permit the Requesters to disseminate information to the public, and it will increase transparency surrounding the federal government's activities. This is particularly important because NEPA grants the public a right to this information and a right to participate in federal decisions, such as commenting on proposed anthropogenic activities in Cook Inlet.

The information requested is not, to our knowledge, publicly available. The government may omit sending us requested records that are available in publicly accessible forums (e.g. Internet) or in published materials that are routinely available at public or university libraries. If the government chooses to omit such information, please provide the Requesters with adequate references and/or website links so that we may obtain these materials on our own. We would request that the government provide us with an index of such omitted documents, so that we may have reasonable certainty that we have access to the complete record regarding the management and protection of the Cook Inlet Beluga whales. However, we suspect that the majority of requested materials will not be available unless we receive them from the government in satisfaction of this FOIA request.

2. Disclosure of the Information is Not Primarily in the Commercial Interest of the Requester

When considering whether a request for a fee waiver meets the second prong of the fee waiver requirement, the agency is directed to consider: (1) "whether or not the requester has a commercial interest that would be furthered by the requested disclosure," and (2) "the primary interest in disclosure," i.e. whether the interest of the requester is primarily commercial or public.

None of the Requesters have a commercial, trade, or profit interest in the requested records. In fact, the Requesters do not have any commercial, trade, or profit interests.

Friends of Animals is a non-profit, international animal advocacy organization, incorporated in the state of New York since 1957. It serves the public interest by increasing the general public's awareness of animal advocacy issues and

by teaching how to end animal cruelty and exploitation around the world. Friends of Animals seeks to promote a respectful view of nonhuman, free-living and domestic animals. The Internal Revenue Service recognizes Friends of Animals as a 501(c)(3) tax-exempt organization (IRS Employer Identification#: 13-6018549). Friends of Animals' successful and well-orchestrated public education programs on animal advocacy issues and government operations merit granting a fee waiver for the requested records.

Sea Shepherd Legal was established in 2014 for the purpose of saving marine wildlife and habitats by enforcing, strengthening, and developing protective laws, treaties, policies, and practices worldwide. Sea Shepherd Legal works on a range of matters to ensure greater protections for marine wildlife and ecosystems, via the use of tools including litigation, policy development and public outreach. The IRS recognizes Sea Shepherd Legal as a public interest environmental law firm. Sea Shepherd Legal's EIN number is 47-2272507.

Turtle Island Restoration Network is a 501(c)(3) that has been working to protect marine wildlife, especially sea turtles, but also marine mammals and other endangered species, since the early 1980s. TIRN works through a combination of legal and advocacy strategies and grassroots organizing and education to strengthen protections worldwide. TIRN's EIN is 91-1818080.

CONCLUSION

Please produce the records regarding this FOIA request by electronic mail to wlp_admin@friendsofanimals.org or to the physical address listed below:

Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112

Please produce the records on a rolling basis to the extent possible; at no point should the search for—or the deliberation concerning—certain records delay the production of others that the federal government has already retrieved and elected to produce.

Thank you for your attention to this request. If you have any questions about the requested documents or the requested fee waiver, please do not hesitate to contact me at 720-949-7791 or at wlp_admin@friendsofanimals.org.

Sincerely,



Kaylee Dolen, Administrative Assistant

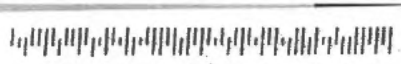
Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112
720-949-7791
wlp_admin@friendsofanimals.org

RECEIVED

2016 DEC 12 PM 1:48

U.S. DISTRICT COURT
DISTRICT OF COLORADO
DENVER

harris
Law P
Animal
Arapahoe Rd. Suite 385
A, CO 80112



MAIL



7016 0910 0001 0622 7255

CPU U.S. POSTAGE

PB 1P 000
3658536
FCMF

\$ 7.36⁰

MAILED DEC 09 2016
80112



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RETURN RECEIPT
REQUESTED

T.D.
12/11/2016

Bob Troyer
United States Attorney
1225 17th Street
Suite 700
Denver, CO 80202

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From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Tuesday, December 20, 2016 10:12 AM
To: Toland, Michael
Cc: Lola Stith - NOAA Affiliate; Robert Swisher - NOAA Federal
Subject: Fwd: AC 18.2017: MEMORANDUM TO FEDERAL AGENCIES CONTACTS: FOIA Regulations' Citation of the GRS

Hi Mike,

(b)(5)

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) (C)

Confidentiality Notice: This e mail message is intended only for the named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.

----- Forwarded message -----

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Date: Tue, Dec 20, 2016 at 10:10 AM
Subject: Re: AC 18.2017: MEMORANDUM TO FEDERAL AGENCIES CONTACTS: FOIA Regulations' Citation of the GRS
To: Marie Marks - NOAA Federal <marie.h.marks@noaa.gov>
Cc: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>, Robert Swisher - NOAA Federal <robert.swisher@noaa.gov>

Thank you Marie--I appreciate it.

(b)(5)

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) (C)

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On Tue, Dec 20, 2016 at 9:34 AM, Marie Marks - NOAA Federal <marie.h.marks@noaa.gov> wrote:
FYI

----- Forwarded message -----

From: **RM Communications** <rm.communications@nara.gov>

Date: Tue, Dec 20, 2016 at 9:02 AM

Subject: AC 18.2017: MEMORANDUM TO FEDERAL AGENCIES CONTACTS: FOIA Regulations' Citation of the GRS

To: NARA-RM-COMMUNICATIONS@listserv.gsa.gov

AC 18.2017

December 20, 2016

MEMORANDUM TO FEDERAL AGENCIES CONTACTS: FOIA Regulations' Citation of the GRS

(b)(5)
[Redacted text block]

[Redacted text block]

For further information please contact GRS_Team@nara.gov.

LAURENCE BREWER
Chief Records Officer
for the U.S. Government

From: Lois Schiffer - NOAA Federal <lois.schiffer@noaa.gov>
Sent: Tuesday, December 20, 2016 9:28 AM
To: Mark Graff - NOAA Federal; John Almeida - NOAA Federal
Subject: Fwd: New Case: FOIA: Friends of Animals et al v. NOAA; response due 1/11/17

Mark (b)(5) [REDACTED]
[REDACTED]
[REDACTED] .thanks.

Lois

----- Forwarded message -----

From: **McClelland, Michelle (Federal)** <mMcClelland@doc.gov>
Date: Sat, Dec 17, 2016 at 10:38 PM
Subject: Fwd: New Case: FOIA: Friends of Animals et al v. NOAA; response due 1/11/17
To: "Cannon, Michael (Federal)" <MCannon@doc.gov>
Cc: "Schiffer, Lois (Federal)" <Lois.Schiffer@noaa.gov>

Incoming from DOJ on subject FOIA case. (b)(5) [REDACTED] . Thx

Sent from my iPhone

Begin forwarded message:

From: "Traskos, Kevin (USACO)" <Kevin.Traskos@usdoj.gov>
To: "Sandoval, Marisela (USACO)" <Marisela.Sandoval@usdoj.gov>
Cc: "Kellogg, Ian (USACO)" <Ian.Kellogg@usdoj.gov>, "Butler, Leah (USACO) [Contractor]" <Leah.Butler3@usdoj.gov>, "Jones, Meghan (USACO)" <Meghan.Jones@usdoj.gov>, "McConnell, Caitlin (USACO)" <Caitlin.McConnell@usdoj.gov>, "McClelland, Michelle (Federal)" <mMcClelland@doc.gov>
Subject: FW: New Case: FOIA: Friends of Animals et al v. NOAA; response due 1/11/17

(b)(5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Thanks!

Kevin

Warning: This message may contain confidential or privileged information. If you have received this email in error, please contact me and delete the email. Thank you.

Kevin Traskos

Chief, Civil Division

Assistant U.S. Attorney

U.S. Attorney's Office, District of Colorado

1225 17th Street, Suite 700

Denver, Colorado 80207

[\(303\) 454-0184](tel:(303)454-0184)

Fax: [\(303\) 454-0404](tel:(303)454-0404)

Kevin.Traskos@usdoj.gov

From: McConnell, Caitlin (USACO)
Sent: Monday, December 12, 2016 3:13 PM
To: Traskos, Kevin (USACO) <KTraskos@usa.doj.gov>
Cc: Jones, Meghan (USACO) <mjones1@usa.doj.gov>
Subject: New Case: FOIA: Friends of Animals et al v. NOAA; response due 1/11/17

Hello,

(b)(5) [Redacted]

[Redacted]

Thank you,
Caitlin

--

Lois Schiffer
General Counsel
National Oceanic & Atmospheric Administration
U.S. Department of Commerce
Phone: 202-482-4080
Cell: (b)(6)
Email: Lois.Schiffer@noaa.gov

(b) (4)

(b) (4)

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AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
District of Colorado

FRIENDS OF ANIMALS, a New York non-profit corporation, and
SEA SHEPHERD LEGAL, a Washington non-profit corporation
Plaintiff(s)
v.

Civil Action No. 16-3007

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, an agency of the United States
Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Bob Troyer
United States Attorney
1225 17th Street
Suit 700
Denver, CO 80202

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Michael Harris
Wildlife Law Program
Friends of Animals
7500 E. Arapahoe Road, Suite 385
Centennial, CO 80112

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 16-3007

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):*

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
FRIENDS OF ANIMALS, a New York non-profit corporation, and SEA SHEPHERD LEGAL, a Washington non-profit corporation
(b) County of Residence of First Listed Plaintiff Arapahoe County
(c) Attorneys Michael Harris, Friends of Animals, Wildlife Law Program, 7500 E. Arapahoe Rd., Suite 385, Centennial, CO 80112; Tel: (720) 949-7791

DEFENDANTS
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, an agency of the United States
County of Residence of First Listed Defendant District of Columbia
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question
4 Diversity

III. CITIZENSHIP OF PRINCIPAL PARTIES
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country

IV. NATURE OF SUIT
CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, TAX SUITS, OTHER STATUTES

V. ORIGIN
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district
6 Multidistrict litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing
5 U.S.C 552- Failure to respond to request under the Freedom of Information Act
Brief description of cause: AP Docket

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMANDS
JURY DEMAND: Yes No

DATE: 12/08/2016
SIGNATURE OF ATTORNEY OF RECORD: /s/ Michael Ray Harris

FOR OFFICE USE ONLY
RECEIPT #
AMOUNT
APPLYING IFP
JUDGE
MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows.

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment noting, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example:

U.S. Civil Statute: 47 USC 553

Brief Description:

Unauthorized reception of cable service

Or:

"AP Docket"

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

FRIENDS OF ANIMALS, and
SEA SHEPHERD LEGAL;

Plaintiffs,

v.

NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION
an agency of the United States,

Defendant.

Civ. No. 16-3007

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF
(FREEDOM OF INFORMATION ACT)**

INTRODUCTION

1. This action is brought to remedy violations of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et. seq.* Specifically, it challenges the failure of the National Oceanic and Atmospheric Administration (“Federal Defendant”) to provide a final determination, including all responsive documents, within the time required by FOIA in regard to Plaintiffs Friends of Animals’ and Sea Shepherd Legal’s (“Plaintiffs”) April 14, 2016 request for information (“Request”).

2. In the Request, Plaintiffs asked for all documents in Federal Defendant’s possession related to pending or final approvals under the Marine Mammal Protection Act, National Environmental Policy Act and the Endangered Species Act for anthropogenic activities affecting the Cook Inlet beluga whale. Plaintiffs also sought all documents related to biological analyses and threats to the Cook Inlet beluga whale. *See* Exhibit A.

3. As of the date on this Complaint, Federal Defendant has not made a final determination regarding the release of documents, nor has Federal Defendant provided a timeline or other plan for compliance with the requirements of FOIA to indicate when or whether the Request will be fully satisfied.

4. Federal Defendant is unlawfully withholding public disclosure of information that Plaintiffs are entitled to receive under FOIA. By failing to make either a timely determination or timely and complete releases after the initial tranche of documents, Federal Defendant failed to comply with the statutory mandates and deadlines imposed by FOIA.

5. Accordingly, Plaintiffs seek declaratory relief establishing that Federal Defendant has violated FOIA. Plaintiffs also seek injunctive relief directing Federal Defendant to make a determination on the Request, provide a timeline for the release of the remaining documents, and promptly provide the requested material free of cost.

6. Plaintiffs bring this lawsuit to obtain timely disclosure of critical information related to authorized takes, and to pending authorizations of requested takes, of hundreds of Cook Inlet beluga whales from multiple and geographically overlapping oil and gas projects in the Cook Inlet. Given the significant potential impact upon the rapidly diminishing population of Cook Inlet beluga whales and the strong public interest in disclosure of information that may directly assist Plaintiffs' ongoing efforts to protect this population, Plaintiffs seek expeditious treatment of their Complaint pursuant to 28 U.S.C. § 1657.

JURISDICTION AND VENUE

7. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA) and 28 U.S.C. § 1331 (federal question). This Court may grant the declaratory relief under 28 U.S.C. §§ 2201, *et seq.* (Declaratory Judgment Act) and injunctive relief under 5 U.S.C. § 552(a)(4)(B) (FOIA). An actual, justiciable controversy exists within the meaning of the Declaratory Judgment Act between Plaintiffs and Federal Defendant. The Court has jurisdiction, upon receipt of a complaint, "to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B).

8. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B), which provides venue for FOIA cases in this district as the district in which a plaintiff resides. Friends of Animals maintains a principle office here in Colorado. Venue is also proper under 28 U.S.C. § 1391(b) because the defendant is subject to personal jurisdiction in this federal district.

PARTIES

9. Friends of Animals is a nonprofit international advocacy organization with nearly 200,000 members, incorporated in the state of New York since 1957. Friends of Animals seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living and domestic animals. Friends of Animals engages in a variety of advocacy programs in support of these goals. Friends of Animals informs its members about animal advocacy issues as well as the organization's progress in addressing these issues through its magazine called *ActionLine*, its website, and other reports. Friends of Animals has published articles and information advocating for the protection of wild species so that they can live unfettered in their natural habitats.

10. In 2013, Friends of Animals created a federal wildlife law program. The program established its principle office in Centennial, Colorado. The office consists of four full-time employees and one part-time employee. Through this office, Friends of Animals submitted the Request at issue in this action.

11. Sea Shepherd Legal is a nonprofit public interest law organization dedicated to its mission to end the destruction of habitat and slaughter of wildlife in the world's oceans in order to conserve and protect ecosystems and species. In furtherance of that mission, Sea Shepherd Legal has been involved in protecting marine life throughout the world. Sea Shepherd Legal uses public outreach and education to advocate for and motivate the creation of greater protections for cetaceans and other marine life.

12. The interests of Plaintiffs and their members are harmed by Federal Defendant's failure to release the requested documents in a timely manner, which prevents Plaintiffs

from obtaining, analyzing, disseminating and using the requested information to advance Plaintiffs' missions of ensuring the protection of marine wildlife and, in particular here, the Cook Inlet beluga whale.

13. Federal Defendant is an agency within the meaning of 5 U.S.C. § 552(f)(1). Federal Defendant is responsible for fulfilling Plaintiffs' Request and complying with all federal laws.

STATUTORY BACKGROUND

14. Congress enacted FOIA to ensure public access to U.S. government records. FOIA carries a presumption of disclosure. *Dep't of State v Ray*, 502 U.S. 164 (1991). Upon receipt of a written request that "reasonably describes" the records sought and complies with "published rules . . . and procedures to be followed," agencies of the United States government are required to "promptly" disclose their records, unless they can be lawfully withheld from disclosure under one of nine specific exemptions in FOIA. 5 U.S.C. § 552(a)(3)(A). The burden is on the government—not the requestor or public—to justify why particular information may be withheld. *Ray*, 502 U.S. at 164.

15. FOIA requires agencies to "determine within 20 days . . . after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefore, and of the right of such person to appeal to the head of the agency any adverse determination." *Id.* at § 552(a)(6)(A)(i).

16. On determination by an agency to comply with the request, the records shall be made "promptly available." *Id.* at § 552(a)(6)(C).

17. In "unusual circumstances," an agency may extend the time limits for up to 10 working days by providing written notice to the requester setting forth the unusual circumstance(s) and the date on which the determination is expected to be dispatched. *Id.* at § 552(a)(6)(B).

18. In some limited circumstances, FOIA allows an agency to seek an extension potentially beyond 10 days. Specifically, FOIA requires an agency to provide written notification to the requester: (1) offering an opportunity to limit the scope of the request so that it may be processed within the 20 work-day limit, or (2) offering an opportunity to arrange with the agency an “alternative time frame” for processing the request. *Id.* at § 552(a)(6)(B)(ii). If the agency elects this option, it must make its FOIA Public Liaison available to the requester to assist in any disputes with the agency. *Id.*

19. If the agency fails to make a determination on a document request within 20 work-days, or within the limited additional time permitted upon proper notification of “unusual circumstances,” the requester is deemed to have constructively exhausted administrative remedies and may seek judicial review. *Id.* at § 552(a)(6)(C). *Oglesby v. Dep’t of Army*, 920 F.2d 57(D.C. Cir 1990), *Nurse v. Sec’y of the Air Force*, 231 F. Supp. 2d 323, 328 (D.D.C. 2002) (“The FOIA is considered a unique statute because it recognizes a constructive exhaustion doctrine for purposes of judicial review upon the expiration of certain relevant FOIA deadlines.”)

20. FOIA requires that the agency “shall make the records promptly available to any person” and may not defer release of responsive documents indefinitely. *Id.* at § 552(a)(3)(A). Failure to issue a determination and to complete the release of documents in a timely fashion is a violation of FOIA even if the initial response and releases may have been prompt. *Munger, Tolles, Olsen v. Dept. of Army*, 58 F. Supp. 3d 1050 (C.D. Cal 2014). *See also Fiduccia v. U.S. Dep’t of Justice*, 185 F.3d 1035, 1041 (9th Cir. 1999)(“Congress gave agencies 20 days, not years, to decide whether to comply with requests and notify the requesters”); *Long v. IRS*, 693 F.2d 907, 910 (9th Cir. 1982) (“[U]nreasonable delays in disclosing non-exempt documents violate the intent and purpose of the FOIA, and the courts have a duty to prevent these abuses.”).

FACTUAL BACKGROUND

21. On April 12, 2016, Plaintiffs submitted the Request under FOIA to Federal Defendant reasonably describing all documents of which Plaintiffs sought disclosure.

22. On April 21, 2016, Federal Defendant provided written notification confirming receipt of the Request and disclosing that the Request had been assigned for processing on April 14, 2016.

23. In the confirmation, Federal Defendant did not request any additional information needed to clarify the Request. Federal Defendant did request a Scope Conference with Friends of Animals.

24. On April 29, 2016, Federal Defendant and Friends of Animals conducted the Scope Conference. During this conference, Federal Defendant did not request any additional information needed to clarify the Request but asked Plaintiffs to prioritize the individual document categories identified in the Request. Friends of Animals instructed Federal Defendant to proceed with the original FOIA request, but agreed to send a letter outlining the priorities of the original FOIA request.

25. On May 10, 2016, Friends of Animals submitted a letter to Federal Defendant outlining the top priorities of the original FOIA request. In that letter, Friends of Animals stated as follows: "As discussed on the April 29, 2016 conference call, Friends of Animals has not changed or altered the original request, nor are we waiving under [sic] rights under FOIA. We provide the following priorities merely to assist the agency in processing our request."

26. On May 16, 2016, Federal Defendant confirmed receipt of Friends of Animals' May 10 letter outlining the top priorities of the original FOIA request and indicated the need for a 10-day extension due to "unusual circumstances." Federal Defendant further stated that the first interim release of records could be anticipated on May 25, 2016.

27. The 20 work-day time limit for providing a determination on the Request commenced on April 14 and, thus, expired on May 12, 2016.

28. Federal Defendant made two interim releases of documents. The first release was dated June 9, 2016. The second was dated July 26, 2016 (but not received until August 29, 2016).

29. Since August 29, 2016, no further documents have been released.

30. Since August 29, 2016, Federal Defendant has not provided any timeline for the release of any remaining documents.

31. As of the date of this complaint, Plaintiffs have not received a final determination on their Request.

32. Plaintiffs believe and allege that Federal Defendant is unlawfully withholding public disclosure of information sought by Plaintiffs, information to which they are entitled to receive promptly, and for which Federal Defendant has not provided a valid disclosure exemption.

33. Federal Defendant has offered no reasonable explanation for its delay, and it has failed to estimate when it will finally be able to comply with its obligations under FOIA.

34. Since Federal Defendant has neither produced responsive documents nor provided an appealable final determination, Plaintiffs have constructively exhausted their administrative remedies with respect to the requested documents.

CLAIM FOR RELIEF
Violation of Freedom of Information Act
Failure to Respond with a Determination

35. Plaintiffs herein incorporate all allegations contained in the proceeding paragraphs.

36. FOIA provides that any person may obtain those agency records that are not subject to the FOIA disclosure exemptions promptly. 5 U.S.C. § 552 (a)(3)(A).

37. Plaintiffs properly requested records within the control of Federal Defendant.

38. Federal Defendant failed to provide Plaintiffs with a final determination as to whether Federal Defendant has any non-exempt records responsive to the Request and whether it intended to release such records within the required timeframe. *Id.* § 552(a)(6)(A)(i) and § 552(a)(6)(B).

39. Federal Defendant failed to properly invoke and comply with FOIA's provision allowing a 10 working day extension for "unusual circumstances." *Id.* at § 552(a)(6)(B)(i).

40. Federal Defendant failed to properly invoke and comply with FOIA's provision permitting an extension of potentially greater than 10 working days by offering Plaintiffs an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. *Id.* at § 552(a)(6)(B)(ii).

41. Federal Defendant has failed to promptly make available responsive documents without unreasonable delay.

42. Federal Defendant's failures to comply with FOIA are subject to judicial review under 5 U.S.C. § 552 (a)(4)(B). Federal Defendant's failure to issue a determination within the statutory deadlines violates 5 U.S.C. § 552 (a)(3)(A).

43. Accordingly, Plaintiffs are entitled to injunctive and declaratory relief with respect to a determination on the Request.

PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court enter judgment providing the following relief:

1. Declare that Federal Defendant violated FOIA by failing to (1) make a determination on Plaintiffs' Request and (2) make records responsive to Plaintiffs' Request available within the statutory deadlines.
2. Order Federal Defendant to (1) provide Plaintiffs with a final determination and (2) process and release all records responsive to the Request at no cost to Plaintiffs within 10 days from the date of such order;

3. Retain jurisdiction of this action to ensure the processing of the Request, and to ensure that no agency records are wrongfully withheld;
4. Award Plaintiffs costs, including reasonable attorney fees and litigation costs in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
5. Grant Plaintiffs any other relief that the Court deems just and proper.

Dated: December 08, 2016

Respectfully Submitted,

/s/ Michael Harris
Michael Ray Harris
Director, Wildlife Law Program
Friends of Animals
7500 E. Arapahoe Road, Suite 385
Centennial, CO 80112
720-949-7791
michaelharris@friendsofanimals.org

Attorney for Plaintiff Friends of Animals

/s/ Brett Sommermeyer
Brett Sommermeyer (admission pending)
Legal Director
Sea Shepherd Legal
2226 Eastlake Ave., E.
No. 108
Seattle, WA 98102
brett@seashepherdlegal.org

Attorney for Plaintiff Sea Shepherd Legal

EXHIBIT A

~~EXPLOITERS~~
FRIENDS
of ANIMALS

April 12, 2016

Submitted Via U.S Certified Mail and FOIAonline

National Oceanic and Atmospheric Administration
Public Reference Facility (SOU1000)
1315 East-West Highway (SSMC3)
Room 9719
Silver Spring, Maryland 20910

Re: FOIA Request for Records Relating to Incidental Harassment Authorizations
Issued for Activities Impacting Cook Inlet Beluga Whales in Federal Waters
Administered by the National Oceanic and Atmospheric Administration

Dear FOIA Officer:

I am writing on behalf of Friends of Animals, Sea Shepherd Legal, and the Turtle Island Restoration Network (collectively, the "Requesters"). Pursuant to 43 C.F.R. Part 2, and the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, Requesters seek the disclosure of all documents¹ in the categories listed below regarding the harassment of the distinct population segment of Cook Inlet beluga whales in waters managed by the National Oceanic and Atmospheric Administration ("NOAA"). Unless otherwise specified, Requesters seek all documents for the time period starting January 26th, 2007 and ending April 11, 2016. Requesters also request a full waiver of all search and duplication fees.

¹ The terms "document(s)" and "records" are used in the broadest sense contemplated by Federal Rule of Civil Procedure 34. It means all written, transcribed, recorded or graphic matters, however produced or reproduced. This definition includes, but is not limited to, any and all original copies or drafts of any and all of the following: records; notes; nonconforming copies that contain deletions, insertions, corrections, handwritten notes or comment summaries; memoranda; schedules; contracts; binders; work papers; logs; diaries; work sheets; files; letters; correspondence; summaries of memoranda; reports or memoranda of telephone conversations or records of personal conversations or interviews; handwritten notes; telephone logs; facsimiles; summaries; invoices; promissory notes; contracts; loan agreements; vouchers; billing statements; tape recordings or transcripts of tape recordings; photographs; videotapes; computerized output or data bases; electronic files; computer disks; computer CDs; electronic mail transmittals; data and all other writings; calculations; and figures or symbols of any kind which, in any manner mentioned, relate to the subjects of the specific requests contained below. This request includes all documents that have ever been within your custody or control, including all inter and intra agency documents, whether they exist in agency working, investigative, retired, electronic mail, or other files currently or at any other time.

A. FOIA Request.

Over the course of several years, NOAA has issued multiple Letters of Authorization (“LoA”) and Incidental Harassment Authorizations (“IHA”) for Level B takes of Cook Inlet beluga whales under the Marine Mammal Protection Act (“MMPA”) incidental to anthropogenic activities in Cook Inlet. Under the MMPA, Level B takes have “the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, feeding, or sheltering.” 16 U.S.C. § 1362(18).

Please provide the following documents in your possession, whether received, created, and/or distributed by NOAA:

- (1) All documents regarding the status of any pending anthropogenic activities in the Cook Inlet area for which IHAs or LoAs have been requested for takes of Cook Inlet belugas;
- (2) All documents regarding the final IHAs or LoAs issued for anthropogenic activities in Cook Inlet, including all documents supporting a “negligible” impact finding pursuant to the MMPA;
- (3) All documents, including research or commentary, not currently available to the public concerning the specific effects of anthropogenic noise or cumulative effects of Level B takes on the Cook Inlet beluga population;
- (4) All documents regarding the cumulative or synergistic effects of Level B takes of Cook Inlet beluga whales resulting from anthropogenic development activities over the past ten years (2007-2016);
- (5) All documents regarding Level A² takes of Cook Inlet belugas resulting from anthropogenic activities;
- (6) All documents regarding the status of NOAA’s preparation of the programmatic EA and EIS analyzing takes of marine mammals of Cook Inlet incidental to anthropogenic activities and all records of anticipated new agency actions or research pertaining to Cook Inlet belugas;
- (7) All documents regarding the preparation of the final recovery plan for Cook Inlet belugas under the federal Endangered Species Act (“ESA”);
- (8) All documents regarding any limiting factors analysis completed or in progress for Cook Inlet belugas;
- (9) All documents regarding any prioritization of threats to Cook Inlet belugas;
- (10) All documents of any accounting(s) of anthropogenic activities in the Cook Inlet that may result in the taking of a beluga whale;

² As defined as having “the potential to injure a marine mammal or marine mammal stock in the wild.” 16 U.S.C. § 1362(18)(A)(i).

- (11) All documents regarding any population monitoring for Cook Inlet belugas planned or in progress for 2016;
- (12) All documents regarding any population monitoring for Cook Inlet belugas conducted within the last three years, including any population surveys (or similar activities) in proposed project areas conducted by the applicant(s) for an IHA or LoA;
- (13) All documents regarding any formal or informal consultations involving Cook Inlet belugas under Section 7 of the ESA.

The items specifically requested are not meant to be exclusive of any other documents that, although not specially requested, have a reasonable relationship to the subject matter of this request.

For purposes of this request, "anthropogenic activities" are defined to encompass any activity wholly or substantially relating to vessel or aircraft noise (if vessel or aircraft movements are products of an anthropogenic project), ship traffic, including strikes, dredging, pile driving, explosions, demolition, sonar use, oil and gas exploration (including seismic operations, drilling, platform noise, airguns, multibeam echosounders, and sub-bottom profilers), shore construction, military testing activities (i.e. explosions, sonar), pipe and cable laying, water pollution and any other activities reasonably affiliated with anthropogenic projects.

The Supreme Court has stated that FOIA establishes a "strong presumption in favor of disclosure" of requested information, and that the burden is on the government to substantiate why information may not be released under the act's various exemptions. *Department of State v. Ray*, 502 U.S. 164, 173 (1991). Congress affirmed these tenets of FOIA in the Open Government Act of 2007, finding that "the Government [should] remain open and accessible to the American people" and always be based "not upon the need to know but upon the fundamental right to know." Public Law 110-175, 121 Stat. 2524, 2525 (Dec. 31, 2007) (internal citations omitted). President Obama has also directed that "[t]he presumption of disclosure should be applied to all decisions involving FOIA." 74 Fed. Reg. 4683 (Jan. 26, 2009). Please consider the foregoing before withholding any documents that are responsive to this request.

The Requesters anticipate that you will make the requested materials available within the statutorily prescribed period. We also request that you waive any applicable fees since disclosure meets the statutory standard for a fee waiver in that it is clearly "in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii).

B. Fee Waiver Request.

FOIA provides that "documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). The legislative history of FOIA, as well as the case law interpreting the Act, indicates that the statute's fee waiver provision is to be liberally construed favoring the public interest. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 Cong. Rec. S14298 (Sept. 30, 1986) (Sen. Leahy)).

This request for information qualifies for a fee waiver under this standard and, accordingly, we request that all fees be waived. This request satisfies both statutory and regulatory requirements for granting a fee waiver. Below we explain how the request and the Requesters meet each of requirements for a fee waiver delineated in NOAA's FOIA regulations (under its parent agency, the Department of Commerce) 15 CFR § 4.11(k).

1. Disclosure of the Information Requested is in the Public Interest.

(i) *"The subject of the request: whether the subject of the requested records concerns the operations or activities of the Government."*

The requested records concern the operations and activities of NOAA, a federal agency. Specifically, they concern the operation of this federal agency, its management of federally protected Cook Inlet beluga whales, and its permitting decision-making process.

(ii) *"The informative value of the information to be disclosed: whether the disclosure is 'likely to contribute' to an understanding of Government operations or activities."*

(a) How the contents of the records are meaningfully informative;

The requested documents would have substantive, meaningfully informative value and would be likely to contribute to a better understanding of NOAA and its actions. The documents will illuminate in a clear and direct way the operations and activities of the federal government and the activities that it undertakes in regards to management of Cook Inlet beluga whales and the anthropogenic projects that affect them. Although Cook Inlet beluga whales have been in the public spotlight in recent years due to their dwindling numbers and Endangered Species Act listing in 2008, not much is definitively known about the Level B take, cumulative, and noise pollution impacts on Cook Inlet beluga whales from anthropogenic activities. The information requested concerns the operations of the agency responsible for approving activities that have the potential to seriously injure or even kill Cook Inlet

beluga whales and the details of NOAA's past and current permitting decisions and decision-making process in regards to these whales.

- (b) The logical connection between the content of the records and the operations or activities;

The release of the requested documents will significantly contribute to public understanding and oversight of the federal government's operations. For example, the records will help the public understand the status of current Cook Inlet projects, how often and to which activities the federal government authorizes Level B takes, how the government evaluates the significance of cumulative and noise impacts, and the process by which the government makes decisions that affect Cook Inlet beluga whales.

- (iii) *"The contribution to an understanding of the subject by the public likely to result from disclosure: whether disclosure of the requested information will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester."*

Friends of Animals:

Friends of Animals is a nonprofit, international animal advocacy organization incorporated in the state of New York since 1957. Friends of Animals seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living, and domestic animals. The public impact of this disclosed information would be magnified through Friends of Animals' public engagement mechanisms. Friends of Animals has a proven track record of contributing to public understanding of issues surrounding animal advocacy and human-wildlife interactions.

Friends of Animals informs its members about animal advocacy issues, as well as the organization's progress in addressing such issues, through its quarterly magazine called *ActionLine*, its website, and other reports. Friends of Animals has published articles and information advocating for the protection of animals so that they can live unfettered in their natural habitat. In particular, Friends of Animals has a long-standing commitment to protecting animals imperiled due to human-caused activities. Friends of Animals regularly publicizes information about wildlife. Friends of Animals employs several experts who are able to quickly digest and circulate the information obtained from this request, including attorneys and media correspondents.

Friends of Animals plans to disseminate the requested information to Friends of Animals' members, members of other conservation organizations, and other interested members of the public through its website, its quarterly magazine,

and through outreach to other media outlets. By disseminating and distributing this information, Friends of Animals will significantly contribute to the public's understanding of how the government manages harassment of Cook Inlet beluga whales. Friends of Animals also informs its members about animal advocacy issues—including government management of birds, wild horses, and other wildlife—through lawsuits.

Friends of Animals staff has the ability to review, consolidate, and disseminate this information to the public. By consolidating and releasing the information, Friends of Animals will significantly enhance the public's understanding of how the government is currently operating. Additionally, the requested information will constitute a significant contribution to public understanding because it will allow Friends of Animals and the public to determine how the federal government's actions are impacting Cook Inlet beluga whales and whether the federal government has met its obligations under the National Environmental Policy Act, the Marine Mammal Protection Act, and Endangered Species Act.

Sea Shepherd Legal

Sea Shepherd Legal is an international, nonprofit, public interest environmental law firm with a mission to save marine wildlife and habitats by enforcing, strengthening, and developing protective laws, treaties, policies, and practices worldwide. Sea Shepherd Legal works on a range of matters from ensuring proper governmental agency action to developing innovative policy approaches, in order to encourage greater protections for marine wildlife and ecosystems. Public outreach is a key aspect of Sea Shepherd Legal's work.

Sea Shepherd Legal engages in public outreach in order to raise awareness about marine conservation facts, law, resources and tools. Through outreach and education, Sea Shepherd Legal promotes public understanding regarding the importance of biodiversity conservation and how members of the public can play an essential role in protecting marine wildlife and habitats.

Sea Shepherd Legal's general public outreach work involves the bi-weekly publication of a blog, disseminating information regarding marine wildlife protection through social media, and initiating calls to action through online campaign petitions. Related Sea Shepherd entities selectively disseminate these materials to more than one million followers.

The public has a right to know which wildlife species and habitats are at risk, the nature of such risk – including anthropogenic impacts, the role the government is required to play in assessing and mitigating risks, and the government's official response thereto. Through its extensive public outreach endeavors, Sea Shepherd

Legal will ensure that the public acquires this knowledge.

Turtle Island Restoration Network

Turtle Island Restoration Network (“TIRN”) is an international public interest non-profit with a strong track record of disseminating information from FOIA requests to its own membership, decision-makers, the media and the general public. TIRN is a non-profit organization that informs, educates, and counsels the public regarding environmental issues, policies, and laws relating to imperiled species, including marine species. TIRN has been substantially involved in the management activities of numerous government agencies for years, and has consistently displayed its ability to disseminate information granted to it through FOIA requests. As a long established advocacy organization, our informational publications supply information not only to our membership, but also to the memberships of most other conservation organizations, locally as well as nationally. Our informational publications continue to contribute information to public media outlets, as well. TIRN routinely disseminates such information through e-mail alerts and newsletters, which are sent to over 200,000 members and activists. In addition, we disseminate information through our websites, which receives over 100,000 page views per month. Furthermore, we bring such information to our partner organizations and to the media for dissemination to the membership of other organizations and the public at large. Information and our analyses of NMFS’s compliance with the MSA, the MMPA and the ESA will likely be disseminated through all of these means.

TIRN will publicize the results of any analysis of the data to inform the public about the policy choices and information regarding the management of anthropogenic impacts to the Cook Inlet Beluga Whale. This is certain to result in a significant increase in public understanding of government agency activity, especially NOAA’s approach to the conservation of marine species. In addition to informing the public about information relevant to policy and management, TIRN has a proven track record of enforcing environmental laws and publicizing agency compliance with the provisions of various environmental laws through information gained from FOIA requests like this one. TIRN intends to use the documents requested in this request in a similar manner, as appropriate.

- (iv) *“The significance of the contribution to public understanding: whether the disclosure is likely to contribute ‘significantly’ to public understanding of Government operations or activities.”*

Requesters seek the requested documents to increase their understanding, and subsequently contribute to public understanding, of how the federal government is managing activities that affect Cook Inlet beluga whales in Alaska. Many anthropogenic projects are approved by NOAA each year, many of them

granted Level B takes of marine mammals, and the government claims that these actions have a negligible effect on marine mammals. However, the public does not have access to all of the documents available to NOAA and thus cannot understand exactly how NOAA makes its non-negligible impact determinations during agency review of project applications. Additionally, the public cannot understand the justifications used by NOAA staff, its decision-making process, or how risks associated with permitting are assessed without more information about the operations of NOAA.

If the information is not disclosed to the Requesters, the public will remain uninformed about what activities the federal government conducts and authorizes. Disclosure, however, will permit the Requesters to disseminate information to the public, and it will increase transparency surrounding the federal government's activities. This is particularly important because NEPA grants the public a right to this information and a right to participate in federal decisions, such as commenting on proposed anthropogenic activities in Cook Inlet.

The information requested is not, to our knowledge, publicly available. The government may omit sending us requested records that are available in publicly accessible forums (e.g. Internet) or in published materials that are routinely available at public or university libraries. If the government chooses to omit such information, please provide the Requesters with adequate references and/or website links so that we may obtain these materials on our own. We would request that the government provide us with an index of such omitted documents, so that we may have reasonable certainty that we have access to the complete record regarding the management and protection of the Cook Inlet Beluga whales. However, we suspect that the majority of requested materials will not be available unless we receive them from the government in satisfaction of this FOIA request.

2. Disclosure of the Information is Not Primarily in the Commercial Interest of the Requester

When considering whether a request for a fee waiver meets the second prong of the fee waiver requirement, the agency is directed to consider: (1) "whether or not the requester has a commercial interest that would be furthered by the requested disclosure," and (2) "the primary interest in disclosure," i.e. whether the interest of the requester is primarily commercial or public.

None of the Requesters have a commercial, trade, or profit interest in the requested records. In fact, the Requesters do not have any commercial, trade, or profit interests.

Friends of Animals is a non-profit, international animal advocacy organization, incorporated in the state of New York since 1957. It serves the public interest by increasing the general public's awareness of animal advocacy issues and

by teaching how to end animal cruelty and exploitation around the world. Friends of Animals seeks to promote a respectful view of nonhuman, free-living and domestic animals. The Internal Revenue Service recognizes Friends of Animals as a 501(c)(3) tax-exempt organization (IRS Employer Identification#: 13-6018549). Friends of Animals' successful and well-orchestrated public education programs on animal advocacy issues and government operations merit granting a fee waiver for the requested records.

Sea Shepherd Legal was established in 2014 for the purpose of saving marine wildlife and habitats by enforcing, strengthening, and developing protective laws, treaties, policies, and practices worldwide. Sea Shepherd Legal works on a range of matters to ensure greater protections for marine wildlife and ecosystems, via the use of tools including litigation, policy development and public outreach. The IRS recognizes Sea Shepherd Legal as a public interest environmental law firm. Sea Shepherd Legal's EIN number is 47-2272507.

Turtle Island Restoration Network is a 501(c)(3) that has been working to protect marine wildlife, especially sea turtles, but also marine mammals and other endangered species, since the early 1980s. TIRN works through a combination of legal and advocacy strategies and grassroots organizing and education to strengthen protections worldwide. TIRN's EIN is 91-1818080.

CONCLUSION

Please produce the records regarding this FOIA request by electronic mail to wlp_admin@friendsofanimals.org or to the physical address listed below:

Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112

Please produce the records on a rolling basis to the extent possible; at no point should the search for—or the deliberation concerning—certain records delay the production of others that the federal government has already retrieved and elected to produce.

Thank you for your attention to this request. If you have any questions about the requested documents or the requested fee waiver, please do not hesitate to contact me at 720-949-7791 or at wlp_admin@friendsofanimals.org.

Sincerely,



Kaylee Dolen, Administrative Assistant

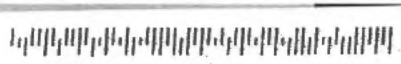
Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112
720-949-7791
wlp_admin@friendsofanimals.org

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U.S. DISTRICT COURT
DISTRICT OF COLORADO
DENVER

harris
Law P
Animal
Arapahoe Rd. Suite 385
A, CO 80112



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RETURN RECEIPT
REQUESTED

T.D.
12/11/2016

Bob Troyer
United States Attorney
1225 17th Street
Suite 700
Denver, CO 80202

Last Name: friends of animals First:
 FBI #: SSN #:
 CATS #: EIN #:
 PDID #: Marshals #:

Name Matching

- Spelling Match
- Sounds Like

Explanation

Participant	USAOID	Alias	Stat	Role	AUSA	Court	Court #
FRIENDS OF ANIMALS	2016V00861		A	P	IJK	DC	16-CV-0279
FRIENDS OF ANIMALS	2016V00092		C	P	IJK	DC	16-CV-00196-
FRIENDS OF ANIMALS	2016V00091		C	P	IJK	DC	16-CV-00194-

Move highlight bar to record and press <F3> to GOTO the Case Summary screen.

MON, 12-DEC-2016

From: Marie Marks - NOAA Federal <marie.h.marks@noaa.gov>
Sent: Tuesday, December 20, 2016 10:34 AM
To: Mark Graff - NOAA Federal
Subject: Re: AC 18.2017: MEMORANDUM TO FEDERAL AGENCIES CONTACTS: FOIA Regulations' Citation of the GRS

Mark, you are welcome.

Marie

On Tue, Dec 20, 2016 at 10:10 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:
Thank you Marie--I appreciate it.

(b)(5)

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:(301)628-5658) (O)
(b)(6) (C)

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On Tue, Dec 20, 2016 at 9:34 AM, Marie Marks - NOAA Federal <marie.h.marks@noaa.gov> wrote:
FYI

----- Forwarded message -----

From: RM Communications <rm.communications@nara.gov>
Date: Tue, Dec 20, 2016 at 9:02 AM
Subject: AC 18.2017: MEMORANDUM TO FEDERAL AGENCIES CONTACTS: FOIA Regulations' Citation of the GRS
To: NARA-RM-COMMUNICATIONS@listserv.gsa.gov

AC 18.2017

December 20, 2016

MEMORANDUM TO FEDERAL AGENCIES CONTACTS: FOIA Regulations' Citation of the GRS

(b)(5)

For further information please contact GRS_Team@nara.gov.

LAURENCE BREWER
Chief Records Officer
for the U.S. Government

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Tuesday, December 20, 2016 11:28 AM
To: Deborah Ben-David - NOAA Federal; John Almeida - NOAA Federal; Stacey Nathanson - NOAA Federal
Cc: Lola Stith - NOAA Affiliate; Robert Swisher - NOAA Federal
Subject: Underlying Docs in FOIA Litigation
Attachments: 20161208 FOA v. NOAA Complaint.pdf; Fee Waiver Granted (13).docx; Original Request.pdf; 16-000959 Interim2, Release Letter.pdf; 16-000959 Interim3 Release Letter (EPA docs).pdf; 16-000959 Interim1 Ltr.pdf

To reference in our call today, here are the background docs for this new FOIA litigation from Friends of Animals, including the original request, the complaint, the Fee Waiver Adjudication, and all 3 interim release notices.

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) (C)

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UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

June 9, 2016

Ms. Kaylee Dolen
Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112

Re: FOIA Request # **DOC-NOAA-2016-000959**

Dear Ms. Dolen:

This letter is in response to your Freedom of Information Act (FOIA) request entered into FOIAonline on April 13, 2016. You requested all documents in NMFS' possession, whether received, created, and/or distributed by NMFS during the time period starting **January 26th, 2007** and ending **April 11, 2016** unless otherwise specified, including:

1. *All documents regarding the status of any pending anthropogenic activities in the Cook Inlet area for which IHAs or LOAs have been requested for takes of Cook Inlet belugas;*
2. *All documents regarding the final IHAs or LOAs issued for anthropogenic activities in Cook Inlet, including all documents supporting a "negligible" impact finding pursuant to the MMPA;*
3. *All documents, including research or commentary, not currently available to the public concerning the specific effects of anthropogenic noise or cumulative effects of Level B takes on the Cook Inlet beluga population;*
4. *All documents regarding the cumulative or synergistic effects of Level B takes of Cook Inlet beluga whales resulting from anthropogenic development activities over the past ten years (2007-2016);*
5. *All documents regarding Level A2 takes of Cook Inlet belugas resulting from anthropogenic activities;*
6. *All documents regarding the status of NOAA's preparation of the programmatic EA and EIS analyzing takes of marine mammals of Cook Inlet incidental to anthropogenic activities and all records of anticipated new agency actions or research pertaining to Cook Inlet belugas;*
7. *All documents regarding the preparation of the final recovery plan for Cook Inlet belugas under the federal Endangered Species Act ("ESA");*
8. *All documents regarding any limiting factors analysis completed or in progress for Cook Inlet belugas;*
9. *All documents regarding prioritization of threats to Cook Inlet belugas;*
10. *All documents of any accounting(s) of anthropogenic activities in the Cook Inlet that may result in the taking of a beluga whale;*
11. *All documents regarding any population monitoring for Cook Inlet belugas planned*



- or in progress for 2016;*
12. *All documents regarding any population monitoring for Cook Inlet belugas conducted within the last three years, including any population surveys (or similar activities) in proposed project areas conducted by the applicant(s) for an IHA or LOA; and*
 13. *All documents regarding any formal or informal consultations involving Cook Inlet belugas under Section 7 of the ESA.*

This constitutes our **1st interim** response to your request. Our search within the National Marine Fisheries Service, Protected Resource Division Alaska Region has thus far located **469 responsive records that are being released to you in their entirety**. An index is provided for your convenience.

Information on Appeals

We encourage you to speak with us if you have concerns as we continue to process this request. Although you have the ability to appeal at this time, we encourage you to focus the appeal/mediation/NOAA discussion, if needed, on documents provided as part of this interim release, but hold specific challenges about production until you have received and reviewed more of the voluminous records that the agency is still in the process of gathering and processing.

1) Administrative Appeal

You have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this interim release must be received within 30 calendar days of the date of this response letter by the:

Assistant General Counsel for Administration (Office)
Room 5898-C
U.S. Department of Commerce
14th and Constitution Avenue, NW
Washington, D.C. 20230

An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to [202-482-2552](tel:202-482-2552), or by FOIAonline, if you have an account in FOIAonline, at <https://foiaonline.regulations.gov/foia/action/public/home#>.

The appeal should include a copy of the original request and response. Please include the label "Freedom of Information Act Appeal" on the appeal letter, as well as on the envelope, the e-mail subject line, or the fax cover sheet, as applicable. FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next business day. If the 30th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

2) OGIS Mediation

The Office of Government Information Services (OGIS), an office created within the National Archives and Records Administration, offers mediation services to FOIA requesters. They may be contacted in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001
Email: ogis@nara.gov
Phone: 301-837-1996
Fax: 301-837-0348
Toll-free: 1-877-684-6448

3) Judicial Review

FOIA provides requesters with the right to challenge an agency's final action in federal court. Before doing so, an adjudication of an administrative appeal is ordinarily required. We continue to search for and process records responsive to your request. Please rest assured that your request is being handled as equitably as possible. As we discussed, this complex request presents unusual circumstances, and we will keep you apprised of our progress.

If you have questions regarding your request, please contact Mr. Lamar Turner, at nmfs.hq.pr.foia@noaa.gov or 301-427-8492.

Sincerely,



Lamar N. Turner, FOIA Coordinator
Office of Protected Resources

Enclosures



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

Ms. Kaylee Dolen
Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112

JUL 26 2016

Re: FOIA Request No. DOC-NOAA-2016-000959

Dear Ms. Dolen:

This letter is in response to your Freedom of Information Act (FOIA) request entered into FOIAonline on April 13, 2016. You requested all documents in NMFS' possession, whether received, created, and/or distributed by NMFS during the time period starting January 26th, 2007 and ending April 11, 2016 unless otherwise specified, including:

1. *All documents regarding the status of any pending anthropogenic activities in the Cook Inlet area for which IHAs or LOAs have been requested for takes of Cook Inlet belugas;*
2. *All documents regarding the final IHAs or LOAs issued for anthropogenic activities in Cook Inlet, including all documents supporting a "negligible" impact finding pursuant to the MMPA;*
3. *All documents, including research or commentary, not currently available to the public concerning the specific effects of anthropogenic noise or cumulative effects of Level B takes on the Cook Inlet beluga population;*
4. *All documents regarding the cumulative or synergistic effects of Level B takes of Cook Inlet beluga whales resulting from anthropogenic development activities over the past ten years (2007-2016);*
5. *All documents regarding Level A2 takes of Cook Inlet belugas resulting from anthropogenic activities;*
6. *All documents regarding the status of NOAA's preparation of the programmatic EA and EIS analyzing takes of marine mammals of Cook Inlet incidental to anthropogenic activities and all records of anticipated new agency actions or research pertaining to Cook Inlet belugas;*
7. *All documents regarding the preparation of the final recovery plan for Cook Inlet belugas under the federal Endangered Species Act ("ESA");*
8. *All documents regarding any limiting factors analysis completed or in progress for Cook Inlet belugas;*
9. *All documents regarding prioritization of threats to Cook Inlet belugas;*
10. *All documents of any accounting(s) of anthropogenic activities in the Cook Inlet that may result in the taking of a beluga whale;*
11. *All documents regarding any population monitoring for Cook Inlet belugas planned or in progress for 2016;*
12. *All documents regarding any population monitoring for Cook Inlet belugas conducted within the last three years, including any population surveys (or similar activities) in proposed project areas conducted by the applicant(s) for an IHA or LOA; and*
13. *All documents regarding any formal or informal consultations involving Cook Inlet belugas under Section 7 of the ESA.*



Printed on Recycled Paper



This constitutes our 2nd interim response to your request. Our search within the National Marine Fisheries Service, Protected Resource Division Alaska Region located an additional 5,419 responsive records. An index is provided for your convenience (enclosed). A summary follows to the released and partially withheld records:

- 5,218 records are released to you in their entirety. Of the records released in full, four (4) carry non responsive redaction to content deemed outside the scope of the request.
- 13 records are partially redacted and 177 records are fully withheld under exemption 5 U.S.C. § 552 (b)(5), which exempts from disclosure inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency. The records are exempted from disclosure through attorney client communication, attorney work product, or deliberative process privilege. Of these partially released documents, two (2) carry non-responsive redaction to content deemed outside the scope of the request.
- 11 records partially redacted under exemption 5 U.S.C. § 552 (b)(6) which protects personnel and medical files and similar files about individuals when the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy.

Note: You may wish to know the records being released to you in this response were previously provided under NOAA-FOIA-2011-00508 and NOAA-FOIA-2008-00316. They are released to you as released to the previous FOIA requesters.

Interim Release History:

The agency released records to you in their entirety on June 9 a total of 469 records. The agency has provided to-date 5,888 records responsive to your request.

You have the right to appeal the partial denial of your FOIA request.

Information on Appeals

We encourage you to speak with us if you have concerns as we continue to process this request. Although you have the ability to appeal at this time, we encourage you to focus the appeal/mediation/NOAA discussion, if needed, on documents provided as part of this interim release, but hold specific challenges about production until you have received and reviewed more of the voluminous records that the agency is still in the process of gathering and processing.

1) Administrative Appeal

You have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this interim release must be received within 90 calendar days of the date of this response letter by the:

Assistant General Counsel for Administration (Office)
Room 5898-C
U.S. Department of Commerce
14th and Constitution Avenue, NW
Washington, D.C. 20230

An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to 202-482-2552, or by FOIAonline, if you have an account in FOIAonline, at <https://foiaonline.regulations.gov/foia/action/public/home#>.

The appeal should include a copy of the original request and response. Please include the label "Freedom of Information Act Appeal" on the appeal letter, as well as on the envelope, the e-mail subject line, or the fax cover sheet, as applicable. FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

2) OGIS Mediation

The Office of Government Information Services (OGIS), an office created within the National Archives and Records Administration, offers mediation services to FOIA requesters. They may be contacted in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road College Park, MD 20740-6001
Email: ogis@nara.gov
Phone: 301-837-1996
Fax: 301-837-0348
Toll-free: 1-877-684-6448

3) Judicial Review

FOIA provides requesters with the right to challenge an agency's final action in federal court. Before doing so, an adjudication of an administrative appeal is ordinarily required

We continue to search for and process records responsive to your request. Please rest assured that your request is being handled as equitably as possible. As previously discussed, this complex request presents unusual circumstances. We will continue to provide interim responses as they become available.

If you have questions regarding your request, please contact Mr. Lamar Turner at nmfs.hq.pr.foia@noaa.gov or 301-427-8492.

Sincerely,



Samuel D. Rauch III,
Deputy Assistant Administrator
for Regulatory Programs



September 28, 2016

Ms. Kaylee Dolen
Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112

Re: FOIA Request No. **DOC-NOAA-2016-000959**

Dear Ms. Dolen:

This letter is in response to your Freedom of Information Act (FOIA) request entered into FOIAonline on April 13, 2016. You requested all documents in NMFS' possession, whether received, created, and/or distributed by NMFS during the time period starting **January 26th, 2007** and ending **April 11, 2016** unless otherwise specified, including:

1. *All documents regarding the status of any pending anthropogenic activities in the Cook Inlet area for which IHAs or LOAs have been requested for takes of Cook Inlet belugas;*
2. *All documents regarding the final IHAs or LOAs issued for anthropogenic activities in Cook Inlet, including all documents supporting a "negligible" impact finding pursuant to the MMPA;*
3. *All documents, including research or commentary, not currently available to the public concerning the specific effects of anthropogenic noise or cumulative effects of Level B takes on the Cook Inlet beluga population;*
4. *All documents regarding the cumulative or synergistic effects of Level B takes of Cook Inlet beluga whales resulting from anthropogenic development activities over the past ten years (2007-2016);*
5. *All documents regarding Level A2 takes of Cook Inlet belugas resulting from anthropogenic activities;*
6. *All documents regarding the status of NOAA's preparation of the programmatic EA and EIS analyzing takes of marine mammals of Cook Inlet incidental to anthropogenic activities and all records of anticipated new agency actions or research pertaining to Cook Inlet belugas;*
7. *All documents regarding the preparation of the final recovery plan for Cook Inlet belugas under the federal Endangered Species Act ("ESA");*
8. *All documents regarding any limiting factors analysis completed or in progress for Cook Inlet belugas;*
9. *All documents regarding prioritization of threats to Cook Inlet belugas;*
10. *All documents of any accounting(s) of anthropogenic activities in the Cook Inlet that may result in the taking of a beluga whale;*
11. *All documents regarding any population monitoring for Cook Inlet belugas planned or in progress for 2016;*
12. *All documents regarding any population monitoring for Cook Inlet belugas conducted within the last three years, including any population surveys (or similar activities) in proposed project areas conducted by the applicant(s) for an IHA or LOA; and*
13. *All documents regarding any formal or informal consultations involving Cook Inlet belugas under Section 7 of the ESA.*



This constitutes our **3rd interim** response to your request. Our search within the National Marine Fisheries Service, Protected Resource Division Alaska Region located an additional **51 responsive records**. A summary follows:

- **51** records are being released to you in their entirety.

Interim Release History

- *1st interim records totaling 469 were released to you in their entirety on June 9, 2016.*
- *2nd interim records totaling 266 were released to you in their entirety on June 10, 2016.*
- *Including this interim, the agency has provided to-date **786** records responsive to your request.*

You have the right to appeal the partial denial of your FOIA request.

Information on Appeals

We encourage you to speak with us if you have concerns as we continue to process this request. Although you have the ability to appeal at this time, we encourage you to focus the appeal/mediation/NOAA discussion, if needed, on documents provided as part of this interim release, but hold specific challenges about production until you have received and reviewed more of the voluminous records that the agency is still in the process of gathering and processing.

1) Administrative Appeal

You have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this interim release must be received within 30 calendar days of the date of this response letter by the:

**Assistant General Counsel for Administration (Office)
Room 5898-C
U.S. Department of Commerce
14th and Constitution Avenue, NW
Washington, D.C. 20230**

An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to 202-482-2552, or by FOIAonline, if you have an account in FOIAonline, at <https://foiaonline.regulations.gov/foia/action/public/home#>.

The appeal should include a copy of the original request and response. Please include the label "Freedom of Information Act Appeal" on the appeal letter, as well as on the envelope, the e-mail subject line, or the fax cover sheet, as applicable. FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next business day. If the 30th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

2) OGIS Mediation

The Office of Government Information Services (OGIS), an office created within the National Archives and Records Administration, offers mediation services to FOIA requesters. They may be contacted in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road College Park, MD 20740-6001
Email: ogis@nara.gov
Phone: 301-837-1996
Fax: 301-837-0348
Toll-free: 1-877-684-6448

3) Judicial Review

FOIA provides requesters with the right to challenge an agency's final action in federal court. Before doing so, an adjudication of an administrative appeal is ordinarily required

We continue to search for and process records responsive to your request. Please rest assured that your request is being handled as equitably as possible. As previously discussed, this complex request presents unusual circumstances. We will continue to provide interim responses as they become available.

If you have questions regarding your request, please contact Mr. Lamar Turner at nmfs.hq.pr.foia@noaa.gov or 301-427-8492.

Sincerely,



Lamar N. Turner, FOIA Coordinator
Office of Protected Resources

Enclosures

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
District of Colorado

FRIENDS OF ANIMALS, a New York non-profit corporation, and
SEA SHEPHERD LEGAL, a Washington non-profit corporation
Plaintiff(s)
v.

Civil Action No. 16-3007

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, an agency of the United States
Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Bob Troyer
United States Attorney
1225 17th Street
Suit 700
Denver, CO 80202

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Michael Harris
Wildlife Law Program
Friends of Animals
7500 E. Arapahoe Road, Suite 385
Centennial, CO 80112

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 16-3007

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):*

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
FRIENDS OF ANIMALS, a New York non-profit corporation, and SEA SHEPHERD LEGAL, a Washington non-profit corporation
(b) County of Residence of First Listed Plaintiff Arapahoe County
(c) Attorneys (Firm Name, Address, and Telephone Number)
Michael Harris
Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Suite 385, Centennial, CO 80112; Tel: (720) 949-7791

DEFENDANTS
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, an agency of the United States
County of Residence of First Listed Defendant District of Columbia
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question
4 Diversity

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT
PERSONAL INJURY
REAL PROPERTY
CIVIL RIGHTS
PRISONER PETITIONS
FORFEITURE/PENALTY
LABOR
IMMIGRATION
BANKRUPTCY
PROPERTY RIGHTS
SOCIAL SECURITY
TAX SUITS
OTHER STATUTES

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
5 U.S.C 552- Failure to respond to request under the Freedom of Information Act
Brief description of cause: AP Docket

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMANDS
CHECK YES only if demanded in complaint.
JURY DEMAND: Yes No

DATE: 12/08/2016
SIGNATURE OF ATTORNEY OF RECORD: /s/ Michael Ray Harris

FOR OFFICE USE ONLY
RECEIPT #
AMOUNT
APPLYING IFP
JUDGE
MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows.

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment noting, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example:

U.S. Civil Statute: 47 USC 553

Brief Description:

Unauthorized reception of cable service

Or:

"AP Docket"

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

FRIENDS OF ANIMALS, and
SEA SHEPHERD LEGAL;

Plaintiffs,

v.

NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION
an agency of the United States,

Defendant.

Civ. No. 16-3007

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF
(FREEDOM OF INFORMATION ACT)**

INTRODUCTION

1. This action is brought to remedy violations of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et. seq.* Specifically, it challenges the failure of the National Oceanic and Atmospheric Administration (“Federal Defendant”) to provide a final determination, including all responsive documents, within the time required by FOIA in regard to Plaintiffs Friends of Animals’ and Sea Shepherd Legal’s (“Plaintiffs”) April 14, 2016 request for information (“Request”).

2. In the Request, Plaintiffs asked for all documents in Federal Defendant’s possession related to pending or final approvals under the Marine Mammal Protection Act, National Environmental Policy Act and the Endangered Species Act for anthropogenic activities affecting the Cook Inlet beluga whale. Plaintiffs also sought all documents related to biological analyses and threats to the Cook Inlet beluga whale. *See* Exhibit A.

3. As of the date on this Complaint, Federal Defendant has not made a final determination regarding the release of documents, nor has Federal Defendant provided a timeline or other plan for compliance with the requirements of FOIA to indicate when or whether the Request will be fully satisfied.

4. Federal Defendant is unlawfully withholding public disclosure of information that Plaintiffs are entitled to receive under FOIA. By failing to make either a timely determination or timely and complete releases after the initial tranche of documents, Federal Defendant failed to comply with the statutory mandates and deadlines imposed by FOIA.

5. Accordingly, Plaintiffs seek declaratory relief establishing that Federal Defendant has violated FOIA. Plaintiffs also seek injunctive relief directing Federal Defendant to make a determination on the Request, provide a timeline for the release of the remaining documents, and promptly provide the requested material free of cost.

6. Plaintiffs bring this lawsuit to obtain timely disclosure of critical information related to authorized takes, and to pending authorizations of requested takes, of hundreds of Cook Inlet beluga whales from multiple and geographically overlapping oil and gas projects in the Cook Inlet. Given the significant potential impact upon the rapidly diminishing population of Cook Inlet beluga whales and the strong public interest in disclosure of information that may directly assist Plaintiffs' ongoing efforts to protect this population, Plaintiffs seek expeditious treatment of their Complaint pursuant to 28 U.S.C. § 1657.

JURISDICTION AND VENUE

7. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA) and 28 U.S.C. § 1331 (federal question). This Court may grant the declaratory relief under 28 U.S.C. §§ 2201, *et seq.* (Declaratory Judgment Act) and injunctive relief under 5 U.S.C. § 552(a)(4)(B) (FOIA). An actual, justiciable controversy exists within the meaning of the Declaratory Judgment Act between Plaintiffs and Federal Defendant. The Court has jurisdiction, upon receipt of a complaint, "to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B).

8. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B), which provides venue for FOIA cases in this district as the district in which a plaintiff resides. Friends of Animals maintains a principle office here in Colorado. Venue is also proper under 28 U.S.C. § 1391(b) because the defendant is subject to personal jurisdiction in this federal district.

PARTIES

9. Friends of Animals is a nonprofit international advocacy organization with nearly 200,000 members, incorporated in the state of New York since 1957. Friends of Animals seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living and domestic animals. Friends of Animals engages in a variety of advocacy programs in support of these goals. Friends of Animals informs its members about animal advocacy issues as well as the organization's progress in addressing these issues through its magazine called *ActionLine*, its website, and other reports. Friends of Animals has published articles and information advocating for the protection of wild species so that they can live unfettered in their natural habitats.

10. In 2013, Friends of Animals created a federal wildlife law program. The program established its principle office in Centennial, Colorado. The office consists of four full-time employees and one part-time employee. Through this office, Friends of Animals submitted the Request at issue in this action.

11. Sea Shepherd Legal is a nonprofit public interest law organization dedicated to its mission to end the destruction of habitat and slaughter of wildlife in the world's oceans in order to conserve and protect ecosystems and species. In furtherance of that mission, Sea Shepherd Legal has been involved in protecting marine life throughout the world. Sea Shepherd Legal uses public outreach and education to advocate for and motivate the creation of greater protections for cetaceans and other marine life.

12. The interests of Plaintiffs and their members are harmed by Federal Defendant's failure to release the requested documents in a timely manner, which prevents Plaintiffs

from obtaining, analyzing, disseminating and using the requested information to advance Plaintiffs' missions of ensuring the protection of marine wildlife and, in particular here, the Cook Inlet beluga whale.

13. Federal Defendant is an agency within the meaning of 5 U.S.C. § 552(f)(1). Federal Defendant is responsible for fulfilling Plaintiffs' Request and complying with all federal laws.

STATUTORY BACKGROUND

14. Congress enacted FOIA to ensure public access to U.S. government records. FOIA carries a presumption of disclosure. *Dep't of State v Ray*, 502 U.S. 164 (1991). Upon receipt of a written request that "reasonably describes" the records sought and complies with "published rules . . . and procedures to be followed," agencies of the United States government are required to "promptly" disclose their records, unless they can be lawfully withheld from disclosure under one of nine specific exemptions in FOIA. 5 U.S.C. § 552(a)(3)(A). The burden is on the government—not the requestor or public—to justify why particular information may be withheld. *Ray*, 502 U.S. at 164.

15. FOIA requires agencies to "determine within 20 days . . . after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefore, and of the right of such person to appeal to the head of the agency any adverse determination." *Id.* at § 552(a)(6)(A)(i).

16. On determination by an agency to comply with the request, the records shall be made "promptly available." *Id.* at § 552(a)(6)(C).

17. In "unusual circumstances," an agency may extend the time limits for up to 10 working days by providing written notice to the requester setting forth the unusual circumstance(s) and the date on which the determination is expected to be dispatched. *Id.* at § 552(a)(6)(B).

18. In some limited circumstances, FOIA allows an agency to seek an extension potentially beyond 10 days. Specifically, FOIA requires an agency to provide written notification to the requester: (1) offering an opportunity to limit the scope of the request so that it may be processed within the 20 work-day limit, or (2) offering an opportunity to arrange with the agency an “alternative time frame” for processing the request. *Id.* at § 552(a)(6)(B)(ii). If the agency elects this option, it must make its FOIA Public Liaison available to the requester to assist in any disputes with the agency. *Id.*

19. If the agency fails to make a determination on a document request within 20 work-days, or within the limited additional time permitted upon proper notification of “unusual circumstances,” the requester is deemed to have constructively exhausted administrative remedies and may seek judicial review. *Id.* at § 552(a)(6)(C). *Oglesby v. Dep’t of Army*, 920 F.2d 57(D.C. Cir 1990), *Nurse v. Sec’y of the Air Force*, 231 F. Supp. 2d 323, 328 (D.D.C. 2002) (“The FOIA is considered a unique statute because it recognizes a constructive exhaustion doctrine for purposes of judicial review upon the expiration of certain relevant FOIA deadlines.”)

20. FOIA requires that the agency “shall make the records promptly available to any person” and may not defer release of responsive documents indefinitely. *Id.* at § 552(a)(3)(A). Failure to issue a determination and to complete the release of documents in a timely fashion is a violation of FOIA even if the initial response and releases may have been prompt. *Munger, Tolles, Olsen v. Dept. of Army*, 58 F. Supp. 3d 1050 (C.D. Cal 2014). *See also Fiduccia v. U.S. Dep’t of Justice*, 185 F.3d 1035, 1041 (9th Cir. 1999)(“Congress gave agencies 20 days, not years, to decide whether to comply with requests and notify the requesters”); *Long v. IRS*, 693 F.2d 907, 910 (9th Cir. 1982) (“[U]nreasonable delays in disclosing non-exempt documents violate the intent and purpose of the FOIA, and the courts have a duty to prevent these abuses.”).

FACTUAL BACKGROUND

21. On April 12, 2016, Plaintiffs submitted the Request under FOIA to Federal Defendant reasonably describing all documents of which Plaintiffs sought disclosure.

22. On April 21, 2016, Federal Defendant provided written notification confirming receipt of the Request and disclosing that the Request had been assigned for processing on April 14, 2016.

23. In the confirmation, Federal Defendant did not request any additional information needed to clarify the Request. Federal Defendant did request a Scope Conference with Friends of Animals.

24. On April 29, 2016, Federal Defendant and Friends of Animals conducted the Scope Conference. During this conference, Federal Defendant did not request any additional information needed to clarify the Request but asked Plaintiffs to prioritize the individual document categories identified in the Request. Friends of Animals instructed Federal Defendant to proceed with the original FOIA request, but agreed to send a letter outlining the priorities of the original FOIA request.

25. On May 10, 2016, Friends of Animals submitted a letter to Federal Defendant outlining the top priorities of the original FOIA request. In that letter, Friends of Animals stated as follows: "As discussed on the April 29, 2016 conference call, Friends of Animals has not changed or altered the original request, nor are we waiving under [sic] rights under FOIA. We provide the following priorities merely to assist the agency in processing our request."

26. On May 16, 2016, Federal Defendant confirmed receipt of Friends of Animals' May 10 letter outlining the top priorities of the original FOIA request and indicated the need for a 10-day extension due to "unusual circumstances." Federal Defendant further stated that the first interim release of records could be anticipated on May 25, 2016.

27. The 20 work-day time limit for providing a determination on the Request commenced on April 14 and, thus, expired on May 12, 2016.

28. Federal Defendant made two interim releases of documents. The first release was dated June 9, 2016. The second was dated July 26, 2016 (but not received until August 29, 2016).

29. Since August 29, 2016, no further documents have been released.

30. Since August 29, 2016, Federal Defendant has not provided any timeline for the release of any remaining documents.

31. As of the date of this complaint, Plaintiffs have not received a final determination on their Request.

32. Plaintiffs believe and allege that Federal Defendant is unlawfully withholding public disclosure of information sought by Plaintiffs, information to which they are entitled to receive promptly, and for which Federal Defendant has not provided a valid disclosure exemption.

33. Federal Defendant has offered no reasonable explanation for its delay, and it has failed to estimate when it will finally be able to comply with its obligations under FOIA.

34. Since Federal Defendant has neither produced responsive documents nor provided an appealable final determination, Plaintiffs have constructively exhausted their administrative remedies with respect to the requested documents.

CLAIM FOR RELIEF
Violation of Freedom of Information Act
Failure to Respond with a Determination

35. Plaintiffs herein incorporate all allegations contained in the proceeding paragraphs.

36. FOIA provides that any person may obtain those agency records that are not subject to the FOIA disclosure exemptions promptly. 5 U.S.C. § 552 (a)(3)(A).

37. Plaintiffs properly requested records within the control of Federal Defendant.

38. Federal Defendant failed to provide Plaintiffs with a final determination as to whether Federal Defendant has any non-exempt records responsive to the Request and whether it intended to release such records within the required timeframe. *Id.* § 552(a)(6)(A)(i) and § 552(a)(6)(B).

39. Federal Defendant failed to properly invoke and comply with FOIA's provision allowing a 10 working day extension for "unusual circumstances." *Id.* at § 552(a)(6)(B)(i).

40. Federal Defendant failed to properly invoke and comply with FOIA's provision permitting an extension of potentially greater than 10 working days by offering Plaintiffs an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. *Id.* at § 552(a)(6)(B)(ii).

41. Federal Defendant has failed to promptly make available responsive documents without unreasonable delay.

42. Federal Defendant's failures to comply with FOIA are subject to judicial review under 5 U.S.C. § 552 (a)(4)(B). Federal Defendant's failure to issue a determination within the statutory deadlines violates 5 U.S.C. § 552 (a)(3)(A).

43. Accordingly, Plaintiffs are entitled to injunctive and declaratory relief with respect to a determination on the Request.

PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court enter judgment providing the following relief:

1. Declare that Federal Defendant violated FOIA by failing to (1) make a determination on Plaintiffs' Request and (2) make records responsive to Plaintiffs' Request available within the statutory deadlines.
2. Order Federal Defendant to (1) provide Plaintiffs with a final determination and (2) process and release all records responsive to the Request at no cost to Plaintiffs within 10 days from the date of such order;

3. Retain jurisdiction of this action to ensure the processing of the Request, and to ensure that no agency records are wrongfully withheld;
4. Award Plaintiffs costs, including reasonable attorney fees and litigation costs in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
5. Grant Plaintiffs any other relief that the Court deems just and proper.

Dated: December 08, 2016

Respectfully Submitted,

/s/ Michael Harris
Michael Ray Harris
Director, Wildlife Law Program
Friends of Animals
7500 E. Arapahoe Road, Suite 385
Centennial, CO 80112
720-949-7791
michaelharris@friendsofanimals.org

Attorney for Plaintiff Friends of Animals

/s/ Brett Sommermeyer
Brett Sommermeyer (admission pending)
Legal Director
Sea Shepherd Legal
2226 Eastlake Ave., E.
No. 108
Seattle, WA 98102
brett@seashepherdlegal.org

Attorney for Plaintiff Sea Shepherd Legal

EXHIBIT A

~~EXPLOITERS~~
FRIENDS
of ANIMALS

April 12, 2016

Submitted Via U.S Certified Mail and FOIAonline

National Oceanic and Atmospheric Administration
Public Reference Facility (SOU1000)
1315 East-West Highway (SSMC3)
Room 9719
Silver Spring, Maryland 20910

Re: FOIA Request for Records Relating to Incidental Harassment Authorizations
Issued for Activities Impacting Cook Inlet Beluga Whales in Federal Waters
Administered by the National Oceanic and Atmospheric Administration

Dear FOIA Officer:

I am writing on behalf of Friends of Animals, Sea Shepherd Legal, and the Turtle Island Restoration Network (collectively, the "Requesters"). Pursuant to 43 C.F.R. Part 2, and the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, Requesters seek the disclosure of all documents¹ in the categories listed below regarding the harassment of the distinct population segment of Cook Inlet beluga whales in waters managed by the National Oceanic and Atmospheric Administration ("NOAA"). Unless otherwise specified, Requesters seek all documents for the time period starting January 26th, 2007 and ending April 11, 2016. Requesters also request a full waiver of all search and duplication fees.

¹ The terms "document(s)" and "records" are used in the broadest sense contemplated by Federal Rule of Civil Procedure 34. It means all written, transcribed, recorded or graphic matters, however produced or reproduced. This definition includes, but is not limited to, any and all original copies or drafts of any and all of the following: records; notes; nonconforming copies that contain deletions, insertions, corrections, handwritten notes or comment summaries; memoranda; schedules; contracts; binders; work papers; logs; diaries; work sheets; files; letters; correspondence; summaries of memoranda; reports or memoranda of telephone conversations or records of personal conversations or interviews; handwritten notes; telephone logs; facsimiles; summaries; invoices; promissory notes; contracts; loan agreements; vouchers; billing statements; tape recordings or transcripts of tape recordings; photographs; videotapes; computerized output or data bases; electronic files; computer disks; computer CDs; electronic mail transmittals; data and all other writings; calculations; and figures or symbols of any kind which, in any manner mentioned, relate to the subjects of the specific requests contained below. This request includes all documents that have ever been within your custody or control, including all inter and intra agency documents, whether they exist in agency working, investigative, retired, electronic mail, or other files currently or at any other time.

A. FOIA Request.

Over the course of several years, NOAA has issued multiple Letters of Authorization (“LoA”) and Incidental Harassment Authorizations (“IHA”) for Level B takes of Cook Inlet beluga whales under the Marine Mammal Protection Act (“MMPA”) incidental to anthropogenic activities in Cook Inlet. Under the MMPA, Level B takes have “the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, feeding, or sheltering.” 16 U.S.C. § 1362(18).

Please provide the following documents in your possession, whether received, created, and/or distributed by NOAA:

- (1) All documents regarding the status of any pending anthropogenic activities in the Cook Inlet area for which IHAs or LoAs have been requested for takes of Cook Inlet belugas;
- (2) All documents regarding the final IHAs or LoAs issued for anthropogenic activities in Cook Inlet, including all documents supporting a “negligible” impact finding pursuant to the MMPA;
- (3) All documents, including research or commentary, not currently available to the public concerning the specific effects of anthropogenic noise or cumulative effects of Level B takes on the Cook Inlet beluga population;
- (4) All documents regarding the cumulative or synergistic effects of Level B takes of Cook Inlet beluga whales resulting from anthropogenic development activities over the past ten years (2007-2016);
- (5) All documents regarding Level A² takes of Cook Inlet belugas resulting from anthropogenic activities;
- (6) All documents regarding the status of NOAA’s preparation of the programmatic EA and EIS analyzing takes of marine mammals of Cook Inlet incidental to anthropogenic activities and all records of anticipated new agency actions or research pertaining to Cook Inlet belugas;
- (7) All documents regarding the preparation of the final recovery plan for Cook Inlet belugas under the federal Endangered Species Act (“ESA”);
- (8) All documents regarding any limiting factors analysis completed or in progress for Cook Inlet belugas;
- (9) All documents regarding any prioritization of threats to Cook Inlet belugas;
- (10) All documents of any accounting(s) of anthropogenic activities in the Cook Inlet that may result in the taking of a beluga whale;

² As defined as having “the potential to injure a marine mammal or marine mammal stock in the wild.” 16 U.S.C. § 1362(18)(A)(i).

- (11) All documents regarding any population monitoring for Cook Inlet belugas planned or in progress for 2016;
- (12) All documents regarding any population monitoring for Cook Inlet belugas conducted within the last three years, including any population surveys (or similar activities) in proposed project areas conducted by the applicant(s) for an IHA or LoA;
- (13) All documents regarding any formal or informal consultations involving Cook Inlet belugas under Section 7 of the ESA.

The items specifically requested are not meant to be exclusive of any other documents that, although not specially requested, have a reasonable relationship to the subject matter of this request.

For purposes of this request, "anthropogenic activities" are defined to encompass any activity wholly or substantially relating to vessel or aircraft noise (if vessel or aircraft movements are products of an anthropogenic project), ship traffic, including strikes, dredging, pile driving, explosions, demolition, sonar use, oil and gas exploration (including seismic operations, drilling, platform noise, airguns, multibeam echosounders, and sub-bottom profilers), shore construction, military testing activities (i.e. explosions, sonar), pipe and cable laying, water pollution and any other activities reasonably affiliated with anthropogenic projects.

The Supreme Court has stated that FOIA establishes a "strong presumption in favor of disclosure" of requested information, and that the burden is on the government to substantiate why information may not be released under the act's various exemptions. *Department of State v. Ray*, 502 U.S. 164, 173 (1991). Congress affirmed these tenets of FOIA in the Open Government Act of 2007, finding that "the Government [should] remain open and accessible to the American people" and always be based "not upon the need to know but upon the fundamental right to know." Public Law 110-175, 121 Stat. 2524, 2525 (Dec. 31, 2007) (internal citations omitted). President Obama has also directed that "[t]he presumption of disclosure should be applied to all decisions involving FOIA." 74 Fed. Reg. 4683 (Jan. 26, 2009). Please consider the foregoing before withholding any documents that are responsive to this request.

The Requesters anticipate that you will make the requested materials available within the statutorily prescribed period. We also request that you waive any applicable fees since disclosure meets the statutory standard for a fee waiver in that it is clearly "in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii).

B. Fee Waiver Request.

FOIA provides that "documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). The legislative history of FOIA, as well as the case law interpreting the Act, indicates that the statute's fee waiver provision is to be liberally construed favoring the public interest. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 Cong. Rec. S14298 (Sept. 30, 1986) (Sen. Leahy)).

This request for information qualifies for a fee waiver under this standard and, accordingly, we request that all fees be waived. This request satisfies both statutory and regulatory requirements for granting a fee waiver. Below we explain how the request and the Requesters meet each of requirements for a fee waiver delineated in NOAA's FOIA regulations (under its parent agency, the Department of Commerce) 15 CFR § 4.11(k).

1. Disclosure of the Information Requested is in the Public Interest.

(i) *"The subject of the request: whether the subject of the requested records concerns the operations or activities of the Government."*

The requested records concern the operations and activities of NOAA, a federal agency. Specifically, they concern the operation of this federal agency, its management of federally protected Cook Inlet beluga whales, and its permitting decision-making process.

(ii) *"The informative value of the information to be disclosed: whether the disclosure is 'likely to contribute' to an understanding of Government operations or activities."*

(a) How the contents of the records are meaningfully informative;

The requested documents would have substantive, meaningfully informative value and would be likely to contribute to a better understanding of NOAA and its actions. The documents will illuminate in a clear and direct way the operations and activities of the federal government and the activities that it undertakes in regards to management of Cook Inlet beluga whales and the anthropogenic projects that affect them. Although Cook Inlet beluga whales have been in the public spotlight in recent years due to their dwindling numbers and Endangered Species Act listing in 2008, not much is definitively known about the Level B take, cumulative, and noise pollution impacts on Cook Inlet beluga whales from anthropogenic activities. The information requested concerns the operations of the agency responsible for approving activities that have the potential to seriously injure or even kill Cook Inlet

beluga whales and the details of NOAA's past and current permitting decisions and decision-making process in regards to these whales.

- (b) The logical connection between the content of the records and the operations or activities;

The release of the requested documents will significantly contribute to public understanding and oversight of the federal government's operations. For example, the records will help the public understand the status of current Cook Inlet projects, how often and to which activities the federal government authorizes Level B takes, how the government evaluates the significance of cumulative and noise impacts, and the process by which the government makes decisions that affect Cook Inlet beluga whales.

- (iii) *"The contribution to an understanding of the subject by the public likely to result from disclosure: whether disclosure of the requested information will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester."*

Friends of Animals:

Friends of Animals is a nonprofit, international animal advocacy organization incorporated in the state of New York since 1957. Friends of Animals seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living, and domestic animals. The public impact of this disclosed information would be magnified through Friends of Animals' public engagement mechanisms. Friends of Animals has a proven track record of contributing to public understanding of issues surrounding animal advocacy and human-wildlife interactions.

Friends of Animals informs its members about animal advocacy issues, as well as the organization's progress in addressing such issues, through its quarterly magazine called *ActionLine*, its website, and other reports. Friends of Animals has published articles and information advocating for the protection of animals so that they can live unfettered in their natural habitat. In particular, Friends of Animals has a long-standing commitment to protecting animals imperiled due to human-caused activities. Friends of Animals regularly publicizes information about wildlife. Friends of Animals employs several experts who are able to quickly digest and circulate the information obtained from this request, including attorneys and media correspondents.

Friends of Animals plans to disseminate the requested information to Friends of Animals' members, members of other conservation organizations, and other interested members of the public through its website, its quarterly magazine,

and through outreach to other media outlets. By disseminating and distributing this information, Friends of Animals will significantly contribute to the public's understanding of how the government manages harassment of Cook Inlet beluga whales. Friends of Animals also informs its members about animal advocacy issues—including government management of birds, wild horses, and other wildlife—through lawsuits.

Friends of Animals staff has the ability to review, consolidate, and disseminate this information to the public. By consolidating and releasing the information, Friends of Animals will significantly enhance the public's understanding of how the government is currently operating. Additionally, the requested information will constitute a significant contribution to public understanding because it will allow Friends of Animals and the public to determine how the federal government's actions are impacting Cook Inlet beluga whales and whether the federal government has met its obligations under the National Environmental Policy Act, the Marine Mammal Protection Act, and Endangered Species Act.

Sea Shepherd Legal

Sea Shepherd Legal is an international, nonprofit, public interest environmental law firm with a mission to save marine wildlife and habitats by enforcing, strengthening, and developing protective laws, treaties, policies, and practices worldwide. Sea Shepherd Legal works on a range of matters from ensuring proper governmental agency action to developing innovative policy approaches, in order to encourage greater protections for marine wildlife and ecosystems. Public outreach is a key aspect of Sea Shepherd Legal's work.

Sea Shepherd Legal engages in public outreach in order to raise awareness about marine conservation facts, law, resources and tools. Through outreach and education, Sea Shepherd Legal promotes public understanding regarding the importance of biodiversity conservation and how members of the public can play an essential role in protecting marine wildlife and habitats.

Sea Shepherd Legal's general public outreach work involves the bi-weekly publication of a blog, disseminating information regarding marine wildlife protection through social media, and initiating calls to action through online campaign petitions. Related Sea Shepherd entities selectively disseminate these materials to more than one million followers.

The public has a right to know which wildlife species and habitats are at risk, the nature of such risk – including anthropogenic impacts, the role the government is required to play in assessing and mitigating risks, and the government's official response thereto. Through its extensive public outreach endeavors, Sea Shepherd

Legal will ensure that the public acquires this knowledge.

Turtle Island Restoration Network

Turtle Island Restoration Network (“TIRN”) is an international public interest non-profit with a strong track record of disseminating information from FOIA requests to its own membership, decision-makers, the media and the general public. TIRN is a non-profit organization that informs, educates, and counsels the public regarding environmental issues, policies, and laws relating to imperiled species, including marine species. TIRN has been substantially involved in the management activities of numerous government agencies for years, and has consistently displayed its ability to disseminate information granted to it through FOIA requests. As a long established advocacy organization, our informational publications supply information not only to our membership, but also to the memberships of most other conservation organizations, locally as well as nationally. Our informational publications continue to contribute information to public media outlets, as well. TIRN routinely disseminates such information through e-mail alerts and newsletters, which are sent to over 200,000 members and activists. In addition, we disseminate information through our websites, which receives over 100,000 page views per month. Furthermore, we bring such information to our partner organizations and to the media for dissemination to the membership of other organizations and the public at large. Information and our analyses of NMFS’s compliance with the MSA, the MMPA and the ESA will likely be disseminated through all of these means.

TIRN will publicize the results of any analysis of the data to inform the public about the policy choices and information regarding the management of anthropogenic impacts to the Cook Inlet Beluga Whale. This is certain to result in a significant increase in public understanding of government agency activity, especially NOAA’s approach to the conservation of marine species. In addition to informing the public about information relevant to policy and management, TIRN has a proven track record of enforcing environmental laws and publicizing agency compliance with the provisions of various environmental laws through information gained from FOIA requests like this one. TIRN intends to use the documents requested in this request in a similar manner, as appropriate.

- (iv) *“The significance of the contribution to public understanding: whether the disclosure is likely to contribute ‘significantly’ to public understanding of Government operations or activities.”*

Requesters seek the requested documents to increase their understanding, and subsequently contribute to public understanding, of how the federal government is managing activities that affect Cook Inlet beluga whales in Alaska. Many anthropogenic projects are approved by NOAA each year, many of them

granted Level B takes of marine mammals, and the government claims that these actions have a negligible effect on marine mammals. However, the public does not have access to all of the documents available to NOAA and thus cannot understand exactly how NOAA makes its non-negligible impact determinations during agency review of project applications. Additionally, the public cannot understand the justifications used by NOAA staff, its decision-making process, or how risks associated with permitting are assessed without more information about the operations of NOAA.

If the information is not disclosed to the Requesters, the public will remain uninformed about what activities the federal government conducts and authorizes. Disclosure, however, will permit the Requesters to disseminate information to the public, and it will increase transparency surrounding the federal government's activities. This is particularly important because NEPA grants the public a right to this information and a right to participate in federal decisions, such as commenting on proposed anthropogenic activities in Cook Inlet.

The information requested is not, to our knowledge, publicly available. The government may omit sending us requested records that are available in publicly accessible forums (e.g. Internet) or in published materials that are routinely available at public or university libraries. If the government chooses to omit such information, please provide the Requesters with adequate references and/or website links so that we may obtain these materials on our own. We would request that the government provide us with an index of such omitted documents, so that we may have reasonable certainty that we have access to the complete record regarding the management and protection of the Cook Inlet Beluga whales. However, we suspect that the majority of requested materials will not be available unless we receive them from the government in satisfaction of this FOIA request.

2. Disclosure of the Information is Not Primarily in the Commercial Interest of the Requester

When considering whether a request for a fee waiver meets the second prong of the fee waiver requirement, the agency is directed to consider: (1) "whether or not the requester has a commercial interest that would be furthered by the requested disclosure," and (2) "the primary interest in disclosure," i.e. whether the interest of the requester is primarily commercial or public.

None of the Requesters have a commercial, trade, or profit interest in the requested records. In fact, the Requesters do not have any commercial, trade, or profit interests.

Friends of Animals is a non-profit, international animal advocacy organization, incorporated in the state of New York since 1957. It serves the public interest by increasing the general public's awareness of animal advocacy issues and

by teaching how to end animal cruelty and exploitation around the world. Friends of Animals seeks to promote a respectful view of nonhuman, free-living and domestic animals. The Internal Revenue Service recognizes Friends of Animals as a 501(c)(3) tax-exempt organization (IRS Employer Identification#: 13-6018549). Friends of Animals' successful and well-orchestrated public education programs on animal advocacy issues and government operations merit granting a fee waiver for the requested records.

Sea Shepherd Legal was established in 2014 for the purpose of saving marine wildlife and habitats by enforcing, strengthening, and developing protective laws, treaties, policies, and practices worldwide. Sea Shepherd Legal works on a range of matters to ensure greater protections for marine wildlife and ecosystems, via the use of tools including litigation, policy development and public outreach. The IRS recognizes Sea Shepherd Legal as a public interest environmental law firm. Sea Shepherd Legal's EIN number is 47-2272507.

Turtle Island Restoration Network is a 501(c)(3) that has been working to protect marine wildlife, especially sea turtles, but also marine mammals and other endangered species, since the early 1980s. TIRN works through a combination of legal and advocacy strategies and grassroots organizing and education to strengthen protections worldwide. TIRN's EIN is 91-1818080.

CONCLUSION

Please produce the records regarding this FOIA request by electronic mail to wlp_admin@friendsofanimals.org or to the physical address listed below:

Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112

Please produce the records on a rolling basis to the extent possible; at no point should the search for—or the deliberation concerning—certain records delay the production of others that the federal government has already retrieved and elected to produce.

Thank you for your attention to this request. If you have any questions about the requested documents or the requested fee waiver, please do not hesitate to contact me at 720-949-7791 or at wlp_admin@friendsofanimals.org.

Sincerely,



Kaylee Dolen, Administrative Assistant

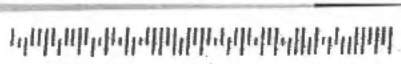
Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
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U.S. DISTRICT COURT
DISTRICT OF COLORADO
CENTENNIAL

harris
Law P
Animal
Arapahoe Rd. Suite 385
A, CO 80112



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T.D.
12/11/2016

Bob Troyer
United States Attorney
1225 17th Street
Suite 700
Denver, CO 80202



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of the Chief Information Officer
High Performance Computing and Communications

Via FOIAonline

January 19, 2021

Attn: Kaylee Dolen
Office of the Administrator
Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112

Re: FOIA Request No. DOC-NOAA-2016-000959

Dear Ms. Dolen:

This letter is in response to your Freedom of Information Act (FOIA) request entered into FOIAonline on April 12, 2016, for the following records:

- (1) All documents regarding the status of any pending anthropogenic activities in the Cook Inlet area for which IHAs or LoAs have been requested for takes of Cook Inlet belugas;
- (2) All documents regarding the final IHAs or LoAs issued for anthropogenic activities in Cook Inlet, including all documents supporting a "negligible" impact finding pursuant to the MMPA;
- (3) All documents, including research or commentary, not currently available to the public concerning the specific effects of anthropogenic noise or cumulative effects of Level B takes on the Cook Inlet beluga population;
- (4) All documents regarding the cumulative or synergistic effects of Level B takes of Cook Inlet beluga whales resulting from anthropogenic development activities over the past ten years (2007-2016);
- (5) All documents regarding Level A2 takes of Cook Inlet belugas resulting from anthropogenic activities;
- (6) All documents regarding the status of NOAA's preparation of the programmatic EA and EIS analyzing takes of marine mammals of Cook Inlet incidental to anthropogenic activities and all records of anticipated new agency actions or research pertaining to Cook Inlet belugas;
- (7) All documents regarding the preparation of the final recovery plan for Cook Inlet belugas under the federal Endangered Species Act ("ESA");
- (8) All documents regarding any limiting factors analysis completed or in progress for Cook Inlet belugas;
- (9) All documents regarding any prioritization of threats to Cook Inlet belugas;
- (10) All documents of any accounting(s) of anthropogenic activities in the

- Cook Inlet that may result in the taking of a beluga whale;
- (11) All documents regarding any population monitoring for Cook Inlet belugas planned or in progress for 2016;
 - (12) All documents regarding any population monitoring for Cook Inlet belugas conducted within the last three years, including any population surveys (or similar activities) in proposed project areas conducted by the applicant(s) for an IHA or LoA;
 - (13) All documents regarding any formal or informal consultations involving Cook Inlet belugas under Section 7 of the ESA.

In order to determine whether your request qualifies for a fee waiver or reduction in fees, pursuant to 5 C.F.R. § 4.11(k) (2010), we must evaluate whether disclosure of the requested information is: 1) in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, and 2) not primarily in the commercial interest of the requester.

In determining whether your request meets the first fee waiver requirement, we considered the following factors.

- 1) Whether the subject of the requested records concerns the operations of activities of the Government.
- 2) Whether the disclosure is “Likely to contribute” to an understanding of Government operations or activities.
- 3) Whether disclosure of the requested information will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester.
- 4) Where the disclosure is likely to contribute “significantly” to public understanding of Government operations or activities.

In determining whether your request meets the second fee waiver requirement, we considered the following factors:

- 1) Whether the requester has a commercial interest that would be furthered by the requested disclosure.
- 2) Whether any identified commercial interests of the requester is sufficiently great, in comparison with the public interest in disclosure that disclosures are “primarily in the commercial interest of the requester.”

Based on the above criteria, we have determined that you adequately addressed the statutory requirements for a waiver of fees in your April 12, 2016 submission. You have been granted a full waiver for the records requested. Please be advised however, granting this waiver does not automatically apply to future requests submitted by you or your organization. Requests for fee waivers are determined on a case-by-case basis for the records requested under statutory fee waiver requirements.

If you have any questions concerning the response to your fee waiver request, please call (301) 628-5658.

Sincerely,

/S/

Mr. Mark Graff
NOAA FOIA Officer





April 12, 2016

Submitted Via U.S Certified Mail and FOIAonline

National Oceanic and Atmospheric Administration
Public Reference Facility (SOU1000)
1315 East-West Highway (SSMC3)
Room 9719
Silver Spring, Maryland 20910

Re: FOIA Request for Records Relating to Incidental Harassment Authorizations Issued for Activities Impacting Cook Inlet Beluga Whales in Federal Waters Administered by the National Oceanic and Atmospheric Administration

Dear FOIA Officer:

I am writing on behalf of Friends of Animals, Sea Shepherd Legal, and the Turtle Island Restoration Network (collectively, the "Requesters"). Pursuant to 43 C.F.R. Part 2, and the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, Requesters seek the disclosure of all documents¹ in the categories listed below regarding the harassment of the distinct population segment of Cook Inlet beluga whales in waters managed by the National Oceanic and Atmospheric Administration ("NOAA"). Unless otherwise specified, Requesters seek all documents for the time period starting January 26th, 2007 and ending April 11, 2016. Requesters also request a full waiver of all search and duplication fees.

¹ The terms "document(s)" and "records" are used in the broadest sense contemplated by Federal Rule of Civil Procedure 34. It means all written, transcribed, recorded or graphic matters, however produced or reproduced. This definition includes, but is not limited to, any and all original copies or drafts of any and all of the following: records; notes; nonconforming copies that contain deletions, insertions, corrections, handwritten notes or comment summaries; memoranda; schedules; contracts; binders; work papers; logs; diaries; work sheets; files; letters; correspondence; summaries of memoranda; reports or memoranda of telephone conversations or records of personal conversations or interviews; handwritten notes; telephone logs; facsimiles; summaries; invoices; promissory notes; contracts; loan agreements; vouchers; billing statements; tape recordings or transcripts of tape recordings; photographs; videotapes; computerized output or data bases; electronic files; computer disks; computer CDs' electronic mail transmittals; data and all other writings; calculations; and figures or symbols of any kind which, in any manner mentioned, relate to the subjects of the specific requests contained below. This request includes all documents that have ever been within your custody or control, including all inter and intra agency documents, whether they exist in agency working, investigative, retired, electronic mail, or other files currently or at any other time.

A. FOIA Request.

Over the course of several years, NOAA has issued multiple Letters of Authorization (“LoA”) and Incidental Harassment Authorizations (“IHA”) for Level B takes of Cook Inlet beluga whales under the Marine Mammal Protection Act (“MMPA”) incidental to anthropogenic activities in Cook Inlet. Under the MMPA, Level B takes have “the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, feeding, or sheltering.” 16 U.S.C. § 1362(18).

Please provide the following documents in your possession, whether received, created, and/or distributed by NOAA:

- (1) All documents regarding the status of any pending anthropogenic activities in the Cook Inlet area for which IHAs or LoAs have been requested for takes of Cook Inlet belugas;
- (2) All documents regarding the final IHAs or LoAs issued for anthropogenic activities in Cook Inlet, including all documents supporting a “negligible” impact finding pursuant to the MMPA;
- (3) All documents, including research or commentary, not currently available to the public concerning the specific effects of anthropogenic noise or cumulative effects of Level B takes on the Cook Inlet beluga population;
- (4) All documents regarding the cumulative or synergistic effects of Level B takes of Cook Inlet beluga whales resulting from anthropogenic development activities over the past ten years (2007-2016);
- (5) All documents regarding Level A² takes of Cook Inlet belugas resulting from anthropogenic activities;
- (6) All documents regarding the status of NOAA’s preparation of the programmatic EA and EIS analyzing takes of marine mammals of Cook Inlet incidental to anthropogenic activities and all records of anticipated new agency actions or research pertaining to Cook Inlet belugas;
- (7) All documents regarding the preparation of the final recovery plan for Cook Inlet belugas under the federal Endangered Species Act (“ESA”);
- (8) All documents regarding any limiting factors analysis completed or in progress for Cook Inlet belugas;
- (9) All documents regarding any prioritization of threats to Cook Inlet belugas;
- (10) All documents of any accounting(s) of anthropogenic activities in the Cook Inlet that may result in the taking of a beluga whale;

² As defined as having “the potential to injure a marine mammal or marine mammal stock in the wild.” 16 U.S.C. § 1362(18)(A)(i).

- (11) All documents regarding any population monitoring for Cook Inlet belugas planned or in progress for 2016;
- (12) All documents regarding any population monitoring for Cook Inlet belugas conducted within the last three years, including any population surveys (or similar activities) in proposed project areas conducted by the applicant(s) for an IHA or LoA;
- (13) All documents regarding any formal or informal consultations involving Cook Inlet belugas under Section 7 of the ESA.

The items specifically requested are not meant to be exclusive of any other documents that, although not specially requested, have a reasonable relationship to the subject matter of this request.

For purposes of this request, "anthropogenic activities" are defined to encompass any activity wholly or substantially relating to vessel or aircraft noise (if vessel or aircraft movements are products of an anthropogenic project), ship traffic, including strikes, dredging, pile driving, explosions, demolition, sonar use, oil and gas exploration (including seismic operations, drilling, platform noise, airguns, multibeam echosounders, and sub-bottom profilers), shore construction, military testing activities (i.e. explosions, sonar), pipe and cable laying, water pollution and any other activities reasonably affiliated with anthropogenic projects.

The Supreme Court has stated that FOIA establishes a "strong presumption in favor of disclosure" of requested information, and that the burden is on the government to substantiate why information may not be released under the act's various exemptions. *Department of State v. Ray*, 502 U.S. 164, 173 (1991). Congress affirmed these tenets of FOIA in the Open Government Act of 2007, finding that "the Government [should] remain open and accessible to the American people" and always be based "not upon the need to know but upon the fundamental right to know." Public Law 110-175, 121 Stat. 2524, 2525 (Dec. 31, 2007) (internal citations omitted). President Obama has also directed that "[t]he presumption of disclosure should be applied to all decisions involving FOIA." 74 Fed. Reg. 4683 (Jan. 26, 2009). Please consider the foregoing before withholding any documents that are responsive to this request.

The Requesters anticipate that you will make the requested materials available within the statutorily prescribed period. We also request that you waive any applicable fees since disclosure meets the statutory standard for a fee waiver in that it is clearly "in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii).

B. Fee Waiver Request.

FOIA provides that "documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). The legislative history of FOIA, as well as the case law interpreting the Act, indicates that the statute's fee waiver provision is to be liberally construed favoring the public interest. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 Cong. Rec. S14298 (Sept. 30, 1986) (Sen. Leahy)).

This request for information qualifies for a fee waiver under this standard and, accordingly, we request that all fees be waived. This request satisfies both statutory and regulatory requirements for granting a fee waiver. Below we explain how the request and the Requesters meet each of requirements for a fee waiver delineated in NOAA's FOIA regulations (under its parent agency, the Department of Commerce) 15 CFR § 4.11(k).

1. Disclosure of the Information Requested is in the Public Interest.

(i) *"The subject of the request: whether the subject of the requested records concerns the operations or activities of the Government."*

The requested records concern the operations and activities of NOAA, a federal agency. Specifically, they concern the operation of this federal agency, its management of federally protected Cook Inlet beluga whales, and its permitting decision-making process.

(ii) *"The informative value of the information to be disclosed: whether the disclosure is 'likely to contribute' to an understanding of Government operations or activities."*

(a) How the contents of the records are meaningfully informative;

The requested documents would have substantive, meaningfully informative value and would be likely to contribute to a better understanding of NOAA and its actions. The documents will illuminate in a clear and direct way the operations and activities of the federal government and the activities that it undertakes in regards to management of Cook Inlet beluga whales and the anthropogenic projects that affect them. Although Cook Inlet beluga whales have been in the public spotlight in recent years due to their dwindling numbers and Endangered Species Act listing in 2008, not much is definitively known about the Level B take, cumulative, and noise pollution impacts on Cook Inlet beluga whales from anthropogenic activities. The information requested concerns the operations of the agency responsible for approving activities that have the potential to seriously injure or even kill Cook Inlet

beluga whales and the details of NOAA's past and current permitting decisions and decision-making process in regards to these whales.

- (b) The logical connection between the content of the records and the operations or activities;

The release of the requested documents will significantly contribute to public understanding and oversight of the federal government's operations. For example, the records will help the public understand the status of current Cook Inlet projects, how often and to which activities the federal government authorizes Level B takes, how the government evaluates the significance of cumulative and noise impacts, and the process by which the government makes decisions that affect Cook Inlet beluga whales.

- (iii) *"The contribution to an understanding of the subject by the public likely to result from disclosure: whether disclosure of the requested information will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester."*

Friends of Animals:

Friends of Animals is a nonprofit, international animal advocacy organization incorporated in the state of New York since 1957. Friends of Animals seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living, and domestic animals. The public impact of this disclosed information would be magnified through Friends of Animals' public engagement mechanisms. Friends of Animals has a proven track record of contributing to public understanding of issues surrounding animal advocacy and human-wildlife interactions.

Friends of Animals informs its members about animal advocacy issues, as well as the organization's progress in addressing such issues, through its quarterly magazine called *ActionLine*, its website, and other reports. Friends of Animals has published articles and information advocating for the protection of animals so that they can live unfettered in their natural habitat. In particular, Friends of Animals has a long-standing commitment to protecting animals imperiled due to human-caused activities. Friends of Animals regularly publicizes information about wildlife. Friends of Animals employs several experts who are able to quickly digest and circulate the information obtained from this request, including attorneys and media correspondents.

Friends of Animals plans to disseminate the requested information to Friends of Animals' members, members of other conservation organizations, and other interested members of the public through its website, its quarterly magazine,

and through outreach to other media outlets. By disseminating and distributing this information, Friends of Animals will significantly contribute to the public's understanding of how the government manages harassment of Cook Inlet beluga whales. Friends of Animals also informs its members about animal advocacy issues—including government management of birds, wild horses, and other wildlife—through lawsuits.

Friends of Animals staff has the ability to review, consolidate, and disseminate this information to the public. By consolidating and releasing the information, Friends of Animals will significantly enhance the public's understanding of how the government is currently operating. Additionally, the requested information will constitute a significant contribution to public understanding because it will allow Friends of Animals and the public to determine how the federal government's actions are impacting Cook Inlet beluga whales and whether the federal government has met its obligations under the National Environmental Policy Act, the Marine Mammal Protection Act, and Endangered Species Act.

Sea Shepherd Legal

Sea Shepherd Legal is an international, nonprofit, public interest environmental law firm with a mission to save marine wildlife and habitats by enforcing, strengthening, and developing protective laws, treaties, policies, and practices worldwide. Sea Shepherd Legal works on a range of matters from ensuring proper governmental agency action to developing innovative policy approaches, in order to encourage greater protections for marine wildlife and ecosystems. Public outreach is a key aspect of Sea Shepherd Legal's work.

Sea Shepherd Legal engages in public outreach in order to raise awareness about marine conservation facts, law, resources and tools. Through outreach and education, Sea Shepherd Legal promotes public understanding regarding the importance of biodiversity conservation and how members of the public can play an essential role in protecting marine wildlife and habitats.

Sea Shepherd Legal's general public outreach work involves the bi-weekly publication of a blog, disseminating information regarding marine wildlife protection through social media, and initiating calls to action through online campaign petitions. Related Sea Shepherd entities selectively disseminate these materials to more than one million followers.

The public has a right to know which wildlife species and habitats are at risk, the nature of such risk – including anthropogenic impacts, the role the government is required to play in assessing and mitigating risks, and the government's official response thereto. Through its extensive public outreach endeavors, Sea Shepherd

Legal will ensure that the public acquires this knowledge.

Turtle Island Restoration Network

Turtle Island Restoration Network (“TIRN”) is an international public interest non-profit with a strong track record of disseminating information from FOIA requests to its own membership, decision-makers, the media and the general public. TIRN is a non-profit organization that informs, educates, and counsels the public regarding environmental issues, policies, and laws relating to imperiled species, including marine species. TIRN has been substantially involved in the management activities of numerous government agencies for years, and has consistently displayed its ability to disseminate information granted to it through FOIA requests. As a long established advocacy organization, our informational publications supply information not only to our membership, but also to the memberships of most other conservation organizations, locally as well as nationally. Our informational publications continue to contribute information to public media outlets, as well. TIRN routinely disseminates such information through e-mail alerts and newsletters, which are sent to over 200,000 members and activists. In addition, we disseminate information through our websites, which receives over 100,000 page views per month. Furthermore, we bring such information to our partner organizations and to the media for dissemination to the membership of other organizations and the public at large. Information and our analyses of NMFS’s compliance with the MSA, the MMPA and the ESA will likely be disseminated through all of these means.

TIRN will publicize the results of any analysis of the data to inform the public about the policy choices and information regarding the management of anthropogenic impacts to the Cook Inlet Beluga Whale. This is certain to result in a significant increase in public understanding of government agency activity, especially NOAA’s approach to the conservation of marine species. In addition to informing the public about information relevant to policy and management, TIRN has a proven track record of enforcing environmental laws and publicizing agency compliance with the provisions of various environmental laws through information gained from FOIA requests like this one. TIRN intends to use the documents requested in this request in a similar manner, as appropriate.

- (iv) *“The significance of the contribution to public understanding: whether the disclosure is likely to contribute ‘significantly’ to public understanding of Government operations or activities.”*

Requesters seek the requested documents to increase their understanding, and subsequently contribute to public understanding, of how the federal government is managing activities that affect Cook Inlet beluga whales in Alaska. Many anthropogenic projects are approved by NOAA each year, many of them

granted Level B takes of marine mammals, and the government claims that these actions have a negligible effect on marine mammals. However, the public does not have access to all of the documents available to NOAA and thus cannot understand exactly how NOAA makes its non-negligible impact determinations during agency review of project applications. Additionally, the public cannot understand the justifications used by NOAA staff, its decision-making process, or how risks associated with permitting are assessed without more information about the operations of NOAA.

If the information is not disclosed to the Requesters, the public will remain uninformed about what activities the federal government conducts and authorizes. Disclosure, however, will permit the Requesters to disseminate information to the public, and it will increase transparency surrounding the federal government's activities. This is particularly important because NEPA grants the public a right to this information and a right to participate in federal decisions, such as commenting on proposed anthropogenic activities in Cook Inlet.

The information requested is not, to our knowledge, publicly available. The government may omit sending us requested records that are available in publicly accessible forums (e.g. Internet) or in published materials that are routinely available at public or university libraries. If the government chooses to omit such information, please provide the Requesters with adequate references and/or website links so that we may obtain these materials on our own. We would request that the government provide us with an index of such omitted documents, so that we may have reasonable certainty that we have access to the complete record regarding the management and protection of the Cook Inlet Beluga whales. However, we suspect that the majority of requested materials will not be available unless we receive them from the government in satisfaction of this FOIA request.

2. Disclosure of the Information is Not Primarily in the Commercial Interest of the Requester

When considering whether a request for a fee waiver meets the second prong of the fee waiver requirement, the agency is directed to consider: (1) "whether or not the requester has a commercial interest that would be furthered by the requested disclosure," and (2) "the primary interest in disclosure," i.e. whether the interest of the requester is primarily commercial or public.

None of the Requesters have a commercial, trade, or profit interest in the requested records. In fact, the Requesters do not have any commercial, trade, or profit interests.

Friends of Animals is a non-profit, international animal advocacy organization, incorporated in the state of New York since 1957. It serves the public interest by increasing the general public's awareness of animal advocacy issues and

by teaching how to end animal cruelty and exploitation around the world. Friends of Animals seeks to promote a respectful view of nonhuman, free-living and domestic animals. The Internal Revenue Service recognizes Friends of Animals as a 501(c)(3) tax-exempt organization (IRS Employer Identification#: 13-6018549). Friends of Animals' successful and well-orchestrated public education programs on animal advocacy issues and government operations merit granting a fee waiver for the requested records.

Sea Shepherd Legal was established in 2014 for the purpose of saving marine wildlife and habitats by enforcing, strengthening, and developing protective laws, treaties, policies, and practices worldwide. Sea Shepherd Legal works on a range of matters to ensure greater protections for marine wildlife and ecosystems, via the use of tools including litigation, policy development and public outreach. The IRS recognizes Sea Shepherd Legal as a public interest environmental law firm. Sea Shepherd Legal's EIN number is 47-2272507.

Turtle Island Restoration Network is a 501(c)(3) that has been working to protect marine wildlife, especially sea turtles, but also marine mammals and other endangered species, since the early 1980s. TIRN works through a combination of legal and advocacy strategies and grassroots organizing and education to strengthen protections worldwide. TIRN's EIN is 91-1818080.

CONCLUSION

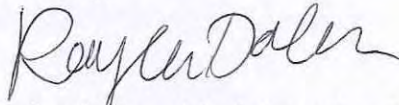
Please produce the records regarding this FOIA request by electronic mail to wlp_admin@friendsofanimals.org or to the physical address listed below:

Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112

Please produce the records on a rolling basis to the extent possible; at no point should the search for—or the deliberation concerning—certain records delay the production of others that the federal government has already retrieved and elected to produce.

Thank you for your attention to this request. If you have any questions about the requested documents or the requested fee waiver, please do not hesitate to contact me at 720-949-7791 or at wlp_admin@friendsofanimals.org.

Sincerely,

A handwritten signature in black ink that reads "Kaylee Dolen". The signature is written in a cursive, flowing style.

Kaylee Dolen, Administrative Assistant

Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112
720-949-7791
wlp_admin@friendsofanimals.org

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AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
District of Colorado

FRIENDS OF ANIMALS, a New York non-profit corporation, and
SEA SHEPHERD LEGAL, a Washington non-profit corporation
Plaintiff(s)
v.

Civil Action No. 16-3007

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, an agency of the United States
Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Bob Troyer
United States Attorney
1225 17th Street
Suit 700
Denver, CO 80202

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Michael Harris
Wildlife Law Program
Friends of Animals
7500 E. Arapahoe Road, Suite 385
Centennial, CO 80112

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 16-3007

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
FRIENDS OF ANIMALS, a New York non-profit corporation, and SEA SHEPHERD LEGAL, a Washington non-profit corporation
(b) County of Residence of First Listed Plaintiff Arapahoe County
(c) Attorneys (Firm Name, Address, and Telephone Number)
Michael Harris
Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Suite 385, Centennial, CO 80112; Tel: (720) 949-7791

DEFENDANTS
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, an agency of the United States
County of Residence of First Listed Defendant District of Columbia
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question
4 Diversity
Indicate Citizenship of Parties in Item III

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)
Table with columns: CONTRACT, REAL PROPERTY, PERSONAL INJURY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
5 U.S.C 552- Failure to respond to request under the Freedom of Information Act
Brief description of cause: AP Docket

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMANDS
CHECK YES only if demanded in complaint.
JURY DEMAND: Yes No

DATE: 12/08/2016
SIGNATURE OF ATTORNEY OF RECORD: /s/ Michael Ray Harris

FOR OFFICE USE ONLY
RECEIPT #
AMOUNT
APPLYING IFP
JUDGE
MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows.

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment noting, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example:

U.S. Civil Statute: 47 USC 553

Brief Description:

Unauthorized reception of cable service

Or:

"AP Docket"

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

FRIENDS OF ANIMALS, and
SEA SHEPHERD LEGAL;

Plaintiffs,

v.

NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION
an agency of the United States,

Defendant.

Civ. No. 16-3007

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF
(FREEDOM OF INFORMATION ACT)**

INTRODUCTION

1. This action is brought to remedy violations of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et. seq.* Specifically, it challenges the failure of the National Oceanic and Atmospheric Administration (“Federal Defendant”) to provide a final determination, including all responsive documents, within the time required by FOIA in regard to Plaintiffs Friends of Animals’ and Sea Shepherd Legal’s (“Plaintiffs”) April 14, 2016 request for information (“Request”).

2. In the Request, Plaintiffs asked for all documents in Federal Defendant’s possession related to pending or final approvals under the Marine Mammal Protection Act, National Environmental Policy Act and the Endangered Species Act for anthropogenic activities affecting the Cook Inlet beluga whale. Plaintiffs also sought all documents related to biological analyses and threats to the Cook Inlet beluga whale. *See* Exhibit A.

3. As of the date on this Complaint, Federal Defendant has not made a final determination regarding the release of documents, nor has Federal Defendant provided a timeline or other plan for compliance with the requirements of FOIA to indicate when or whether the Request will be fully satisfied.

4. Federal Defendant is unlawfully withholding public disclosure of information that Plaintiffs are entitled to receive under FOIA. By failing to make either a timely determination or timely and complete releases after the initial tranche of documents, Federal Defendant failed to comply with the statutory mandates and deadlines imposed by FOIA.

5. Accordingly, Plaintiffs seek declaratory relief establishing that Federal Defendant has violated FOIA. Plaintiffs also seek injunctive relief directing Federal Defendant to make a determination on the Request, provide a timeline for the release of the remaining documents, and promptly provide the requested material free of cost.

6. Plaintiffs bring this lawsuit to obtain timely disclosure of critical information related to authorized takes, and to pending authorizations of requested takes, of hundreds of Cook Inlet beluga whales from multiple and geographically overlapping oil and gas projects in the Cook Inlet. Given the significant potential impact upon the rapidly diminishing population of Cook Inlet beluga whales and the strong public interest in disclosure of information that may directly assist Plaintiffs' ongoing efforts to protect this population, Plaintiffs seek expeditious treatment of their Complaint pursuant to 28 U.S.C. § 1657.

JURISDICTION AND VENUE

7. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA) and 28 U.S.C. § 1331 (federal question). This Court may grant the declaratory relief under 28 U.S.C. §§ 2201, *et seq.* (Declaratory Judgment Act) and injunctive relief under 5 U.S.C. § 552(a)(4)(B) (FOIA). An actual, justiciable controversy exists within the meaning of the Declaratory Judgment Act between Plaintiffs and Federal Defendant. The Court has jurisdiction, upon receipt of a complaint, "to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B).

8. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B), which provides venue for FOIA cases in this district as the district in which a plaintiff resides. Friends of Animals maintains a principle office here in Colorado. Venue is also proper under 28 U.S.C. § 1391(b) because the defendant is subject to personal jurisdiction in this federal district.

PARTIES

9. Friends of Animals is a nonprofit international advocacy organization with nearly 200,000 members, incorporated in the state of New York since 1957. Friends of Animals seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living and domestic animals. Friends of Animals engages in a variety of advocacy programs in support of these goals. Friends of Animals informs its members about animal advocacy issues as well as the organization's progress in addressing these issues through its magazine called *ActionLine*, its website, and other reports. Friends of Animals has published articles and information advocating for the protection of wild species so that they can live unfettered in their natural habitats.

10. In 2013, Friends of Animals created a federal wildlife law program. The program established its principle office in Centennial, Colorado. The office consists of four full-time employees and one part-time employee. Through this office, Friends of Animals submitted the Request at issue in this action.

11. Sea Shepherd Legal is a nonprofit public interest law organization dedicated to its mission to end the destruction of habitat and slaughter of wildlife in the world's oceans in order to conserve and protect ecosystems and species. In furtherance of that mission, Sea Shepherd Legal has been involved in protecting marine life throughout the world. Sea Shepherd Legal uses public outreach and education to advocate for and motivate the creation of greater protections for cetaceans and other marine life.

12. The interests of Plaintiffs and their members are harmed by Federal Defendant's failure to release the requested documents in a timely manner, which prevents Plaintiffs

from obtaining, analyzing, disseminating and using the requested information to advance Plaintiffs' missions of ensuring the protection of marine wildlife and, in particular here, the Cook Inlet beluga whale.

13. Federal Defendant is an agency within the meaning of 5 U.S.C. § 552(f)(1). Federal Defendant is responsible for fulfilling Plaintiffs' Request and complying with all federal laws.

STATUTORY BACKGROUND

14. Congress enacted FOIA to ensure public access to U.S. government records. FOIA carries a presumption of disclosure. *Dep't of State v Ray*, 502 U.S. 164 (1991). Upon receipt of a written request that "reasonably describes" the records sought and complies with "published rules . . . and procedures to be followed," agencies of the United States government are required to "promptly" disclose their records, unless they can be lawfully withheld from disclosure under one of nine specific exemptions in FOIA. 5 U.S.C. § 552(a)(3)(A). The burden is on the government—not the requestor or public—to justify why particular information may be withheld. *Ray*, 502 U.S. at 164.

15. FOIA requires agencies to "determine within 20 days . . . after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefore, and of the right of such person to appeal to the head of the agency any adverse determination." *Id.* at § 552(a)(6)(A)(i).

16. On determination by an agency to comply with the request, the records shall be made "promptly available." *Id.* at § 552(a)(6)(C).

17. In "unusual circumstances," an agency may extend the time limits for up to 10 working days by providing written notice to the requester setting forth the unusual circumstance(s) and the date on which the determination is expected to be dispatched. *Id.* at § 552(a)(6)(B).

18. In some limited circumstances, FOIA allows an agency to seek an extension potentially beyond 10 days. Specifically, FOIA requires an agency to provide written notification to the requester: (1) offering an opportunity to limit the scope of the request so that it may be processed within the 20 work-day limit, or (2) offering an opportunity to arrange with the agency an “alternative time frame” for processing the request. *Id.* at § 552(a)(6)(B)(ii). If the agency elects this option, it must make its FOIA Public Liaison available to the requester to assist in any disputes with the agency. *Id.*

19. If the agency fails to make a determination on a document request within 20 work-days, or within the limited additional time permitted upon proper notification of “unusual circumstances,” the requester is deemed to have constructively exhausted administrative remedies and may seek judicial review. *Id.* at § 552(a)(6)(C). *Oglesby v. Dep’t of Army*, 920 F.2d 57(D.C. Cir 1990), *Nurse v. Sec’y of the Air Force*, 231 F. Supp. 2d 323, 328 (D.D.C. 2002) (“The FOIA is considered a unique statute because it recognizes a constructive exhaustion doctrine for purposes of judicial review upon the expiration of certain relevant FOIA deadlines.”)

20. FOIA requires that the agency “shall make the records promptly available to any person” and may not defer release of responsive documents indefinitely. *Id.* at § 552(a)(3)(A). Failure to issue a determination and to complete the release of documents in a timely fashion is a violation of FOIA even if the initial response and releases may have been prompt. *Munger, Tolles, Olsen v. Dept. of Army*, 58 F. Supp. 3d 1050 (C.D. Cal 2014). *See also Fiduccia v. U.S. Dep’t of Justice*, 185 F.3d 1035, 1041 (9th Cir. 1999)(“Congress gave agencies 20 days, not years, to decide whether to comply with requests and notify the requesters”); *Long v. IRS*, 693 F.2d 907, 910 (9th Cir. 1982) (“[U]nreasonable delays in disclosing non-exempt documents violate the intent and purpose of the FOIA, and the courts have a duty to prevent these abuses.”).

FACTUAL BACKGROUND

21. On April 12, 2016, Plaintiffs submitted the Request under FOIA to Federal Defendant reasonably describing all documents of which Plaintiffs sought disclosure.

22. On April 21, 2016, Federal Defendant provided written notification confirming receipt of the Request and disclosing that the Request had been assigned for processing on April 14, 2016.

23. In the confirmation, Federal Defendant did not request any additional information needed to clarify the Request. Federal Defendant did request a Scope Conference with Friends of Animals.

24. On April 29, 2016, Federal Defendant and Friends of Animals conducted the Scope Conference. During this conference, Federal Defendant did not request any additional information needed to clarify the Request but asked Plaintiffs to prioritize the individual document categories identified in the Request. Friends of Animals instructed Federal Defendant to proceed with the original FOIA request, but agreed to send a letter outlining the priorities of the original FOIA request.

25. On May 10, 2016, Friends of Animals submitted a letter to Federal Defendant outlining the top priorities of the original FOIA request. In that letter, Friends of Animals stated as follows: "As discussed on the April 29, 2016 conference call, Friends of Animals has not changed or altered the original request, nor are we waiving under [sic] rights under FOIA. We provide the following priorities merely to assist the agency in processing our request."

26. On May 16, 2016, Federal Defendant confirmed receipt of Friends of Animals' May 10 letter outlining the top priorities of the original FOIA request and indicated the need for a 10-day extension due to "unusual circumstances." Federal Defendant further stated that the first interim release of records could be anticipated on May 25, 2016.

27. The 20 work-day time limit for providing a determination on the Request commenced on April 14 and, thus, expired on May 12, 2016.

28. Federal Defendant made two interim releases of documents. The first release was dated June 9, 2016. The second was dated July 26, 2016 (but not received until August 29, 2016).

29. Since August 29, 2016, no further documents have been released.

30. Since August 29, 2016, Federal Defendant has not provided any timeline for the release of any remaining documents.

31. As of the date of this complaint, Plaintiffs have not received a final determination on their Request.

32. Plaintiffs believe and allege that Federal Defendant is unlawfully withholding public disclosure of information sought by Plaintiffs, information to which they are entitled to receive promptly, and for which Federal Defendant has not provided a valid disclosure exemption.

33. Federal Defendant has offered no reasonable explanation for its delay, and it has failed to estimate when it will finally be able to comply with its obligations under FOIA.

34. Since Federal Defendant has neither produced responsive documents nor provided an appealable final determination, Plaintiffs have constructively exhausted their administrative remedies with respect to the requested documents.

CLAIM FOR RELIEF
Violation of Freedom of Information Act
Failure to Respond with a Determination

35. Plaintiffs herein incorporate all allegations contained in the proceeding paragraphs.

36. FOIA provides that any person may obtain those agency records that are not subject to the FOIA disclosure exemptions promptly. 5 U.S.C. § 552 (a)(3)(A).

37. Plaintiffs properly requested records within the control of Federal Defendant.

38. Federal Defendant failed to provide Plaintiffs with a final determination as to whether Federal Defendant has any non-exempt records responsive to the Request and whether it intended to release such records within the required timeframe. *Id.* § 552(a)(6)(A)(i) and § 552(a)(6)(B).

39. Federal Defendant failed to properly invoke and comply with FOIA's provision allowing a 10 working day extension for "unusual circumstances." *Id.* at § 552(a)(6)(B)(i).

40. Federal Defendant failed to properly invoke and comply with FOIA's provision permitting an extension of potentially greater than 10 working days by offering Plaintiffs an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. *Id.* at § 552(a)(6)(B)(ii).

41. Federal Defendant has failed to promptly make available responsive documents without unreasonable delay.

42. Federal Defendant's failures to comply with FOIA are subject to judicial review under 5 U.S.C. § 552 (a)(4)(B). Federal Defendant's failure to issue a determination within the statutory deadlines violates 5 U.S.C. § 552 (a)(3)(A).

43. Accordingly, Plaintiffs are entitled to injunctive and declaratory relief with respect to a determination on the Request.

PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court enter judgment providing the following relief:

1. Declare that Federal Defendant violated FOIA by failing to (1) make a determination on Plaintiffs' Request and (2) make records responsive to Plaintiffs' Request available within the statutory deadlines.
2. Order Federal Defendant to (1) provide Plaintiffs with a final determination and (2) process and release all records responsive to the Request at no cost to Plaintiffs within 10 days from the date of such order;

3. Retain jurisdiction of this action to ensure the processing of the Request, and to ensure that no agency records are wrongfully withheld;
4. Award Plaintiffs costs, including reasonable attorney fees and litigation costs in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
5. Grant Plaintiffs any other relief that the Court deems just and proper.

Dated: December 08, 2016

Respectfully Submitted,

/s/ Michael Harris
Michael Ray Harris
Director, Wildlife Law Program
Friends of Animals
7500 E. Arapahoe Road, Suite 385
Centennial, CO 80112
720-949-7791
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Attorney for Plaintiff Friends of Animals

/s/ Brett Sommermeyer
Brett Sommermeyer (admission pending)
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Sea Shepherd Legal
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No. 108
Seattle, WA 98102
brett@seashepherdlegal.org

Attorney for Plaintiff Sea Shepherd Legal

EXHIBIT A

~~EXPLOITERS~~
FRIENDS
of ANIMALS

April 12, 2016

Submitted Via U.S Certified Mail and FOIAonline

National Oceanic and Atmospheric Administration
Public Reference Facility (SOU1000)
1315 East-West Highway (SSMC3)
Room 9719
Silver Spring, Maryland 20910

Re: FOIA Request for Records Relating to Incidental Harassment Authorizations
Issued for Activities Impacting Cook Inlet Beluga Whales in Federal Waters
Administered by the National Oceanic and Atmospheric Administration

Dear FOIA Officer:

I am writing on behalf of Friends of Animals, Sea Shepherd Legal, and the Turtle Island Restoration Network (collectively, the "Requesters"). Pursuant to 43 C.F.R. Part 2, and the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, Requesters seek the disclosure of all documents¹ in the categories listed below regarding the harassment of the distinct population segment of Cook Inlet beluga whales in waters managed by the National Oceanic and Atmospheric Administration ("NOAA"). Unless otherwise specified, Requesters seek all documents for the time period starting January 26th, 2007 and ending April 11, 2016. Requesters also request a full waiver of all search and duplication fees.

¹ The terms "document(s)" and "records" are used in the broadest sense contemplated by Federal Rule of Civil Procedure 34. It means all written, transcribed, recorded or graphic matters, however produced or reproduced. This definition includes, but is not limited to, any and all original copies or drafts of any and all of the following: records; notes; nonconforming copies that contain deletions, insertions, corrections, handwritten notes or comment summaries; memoranda; schedules; contracts; binders; work papers; logs; diaries; work sheets; files; letters; correspondence; summaries of memoranda; reports or memoranda of telephone conversations or records of personal conversations or interviews; handwritten notes; telephone logs; facsimiles; summaries; invoices; promissory notes; contracts; loan agreements; vouchers; billing statements; tape recordings or transcripts of tape recordings; photographs; videotapes; computerized output or data bases; electronic files; computer disks; computer CDs; electronic mail transmittals; data and all other writings; calculations; and figures or symbols of any kind which, in any manner mentioned, relate to the subjects of the specific requests contained below. This request includes all documents that have ever been within your custody or control, including all inter and intra agency documents, whether they exist in agency working, investigative, retired, electronic mail, or other files currently or at any other time.

A. FOIA Request.

Over the course of several years, NOAA has issued multiple Letters of Authorization (“LoA”) and Incidental Harassment Authorizations (“IHA”) for Level B takes of Cook Inlet beluga whales under the Marine Mammal Protection Act (“MMPA”) incidental to anthropogenic activities in Cook Inlet. Under the MMPA, Level B takes have “the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, feeding, or sheltering.” 16 U.S.C. § 1362(18).

Please provide the following documents in your possession, whether received, created, and/or distributed by NOAA:

- (1) All documents regarding the status of any pending anthropogenic activities in the Cook Inlet area for which IHAs or LoAs have been requested for takes of Cook Inlet belugas;
- (2) All documents regarding the final IHAs or LoAs issued for anthropogenic activities in Cook Inlet, including all documents supporting a “negligible” impact finding pursuant to the MMPA;
- (3) All documents, including research or commentary, not currently available to the public concerning the specific effects of anthropogenic noise or cumulative effects of Level B takes on the Cook Inlet beluga population;
- (4) All documents regarding the cumulative or synergistic effects of Level B takes of Cook Inlet beluga whales resulting from anthropogenic development activities over the past ten years (2007-2016);
- (5) All documents regarding Level A² takes of Cook Inlet belugas resulting from anthropogenic activities;
- (6) All documents regarding the status of NOAA’s preparation of the programmatic EA and EIS analyzing takes of marine mammals of Cook Inlet incidental to anthropogenic activities and all records of anticipated new agency actions or research pertaining to Cook Inlet belugas;
- (7) All documents regarding the preparation of the final recovery plan for Cook Inlet belugas under the federal Endangered Species Act (“ESA”);
- (8) All documents regarding any limiting factors analysis completed or in progress for Cook Inlet belugas;
- (9) All documents regarding any prioritization of threats to Cook Inlet belugas;
- (10) All documents of any accounting(s) of anthropogenic activities in the Cook Inlet that may result in the taking of a beluga whale;

² As defined as having “the potential to injure a marine mammal or marine mammal stock in the wild.” 16 U.S.C. § 1362(18)(A)(i).

- (11) All documents regarding any population monitoring for Cook Inlet belugas planned or in progress for 2016;
- (12) All documents regarding any population monitoring for Cook Inlet belugas conducted within the last three years, including any population surveys (or similar activities) in proposed project areas conducted by the applicant(s) for an IHA or LoA;
- (13) All documents regarding any formal or informal consultations involving Cook Inlet belugas under Section 7 of the ESA.

The items specifically requested are not meant to be exclusive of any other documents that, although not specially requested, have a reasonable relationship to the subject matter of this request.

For purposes of this request, "anthropogenic activities" are defined to encompass any activity wholly or substantially relating to vessel or aircraft noise (if vessel or aircraft movements are products of an anthropogenic project), ship traffic, including strikes, dredging, pile driving, explosions, demolition, sonar use, oil and gas exploration (including seismic operations, drilling, platform noise, airguns, multibeam echosounders, and sub-bottom profilers), shore construction, military testing activities (i.e. explosions, sonar), pipe and cable laying, water pollution and any other activities reasonably affiliated with anthropogenic projects.

The Supreme Court has stated that FOIA establishes a "strong presumption in favor of disclosure" of requested information, and that the burden is on the government to substantiate why information may not be released under the act's various exemptions. *Department of State v. Ray*, 502 U.S. 164, 173 (1991). Congress affirmed these tenets of FOIA in the Open Government Act of 2007, finding that "the Government [should] remain open and accessible to the American people" and always be based "not upon the need to know but upon the fundamental right to know." Public Law 110-175, 121 Stat. 2524, 2525 (Dec. 31, 2007) (internal citations omitted). President Obama has also directed that "[t]he presumption of disclosure should be applied to all decisions involving FOIA." 74 Fed. Reg. 4683 (Jan. 26, 2009). Please consider the foregoing before withholding any documents that are responsive to this request.

The Requesters anticipate that you will make the requested materials available within the statutorily prescribed period. We also request that you waive any applicable fees since disclosure meets the statutory standard for a fee waiver in that it is clearly "in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii).

B. Fee Waiver Request.

FOIA provides that "documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). The legislative history of FOIA, as well as the case law interpreting the Act, indicates that the statute's fee waiver provision is to be liberally construed favoring the public interest. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 Cong. Rec. S14298 (Sept. 30, 1986) (Sen. Leahy)).

This request for information qualifies for a fee waiver under this standard and, accordingly, we request that all fees be waived. This request satisfies both statutory and regulatory requirements for granting a fee waiver. Below we explain how the request and the Requesters meet each of requirements for a fee waiver delineated in NOAA's FOIA regulations (under its parent agency, the Department of Commerce) 15 CFR § 4.11(k).

1. Disclosure of the Information Requested is in the Public Interest.

(i) *"The subject of the request: whether the subject of the requested records concerns the operations or activities of the Government."*

The requested records concern the operations and activities of NOAA, a federal agency. Specifically, they concern the operation of this federal agency, its management of federally protected Cook Inlet beluga whales, and its permitting decision-making process.

(ii) *"The informative value of the information to be disclosed: whether the disclosure is 'likely to contribute' to an understanding of Government operations or activities."*

(a) How the contents of the records are meaningfully informative;

The requested documents would have substantive, meaningfully informative value and would be likely to contribute to a better understanding of NOAA and its actions. The documents will illuminate in a clear and direct way the operations and activities of the federal government and the activities that it undertakes in regards to management of Cook Inlet beluga whales and the anthropogenic projects that affect them. Although Cook Inlet beluga whales have been in the public spotlight in recent years due to their dwindling numbers and Endangered Species Act listing in 2008, not much is definitively known about the Level B take, cumulative, and noise pollution impacts on Cook Inlet beluga whales from anthropogenic activities. The information requested concerns the operations of the agency responsible for approving activities that have the potential to seriously injure or even kill Cook Inlet

beluga whales and the details of NOAA's past and current permitting decisions and decision-making process in regards to these whales.

- (b) The logical connection between the content of the records and the operations or activities;

The release of the requested documents will significantly contribute to public understanding and oversight of the federal government's operations. For example, the records will help the public understand the status of current Cook Inlet projects, how often and to which activities the federal government authorizes Level B takes, how the government evaluates the significance of cumulative and noise impacts, and the process by which the government makes decisions that affect Cook Inlet beluga whales.

- (iii) *"The contribution to an understanding of the subject by the public likely to result from disclosure: whether disclosure of the requested information will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester."*

Friends of Animals:

Friends of Animals is a nonprofit, international animal advocacy organization incorporated in the state of New York since 1957. Friends of Animals seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living, and domestic animals. The public impact of this disclosed information would be magnified through Friends of Animals' public engagement mechanisms. Friends of Animals has a proven track record of contributing to public understanding of issues surrounding animal advocacy and human-wildlife interactions.

Friends of Animals informs its members about animal advocacy issues, as well as the organization's progress in addressing such issues, through its quarterly magazine called *ActionLine*, its website, and other reports. Friends of Animals has published articles and information advocating for the protection of animals so that they can live unfettered in their natural habitat. In particular, Friends of Animals has a long-standing commitment to protecting animals imperiled due to human-caused activities. Friends of Animals regularly publicizes information about wildlife. Friends of Animals employs several experts who are able to quickly digest and circulate the information obtained from this request, including attorneys and media correspondents.

Friends of Animals plans to disseminate the requested information to Friends of Animals' members, members of other conservation organizations, and other interested members of the public through its website, its quarterly magazine,

and through outreach to other media outlets. By disseminating and distributing this information, Friends of Animals will significantly contribute to the public's understanding of how the government manages harassment of Cook Inlet beluga whales. Friends of Animals also informs its members about animal advocacy issues—including government management of birds, wild horses, and other wildlife—through lawsuits.

Friends of Animals staff has the ability to review, consolidate, and disseminate this information to the public. By consolidating and releasing the information, Friends of Animals will significantly enhance the public's understanding of how the government is currently operating. Additionally, the requested information will constitute a significant contribution to public understanding because it will allow Friends of Animals and the public to determine how the federal government's actions are impacting Cook Inlet beluga whales and whether the federal government has met its obligations under the National Environmental Policy Act, the Marine Mammal Protection Act, and Endangered Species Act.

Sea Shepherd Legal

Sea Shepherd Legal is an international, nonprofit, public interest environmental law firm with a mission to save marine wildlife and habitats by enforcing, strengthening, and developing protective laws, treaties, policies, and practices worldwide. Sea Shepherd Legal works on a range of matters from ensuring proper governmental agency action to developing innovative policy approaches, in order to encourage greater protections for marine wildlife and ecosystems. Public outreach is a key aspect of Sea Shepherd Legal's work.

Sea Shepherd Legal engages in public outreach in order to raise awareness about marine conservation facts, law, resources and tools. Through outreach and education, Sea Shepherd Legal promotes public understanding regarding the importance of biodiversity conservation and how members of the public can play an essential role in protecting marine wildlife and habitats.

Sea Shepherd Legal's general public outreach work involves the bi-weekly publication of a blog, disseminating information regarding marine wildlife protection through social media, and initiating calls to action through online campaign petitions. Related Sea Shepherd entities selectively disseminate these materials to more than one million followers.

The public has a right to know which wildlife species and habitats are at risk, the nature of such risk – including anthropogenic impacts, the role the government is required to play in assessing and mitigating risks, and the government's official response thereto. Through its extensive public outreach endeavors, Sea Shepherd

Legal will ensure that the public acquires this knowledge.

Turtle Island Restoration Network

Turtle Island Restoration Network (“TIRN”) is an international public interest non-profit with a strong track record of disseminating information from FOIA requests to its own membership, decision-makers, the media and the general public. TIRN is a non-profit organization that informs, educates, and counsels the public regarding environmental issues, policies, and laws relating to imperiled species, including marine species. TIRN has been substantially involved in the management activities of numerous government agencies for years, and has consistently displayed its ability to disseminate information granted to it through FOIA requests. As a long established advocacy organization, our informational publications supply information not only to our membership, but also to the memberships of most other conservation organizations, locally as well as nationally. Our informational publications continue to contribute information to public media outlets, as well. TIRN routinely disseminates such information through e-mail alerts and newsletters, which are sent to over 200,000 members and activists. In addition, we disseminate information through our websites, which receives over 100,000 page views per month. Furthermore, we bring such information to our partner organizations and to the media for dissemination to the membership of other organizations and the public at large. Information and our analyses of NMFS’s compliance with the MSA, the MMPA and the ESA will likely be disseminated through all of these means.

TIRN will publicize the results of any analysis of the data to inform the public about the policy choices and information regarding the management of anthropogenic impacts to the Cook Inlet Beluga Whale. This is certain to result in a significant increase in public understanding of government agency activity, especially NOAA’s approach to the conservation of marine species. In addition to informing the public about information relevant to policy and management, TIRN has a proven track record of enforcing environmental laws and publicizing agency compliance with the provisions of various environmental laws through information gained from FOIA requests like this one. TIRN intends to use the documents requested in this request in a similar manner, as appropriate.

- (iv) *“The significance of the contribution to public understanding: whether the disclosure is likely to contribute ‘significantly’ to public understanding of Government operations or activities.”*

Requesters seek the requested documents to increase their understanding, and subsequently contribute to public understanding, of how the federal government is managing activities that affect Cook Inlet beluga whales in Alaska. Many anthropogenic projects are approved by NOAA each year, many of them

granted Level B takes of marine mammals, and the government claims that these actions have a negligible effect on marine mammals. However, the public does not have access to all of the documents available to NOAA and thus cannot understand exactly how NOAA makes its non-negligible impact determinations during agency review of project applications. Additionally, the public cannot understand the justifications used by NOAA staff, its decision-making process, or how risks associated with permitting are assessed without more information about the operations of NOAA.

If the information is not disclosed to the Requesters, the public will remain uninformed about what activities the federal government conducts and authorizes. Disclosure, however, will permit the Requesters to disseminate information to the public, and it will increase transparency surrounding the federal government's activities. This is particularly important because NEPA grants the public a right to this information and a right to participate in federal decisions, such as commenting on proposed anthropogenic activities in Cook Inlet.

The information requested is not, to our knowledge, publicly available. The government may omit sending us requested records that are available in publicly accessible forums (e.g. Internet) or in published materials that are routinely available at public or university libraries. If the government chooses to omit such information, please provide the Requesters with adequate references and/or website links so that we may obtain these materials on our own. We would request that the government provide us with an index of such omitted documents, so that we may have reasonable certainty that we have access to the complete record regarding the management and protection of the Cook Inlet Beluga whales. However, we suspect that the majority of requested materials will not be available unless we receive them from the government in satisfaction of this FOIA request.

2. Disclosure of the Information is Not Primarily in the Commercial Interest of the Requester

When considering whether a request for a fee waiver meets the second prong of the fee waiver requirement, the agency is directed to consider: (1) "whether or not the requester has a commercial interest that would be furthered by the requested disclosure," and (2) "the primary interest in disclosure," i.e. whether the interest of the requester is primarily commercial or public.

None of the Requesters have a commercial, trade, or profit interest in the requested records. In fact, the Requesters do not have any commercial, trade, or profit interests.

Friends of Animals is a non-profit, international animal advocacy organization, incorporated in the state of New York since 1957. It serves the public interest by increasing the general public's awareness of animal advocacy issues and

by teaching how to end animal cruelty and exploitation around the world. Friends of Animals seeks to promote a respectful view of nonhuman, free-living and domestic animals. The Internal Revenue Service recognizes Friends of Animals as a 501(c)(3) tax-exempt organization (IRS Employer Identification#: 13-6018549). Friends of Animals' successful and well-orchestrated public education programs on animal advocacy issues and government operations merit granting a fee waiver for the requested records.

Sea Shepherd Legal was established in 2014 for the purpose of saving marine wildlife and habitats by enforcing, strengthening, and developing protective laws, treaties, policies, and practices worldwide. Sea Shepherd Legal works on a range of matters to ensure greater protections for marine wildlife and ecosystems, via the use of tools including litigation, policy development and public outreach. The IRS recognizes Sea Shepherd Legal as a public interest environmental law firm. Sea Shepherd Legal's EIN number is 47-2272507.

Turtle Island Restoration Network is a 501(c)(3) that has been working to protect marine wildlife, especially sea turtles, but also marine mammals and other endangered species, since the early 1980s. TIRN works through a combination of legal and advocacy strategies and grassroots organizing and education to strengthen protections worldwide. TIRN's EIN is 91-1818080.

CONCLUSION

Please produce the records regarding this FOIA request by electronic mail to wlp_admin@friendsofanimals.org or to the physical address listed below:

Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112

Please produce the records on a rolling basis to the extent possible; at no point should the search for—or the deliberation concerning—certain records delay the production of others that the federal government has already retrieved and elected to produce.

Thank you for your attention to this request. If you have any questions about the requested documents or the requested fee waiver, please do not hesitate to contact me at 720-949-7791 or at wlp_admin@friendsofanimals.org.

Sincerely,



Kaylee Dolen, Administrative Assistant

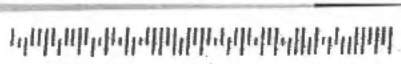
Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112
720-949-7791
wlp_admin@friendsofanimals.org

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U.S. DISTRICT COURT
DISTRICT OF COLORADO
DENVER

harris
Law P
Animal
Arapahoe Rd. Suite 385
A, CO 80112



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RETURN RECEIPT
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T.D.
12/11/2016

Bob Troyer
United States Attorney
1225 17th Street
Suite 700
Denver, CO 80202



April 12, 2016

Submitted Via U.S Certified Mail and FOIAonline

National Oceanic and Atmospheric Administration
Public Reference Facility (SOU1000)
1315 East-West Highway (SSMC3)
Room 9719
Silver Spring, Maryland 20910

Re: FOIA Request for Records Relating to Incidental Harassment Authorizations Issued for Activities Impacting Cook Inlet Beluga Whales in Federal Waters Administered by the National Oceanic and Atmospheric Administration

Dear FOIA Officer:

I am writing on behalf of Friends of Animals, Sea Shepherd Legal, and the Turtle Island Restoration Network (collectively, the "Requesters"). Pursuant to 43 C.F.R. Part 2, and the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, Requesters seek the disclosure of all documents¹ in the categories listed below regarding the harassment of the distinct population segment of Cook Inlet beluga whales in waters managed by the National Oceanic and Atmospheric Administration ("NOAA"). Unless otherwise specified, Requesters seek all documents for the time period starting January 26th, 2007 and ending April 11, 2016. Requesters also request a full waiver of all search and duplication fees.

¹ The terms "document(s)" and "records" are used in the broadest sense contemplated by Federal Rule of Civil Procedure 34. It means all written, transcribed, recorded or graphic matters, however produced or reproduced. This definition includes, but is not limited to, any and all original copies or drafts of any and all of the following: records; notes; nonconforming copies that contain deletions, insertions, corrections, handwritten notes or comment summaries; memoranda; schedules; contracts; binders; work papers; logs; diaries; work sheets; files; letters; correspondence; summaries of memoranda; reports or memoranda of telephone conversations or records of personal conversations or interviews; handwritten notes; telephone logs; facsimiles; summaries; invoices; promissory notes; contracts; loan agreements; vouchers; billing statements; tape recordings or transcripts of tape recordings; photographs; videotapes; computerized output or data bases; electronic files; computer disks; computer CDs' electronic mail transmittals; data and all other writings; calculations; and figures or symbols of any kind which, in any manner mentioned, relate to the subjects of the specific requests contained below. This request includes all documents that have ever been within your custody or control, including all inter and intra agency documents, whether they exist in agency working, investigative, retired, electronic mail, or other files currently or at any other time.

A. FOIA Request.

Over the course of several years, NOAA has issued multiple Letters of Authorization (“LoA”) and Incidental Harassment Authorizations (“IHA”) for Level B takes of Cook Inlet beluga whales under the Marine Mammal Protection Act (“MMPA”) incidental to anthropogenic activities in Cook Inlet. Under the MMPA, Level B takes have “the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, feeding, or sheltering.” 16 U.S.C. § 1362(18).

Please provide the following documents in your possession, whether received, created, and/or distributed by NOAA:

- (1) All documents regarding the status of any pending anthropogenic activities in the Cook Inlet area for which IHAs or LoAs have been requested for takes of Cook Inlet belugas;
- (2) All documents regarding the final IHAs or LoAs issued for anthropogenic activities in Cook Inlet, including all documents supporting a “negligible” impact finding pursuant to the MMPA;
- (3) All documents, including research or commentary, not currently available to the public concerning the specific effects of anthropogenic noise or cumulative effects of Level B takes on the Cook Inlet beluga population;
- (4) All documents regarding the cumulative or synergistic effects of Level B takes of Cook Inlet beluga whales resulting from anthropogenic development activities over the past ten years (2007-2016);
- (5) All documents regarding Level A² takes of Cook Inlet belugas resulting from anthropogenic activities;
- (6) All documents regarding the status of NOAA’s preparation of the programmatic EA and EIS analyzing takes of marine mammals of Cook Inlet incidental to anthropogenic activities and all records of anticipated new agency actions or research pertaining to Cook Inlet belugas;
- (7) All documents regarding the preparation of the final recovery plan for Cook Inlet belugas under the federal Endangered Species Act (“ESA”);
- (8) All documents regarding any limiting factors analysis completed or in progress for Cook Inlet belugas;
- (9) All documents regarding any prioritization of threats to Cook Inlet belugas;
- (10) All documents of any accounting(s) of anthropogenic activities in the Cook Inlet that may result in the taking of a beluga whale;

² As defined as having “the potential to injure a marine mammal or marine mammal stock in the wild.” 16 U.S.C. § 1362(18)(A)(i).

- (11) All documents regarding any population monitoring for Cook Inlet belugas planned or in progress for 2016;
- (12) All documents regarding any population monitoring for Cook Inlet belugas conducted within the last three years, including any population surveys (or similar activities) in proposed project areas conducted by the applicant(s) for an IHA or LoA;
- (13) All documents regarding any formal or informal consultations involving Cook Inlet belugas under Section 7 of the ESA.

The items specifically requested are not meant to be exclusive of any other documents that, although not specially requested, have a reasonable relationship to the subject matter of this request.

For purposes of this request, "anthropogenic activities" are defined to encompass any activity wholly or substantially relating to vessel or aircraft noise (if vessel or aircraft movements are products of an anthropogenic project), ship traffic, including strikes, dredging, pile driving, explosions, demolition, sonar use, oil and gas exploration (including seismic operations, drilling, platform noise, airguns, multibeam echosounders, and sub-bottom profilers), shore construction, military testing activities (i.e. explosions, sonar), pipe and cable laying, water pollution and any other activities reasonably affiliated with anthropogenic projects.

The Supreme Court has stated that FOIA establishes a "strong presumption in favor of disclosure" of requested information, and that the burden is on the government to substantiate why information may not be released under the act's various exemptions. *Department of State v. Ray*, 502 U.S. 164, 173 (1991). Congress affirmed these tenets of FOIA in the Open Government Act of 2007, finding that "the Government [should] remain open and accessible to the American people" and always be based "not upon the need to know but upon the fundamental right to know." Public Law 110-175, 121 Stat. 2524, 2525 (Dec. 31, 2007) (internal citations omitted). President Obama has also directed that "[t]he presumption of disclosure should be applied to all decisions involving FOIA." 74 Fed. Reg. 4683 (Jan. 26, 2009). Please consider the foregoing before withholding any documents that are responsive to this request.

The Requesters anticipate that you will make the requested materials available within the statutorily prescribed period. We also request that you waive any applicable fees since disclosure meets the statutory standard for a fee waiver in that it is clearly "in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii).

B. Fee Waiver Request.

FOIA provides that "documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). The legislative history of FOIA, as well as the case law interpreting the Act, indicates that the statute's fee waiver provision is to be liberally construed favoring the public interest. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 Cong. Rec. S14298 (Sept. 30, 1986) (Sen. Leahy)).

This request for information qualifies for a fee waiver under this standard and, accordingly, we request that all fees be waived. This request satisfies both statutory and regulatory requirements for granting a fee waiver. Below we explain how the request and the Requesters meet each of requirements for a fee waiver delineated in NOAA's FOIA regulations (under its parent agency, the Department of Commerce) 15 CFR § 4.11(k).

1. Disclosure of the Information Requested is in the Public Interest.

(i) *"The subject of the request: whether the subject of the requested records concerns the operations or activities of the Government."*

The requested records concern the operations and activities of NOAA, a federal agency. Specifically, they concern the operation of this federal agency, its management of federally protected Cook Inlet beluga whales, and its permitting decision-making process.

(ii) *"The informative value of the information to be disclosed: whether the disclosure is 'likely to contribute' to an understanding of Government operations or activities."*

(a) How the contents of the records are meaningfully informative;

The requested documents would have substantive, meaningfully informative value and would be likely to contribute to a better understanding of NOAA and its actions. The documents will illuminate in a clear and direct way the operations and activities of the federal government and the activities that it undertakes in regards to management of Cook Inlet beluga whales and the anthropogenic projects that affect them. Although Cook Inlet beluga whales have been in the public spotlight in recent years due to their dwindling numbers and Endangered Species Act listing in 2008, not much is definitively known about the Level B take, cumulative, and noise pollution impacts on Cook Inlet beluga whales from anthropogenic activities. The information requested concerns the operations of the agency responsible for approving activities that have the potential to seriously injure or even kill Cook Inlet

beluga whales and the details of NOAA's past and current permitting decisions and decision-making process in regards to these whales.

- (b) The logical connection between the content of the records and the operations or activities;

The release of the requested documents will significantly contribute to public understanding and oversight of the federal government's operations. For example, the records will help the public understand the status of current Cook Inlet projects, how often and to which activities the federal government authorizes Level B takes, how the government evaluates the significance of cumulative and noise impacts, and the process by which the government makes decisions that affect Cook Inlet beluga whales.

- (iii) *"The contribution to an understanding of the subject by the public likely to result from disclosure: whether disclosure of the requested information will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester."*

Friends of Animals:

Friends of Animals is a nonprofit, international animal advocacy organization incorporated in the state of New York since 1957. Friends of Animals seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living, and domestic animals. The public impact of this disclosed information would be magnified through Friends of Animals' public engagement mechanisms. Friends of Animals has a proven track record of contributing to public understanding of issues surrounding animal advocacy and human-wildlife interactions.

Friends of Animals informs its members about animal advocacy issues, as well as the organization's progress in addressing such issues, through its quarterly magazine called *ActionLine*, its website, and other reports. Friends of Animals has published articles and information advocating for the protection of animals so that they can live unfettered in their natural habitat. In particular, Friends of Animals has a long-standing commitment to protecting animals imperiled due to human-caused activities. Friends of Animals regularly publicizes information about wildlife. Friends of Animals employs several experts who are able to quickly digest and circulate the information obtained from this request, including attorneys and media correspondents.

Friends of Animals plans to disseminate the requested information to Friends of Animals' members, members of other conservation organizations, and other interested members of the public through its website, its quarterly magazine,

and through outreach to other media outlets. By disseminating and distributing this information, Friends of Animals will significantly contribute to the public's understanding of how the government manages harassment of Cook Inlet beluga whales. Friends of Animals also informs its members about animal advocacy issues—including government management of birds, wild horses, and other wildlife—through lawsuits.

Friends of Animals staff has the ability to review, consolidate, and disseminate this information to the public. By consolidating and releasing the information, Friends of Animals will significantly enhance the public's understanding of how the government is currently operating. Additionally, the requested information will constitute a significant contribution to public understanding because it will allow Friends of Animals and the public to determine how the federal government's actions are impacting Cook Inlet beluga whales and whether the federal government has met its obligations under the National Environmental Policy Act, the Marine Mammal Protection Act, and Endangered Species Act.

Sea Shepherd Legal

Sea Shepherd Legal is an international, nonprofit, public interest environmental law firm with a mission to save marine wildlife and habitats by enforcing, strengthening, and developing protective laws, treaties, policies, and practices worldwide. Sea Shepherd Legal works on a range of matters from ensuring proper governmental agency action to developing innovative policy approaches, in order to encourage greater protections for marine wildlife and ecosystems. Public outreach is a key aspect of Sea Shepherd Legal's work.

Sea Shepherd Legal engages in public outreach in order to raise awareness about marine conservation facts, law, resources and tools. Through outreach and education, Sea Shepherd Legal promotes public understanding regarding the importance of biodiversity conservation and how members of the public can play an essential role in protecting marine wildlife and habitats.

Sea Shepherd Legal's general public outreach work involves the bi-weekly publication of a blog, disseminating information regarding marine wildlife protection through social media, and initiating calls to action through online campaign petitions. Related Sea Shepherd entities selectively disseminate these materials to more than one million followers.

The public has a right to know which wildlife species and habitats are at risk, the nature of such risk – including anthropogenic impacts, the role the government is required to play in assessing and mitigating risks, and the government's official response thereto. Through its extensive public outreach endeavors, Sea Shepherd

Legal will ensure that the public acquires this knowledge.

Turtle Island Restoration Network

Turtle Island Restoration Network (“TIRN”) is an international public interest non-profit with a strong track record of disseminating information from FOIA requests to its own membership, decision-makers, the media and the general public. TIRN is a non-profit organization that informs, educates, and counsels the public regarding environmental issues, policies, and laws relating to imperiled species, including marine species. TIRN has been substantially involved in the management activities of numerous government agencies for years, and has consistently displayed its ability to disseminate information granted to it through FOIA requests. As a long established advocacy organization, our informational publications supply information not only to our membership, but also to the memberships of most other conservation organizations, locally as well as nationally. Our informational publications continue to contribute information to public media outlets, as well. TIRN routinely disseminates such information through e-mail alerts and newsletters, which are sent to over 200,000 members and activists. In addition, we disseminate information through our websites, which receives over 100,000 page views per month. Furthermore, we bring such information to our partner organizations and to the media for dissemination to the membership of other organizations and the public at large. Information and our analyses of NMFS’s compliance with the MSA, the MMPA and the ESA will likely be disseminated through all of these means.

TIRN will publicize the results of any analysis of the data to inform the public about the policy choices and information regarding the management of anthropogenic impacts to the Cook Inlet Beluga Whale. This is certain to result in a significant increase in public understanding of government agency activity, especially NOAA’s approach to the conservation of marine species. In addition to informing the public about information relevant to policy and management, TIRN has a proven track record of enforcing environmental laws and publicizing agency compliance with the provisions of various environmental laws through information gained from FOIA requests like this one. TIRN intends to use the documents requested in this request in a similar manner, as appropriate.

- (iv) *“The significance of the contribution to public understanding: whether the disclosure is likely to contribute ‘significantly’ to public understanding of Government operations or activities.”*

Requesters seek the requested documents to increase their understanding, and subsequently contribute to public understanding, of how the federal government is managing activities that affect Cook Inlet beluga whales in Alaska. Many anthropogenic projects are approved by NOAA each year, many of them

granted Level B takes of marine mammals, and the government claims that these actions have a negligible effect on marine mammals. However, the public does not have access to all of the documents available to NOAA and thus cannot understand exactly how NOAA makes its non-negligible impact determinations during agency review of project applications. Additionally, the public cannot understand the justifications used by NOAA staff, its decision-making process, or how risks associated with permitting are assessed without more information about the operations of NOAA.

If the information is not disclosed to the Requesters, the public will remain uninformed about what activities the federal government conducts and authorizes. Disclosure, however, will permit the Requesters to disseminate information to the public, and it will increase transparency surrounding the federal government's activities. This is particularly important because NEPA grants the public a right to this information and a right to participate in federal decisions, such as commenting on proposed anthropogenic activities in Cook Inlet.

The information requested is not, to our knowledge, publicly available. The government may omit sending us requested records that are available in publicly accessible forums (e.g. Internet) or in published materials that are routinely available at public or university libraries. If the government chooses to omit such information, please provide the Requesters with adequate references and/or website links so that we may obtain these materials on our own. We would request that the government provide us with an index of such omitted documents, so that we may have reasonable certainty that we have access to the complete record regarding the management and protection of the Cook Inlet Beluga whales. However, we suspect that the majority of requested materials will not be available unless we receive them from the government in satisfaction of this FOIA request.

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When considering whether a request for a fee waiver meets the second prong of the fee waiver requirement, the agency is directed to consider: (1) "whether or not the requester has a commercial interest that would be furthered by the requested disclosure," and (2) "the primary interest in disclosure," i.e. whether the interest of the requester is primarily commercial or public.

None of the Requesters have a commercial, trade, or profit interest in the requested records. In fact, the Requesters do not have any commercial, trade, or profit interests.

Friends of Animals is a non-profit, international animal advocacy organization, incorporated in the state of New York since 1957. It serves the public interest by increasing the general public's awareness of animal advocacy issues and

by teaching how to end animal cruelty and exploitation around the world. Friends of Animals seeks to promote a respectful view of nonhuman, free-living and domestic animals. The Internal Revenue Service recognizes Friends of Animals as a 501(c)(3) tax-exempt organization (IRS Employer Identification#: 13-6018549). Friends of Animals' successful and well-orchestrated public education programs on animal advocacy issues and government operations merit granting a fee waiver for the requested records.

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CONCLUSION

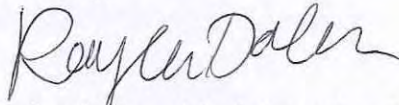
Please produce the records regarding this FOIA request by electronic mail to wlp_admin@friendsofanimals.org or to the physical address listed below:

Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112

Please produce the records on a rolling basis to the extent possible; at no point should the search for—or the deliberation concerning—certain records delay the production of others that the federal government has already retrieved and elected to produce.

Thank you for your attention to this request. If you have any questions about the requested documents or the requested fee waiver, please do not hesitate to contact me at 720-949-7791 or at wlp_admin@friendsofanimals.org.

Sincerely,

A handwritten signature in black ink that reads "Kaylee Dolen". The signature is written in a cursive, flowing style.

Kaylee Dolen, Administrative Assistant

Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112
720-949-7791
wlp_admin@friendsofanimals.org

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Tuesday, December 20, 2016 11:30 AM
To: Samuel Dixon - NOAA Affiliate; Steven Goodman - NOAA Federal
Subject: Fwd: Underlying Docs in FOA Litigation
Attachments: 20161208 FOA v. NOAA Complaint.pdf; Fee Waiver Granted (13).docx; Original Request.pdf; 16-000959 Interim2, Release Letter.pdf; 16-000959 Interim3 Release Letter (EPA docs).pdf; 16-000959 Interim1 Ltr.pdf

to keep you both in the loop

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) (C)

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----- Forwarded message -----

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Date: Tue, Dec 20, 2016 at 11:28 AM
Subject: Underlying Docs in FOA Litigation
To: Deborah Ben-David - NOAA Federal <deborah.ben-david@noaa.gov>, John Almeida - NOAA Federal <john.almeida@noaa.gov>, Stacey Nathanson - NOAA Federal <stacey.nathanson@noaa.gov>
Cc: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>, Robert Swisher - NOAA Federal <robert.swisher@noaa.gov>

To reference in our call today, here are the background docs for this new FOIA litigation from Friends of Animals, including the original request, the complaint, the Fee Waiver Adjudication, and all 3 interim release notices.

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) (C)

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UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

June 9, 2016

Ms. Kaylee Dolen
Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112

Re: FOIA Request # **DOC-NOAA-2016-000959**

Dear Ms. Dolen:

This letter is in response to your Freedom of Information Act (FOIA) request entered into FOIAonline on April 13, 2016. You requested all documents in NMFS' possession, whether received, created, and/or distributed by NMFS during the time period starting **January 26th, 2007** and ending **April 11, 2016** unless otherwise specified, including:

1. *All documents regarding the status of any pending anthropogenic activities in the Cook Inlet area for which IHAs or LOAs have been requested for takes of Cook Inlet belugas;*
2. *All documents regarding the final IHAs or LOAs issued for anthropogenic activities in Cook Inlet, including all documents supporting a "negligible" impact finding pursuant to the MMPA;*
3. *All documents, including research or commentary, not currently available to the public concerning the specific effects of anthropogenic noise or cumulative effects of Level B takes on the Cook Inlet beluga population;*
4. *All documents regarding the cumulative or synergistic effects of Level B takes of Cook Inlet beluga whales resulting from anthropogenic development activities over the past ten years (2007-2016);*
5. *All documents regarding Level A2 takes of Cook Inlet belugas resulting from anthropogenic activities;*
6. *All documents regarding the status of NOAA's preparation of the programmatic EA and EIS analyzing takes of marine mammals of Cook Inlet incidental to anthropogenic activities and all records of anticipated new agency actions or research pertaining to Cook Inlet belugas;*
7. *All documents regarding the preparation of the final recovery plan for Cook Inlet belugas under the federal Endangered Species Act ("ESA");*
8. *All documents regarding any limiting factors analysis completed or in progress for Cook Inlet belugas;*
9. *All documents regarding prioritization of threats to Cook Inlet belugas;*
10. *All documents of any accounting(s) of anthropogenic activities in the Cook Inlet that may result in the taking of a beluga whale;*
11. *All documents regarding any population monitoring for Cook Inlet belugas planned*



- or in progress for 2016;*
12. *All documents regarding any population monitoring for Cook Inlet belugas conducted within the last three years, including any population surveys (or similar activities) in proposed project areas conducted by the applicant(s) for an IHA or LOA; and*
 13. *All documents regarding any formal or informal consultations involving Cook Inlet belugas under Section 7 of the ESA.*

This constitutes our **1st interim** response to your request. Our search within the National Marine Fisheries Service, Protected Resource Division Alaska Region has thus far located **469 responsive records that are being released to you in their entirety**. An index is provided for your convenience.

Information on Appeals

We encourage you to speak with us if you have concerns as we continue to process this request. Although you have the ability to appeal at this time, we encourage you to focus the appeal/mediation/NOAA discussion, if needed, on documents provided as part of this interim release, but hold specific challenges about production until you have received and reviewed more of the voluminous records that the agency is still in the process of gathering and processing.

1) Administrative Appeal

You have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this interim release must be received within 30 calendar days of the date of this response letter by the:

Assistant General Counsel for Administration (Office)
Room 5898-C
U.S. Department of Commerce
14th and Constitution Avenue, NW
Washington, D.C. 20230

An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to [202-482-2552](tel:202-482-2552), or by FOIAonline, if you have an account in FOIAonline, at <https://foiaonline.regulations.gov/foia/action/public/home#>.

The appeal should include a copy of the original request and response. Please include the label "Freedom of Information Act Appeal" on the appeal letter, as well as on the envelope, the e-mail subject line, or the fax cover sheet, as applicable. FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next business day. If the 30th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

2) OGIS Mediation

The Office of Government Information Services (OGIS), an office created within the National Archives and Records Administration, offers mediation services to FOIA requesters. They may be contacted in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001
Email: ogis@nara.gov
Phone: 301-837-1996
Fax: 301-837-0348
Toll-free: 1-877-684-6448

3) Judicial Review

FOIA provides requesters with the right to challenge an agency's final action in federal court. Before doing so, an adjudication of an administrative appeal is ordinarily required. We continue to search for and process records responsive to your request. Please rest assured that your request is being handled as equitably as possible. As we discussed, this complex request presents unusual circumstances, and we will keep you apprised of our progress.

If you have questions regarding your request, please contact Mr. Lamar Turner, at nmfs.hq.pr.foia@noaa.gov or 301-427-8492.

Sincerely,



Lamar N. Turner, FOIA Coordinator
Office of Protected Resources

Enclosures



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

Ms. Kaylee Dolen
Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112

JUL 26 2016

Re: FOIA Request No. DOC-NOAA-2016-000959

Dear Ms. Dolen:

This letter is in response to your Freedom of Information Act (FOIA) request entered into FOIAonline on April 13, 2016. You requested all documents in NMFS' possession, whether received, created, and/or distributed by NMFS during the time period starting January 26th, 2007 and ending April 11, 2016 unless otherwise specified, including:

1. All documents regarding the status of any pending anthropogenic activities in the Cook Inlet area for which IHAs or LOAs have been requested for takes of Cook Inlet belugas;
2. All documents regarding the final IHAs or LOAs issued for anthropogenic activities in Cook Inlet, including all documents supporting a "negligible" impact finding pursuant to the MMPA;
3. All documents, including research or commentary, not currently available to the public concerning the specific effects of anthropogenic noise or cumulative effects of Level B takes on the Cook Inlet beluga population;
4. All documents regarding the cumulative or synergistic effects of Level B takes of Cook Inlet beluga whales resulting from anthropogenic development activities over the past ten years (2007-2016);
5. All documents regarding Level A2 takes of Cook Inlet belugas resulting from anthropogenic activities;
6. All documents regarding the status of NOAA's preparation of the programmatic EA and EIS analyzing takes of marine mammals of Cook Inlet incidental to anthropogenic activities and all records of anticipated new agency actions or research pertaining to Cook Inlet belugas;
7. All documents regarding the preparation of the final recovery plan for Cook Inlet belugas under the federal Endangered Species Act ("ESA");
8. All documents regarding any limiting factors analysis completed or in progress for Cook Inlet belugas;
9. All documents regarding prioritization of threats to Cook Inlet belugas;
10. All documents of any accounting(s) of anthropogenic activities in the Cook Inlet that may result in the taking of a beluga whale;
11. All documents regarding any population monitoring for Cook Inlet belugas planned or in progress for 2016;
12. All documents regarding any population monitoring for Cook Inlet belugas conducted within the last three years, including any population surveys (or similar activities) in proposed project areas conducted by the applicant(s) for an IHA or LOA; and
13. All documents regarding any formal or informal consultations involving Cook Inlet belugas under Section 7 of the ESA.



Printed on Recycled Paper



This constitutes our 2nd interim response to your request. Our search within the National Marine Fisheries Service, Protected Resource Division Alaska Region located an additional 5,419 responsive records. An index is provided for your convenience (enclosed). A summary follows to the released and partially withheld records:

- 5,218 records are released to you in their entirety. Of the records released in full, four (4) carry non responsive redaction to content deemed outside the scope of the request.
- 13 records are partially redacted and 177 records are fully withheld under exemption 5 U.S.C. § 552 (b)(5), which exempts from disclosure inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency. The records are exempted from disclosure through attorney client communication, attorney work product, or deliberative process privilege. Of these partially released documents, two (2) carry non-responsive redaction to content deemed outside the scope of the request.
- 11 records partially redacted under exemption 5 U.S.C. § 552 (b)(6) which protects personnel and medical files and similar files about individuals when the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy.

Note: You may wish to know the records being released to you in this response were previously provided under NOAA-FOIA-2011-00508 and NOAA-FOIA-2008-00316. They are released to you as released to the previous FOIA requesters.

Interim Release History:

The agency released records to you in their entirety on June 9 a total of 469 records. The agency has provided to-date 5,888 records responsive to your request.

You have the right to appeal the partial denial of your FOIA request.

Information on Appeals

We encourage you to speak with us if you have concerns as we continue to process this request. Although you have the ability to appeal at this time, we encourage you to focus the appeal/mediation/NOAA discussion, if needed, on documents provided as part of this interim release, but hold specific challenges about production until you have received and reviewed more of the voluminous records that the agency is still in the process of gathering and processing.

1) Administrative Appeal

You have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this interim release must be received within 90 calendar days of the date of this response letter by the:

Assistant General Counsel for Administration (Office)
Room 5898-C
U.S. Department of Commerce
14th and Constitution Avenue, NW
Washington, D.C. 20230

An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to 202-482-2552, or by FOIAonline, if you have an account in FOIAonline, at <https://foiaonline.regulations.gov/foia/action/public/home#>.

The appeal should include a copy of the original request and response. Please include the label "Freedom of Information Act Appeal" on the appeal letter, as well as on the envelope, the e-mail subject line, or the fax cover sheet, as applicable. FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

2) OGIS Mediation

The Office of Government Information Services (OGIS), an office created within the National Archives and Records Administration, offers mediation services to FOIA requesters. They may be contacted in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road College Park, MD 20740-6001
Email: ogis@nara.gov
Phone: 301-837-1996
Fax: 301-837-0348
Toll-free: 1-877-684-6448

3) Judicial Review

FOIA provides requesters with the right to challenge an agency's final action in federal court. Before doing so, an adjudication of an administrative appeal is ordinarily required

We continue to search for and process records responsive to your request. Please rest assured that your request is being handled as equitably as possible. As previously discussed, this complex request presents unusual circumstances. We will continue to provide interim responses as they become available.

If you have questions regarding your request, please contact Mr. Lamar Turner at nmfs.hq.pr.foia@noaa.gov or 301-427-8492.

Sincerely,



Samuel D. Rauch III,
Deputy Assistant Administrator
for Regulatory Programs



September 28, 2016

Ms. Kaylee Dolen
Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112

Re: FOIA Request No. **DOC-NOAA-2016-000959**

Dear Ms. Dolen:

This letter is in response to your Freedom of Information Act (FOIA) request entered into FOIAonline on April 13, 2016. You requested all documents in NMFS' possession, whether received, created, and/or distributed by NMFS during the time period starting **January 26th, 2007** and ending **April 11, 2016** unless otherwise specified, including:

1. *All documents regarding the status of any pending anthropogenic activities in the Cook Inlet area for which IHAs or LOAs have been requested for takes of Cook Inlet belugas;*
2. *All documents regarding the final IHAs or LOAs issued for anthropogenic activities in Cook Inlet, including all documents supporting a "negligible" impact finding pursuant to the MMPA;*
3. *All documents, including research or commentary, not currently available to the public concerning the specific effects of anthropogenic noise or cumulative effects of Level B takes on the Cook Inlet beluga population;*
4. *All documents regarding the cumulative or synergistic effects of Level B takes of Cook Inlet beluga whales resulting from anthropogenic development activities over the past ten years (2007-2016);*
5. *All documents regarding Level A2 takes of Cook Inlet belugas resulting from anthropogenic activities;*
6. *All documents regarding the status of NOAA's preparation of the programmatic EA and EIS analyzing takes of marine mammals of Cook Inlet incidental to anthropogenic activities and all records of anticipated new agency actions or research pertaining to Cook Inlet belugas;*
7. *All documents regarding the preparation of the final recovery plan for Cook Inlet belugas under the federal Endangered Species Act ("ESA");*
8. *All documents regarding any limiting factors analysis completed or in progress for Cook Inlet belugas;*
9. *All documents regarding prioritization of threats to Cook Inlet belugas;*
10. *All documents of any accounting(s) of anthropogenic activities in the Cook Inlet that may result in the taking of a beluga whale;*
11. *All documents regarding any population monitoring for Cook Inlet belugas planned or in progress for 2016;*
12. *All documents regarding any population monitoring for Cook Inlet belugas conducted within the last three years, including any population surveys (or similar activities) in proposed project areas conducted by the applicant(s) for an IHA or LOA; and*
13. *All documents regarding any formal or informal consultations involving Cook Inlet belugas under Section 7 of the ESA.*



This constitutes our **3rd interim** response to your request. Our search within the National Marine Fisheries Service, Protected Resource Division Alaska Region located an additional **51 responsive records**. A summary follows:

- **51** records are being released to you in their entirety.

Interim Release History

- *1st interim records totaling 469 were released to you in their entirety on June 9, 2016.*
- *2nd interim records totaling 266 were released to you in their entirety on June 10, 2016.*
- *Including this interim, the agency has provided to-date **786** records responsive to your request.*

You have the right to appeal the partial denial of your FOIA request.

Information on Appeals

We encourage you to speak with us if you have concerns as we continue to process this request. Although you have the ability to appeal at this time, we encourage you to focus the appeal/mediation/NOAA discussion, if needed, on documents provided as part of this interim release, but hold specific challenges about production until you have received and reviewed more of the voluminous records that the agency is still in the process of gathering and processing.

1) Administrative Appeal

You have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this interim release must be received within 30 calendar days of the date of this response letter by the:

**Assistant General Counsel for Administration (Office)
Room 5898-C
U.S. Department of Commerce
14th and Constitution Avenue, NW
Washington, D.C. 20230**

An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to 202-482-2552, or by FOIAonline, if you have an account in FOIAonline, at <https://foiaonline.regulations.gov/foia/action/public/home#>.

The appeal should include a copy of the original request and response. Please include the label "Freedom of Information Act Appeal" on the appeal letter, as well as on the envelope, the e-mail subject line, or the fax cover sheet, as applicable. FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next business day. If the 30th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

2) OGIS Mediation

The Office of Government Information Services (OGIS), an office created within the National Archives and Records Administration, offers mediation services to FOIA requesters. They may be contacted in any of the following ways:

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National Archives and Records Administration
Room 2510
8601 Adelphi Road College Park, MD 20740-6001
Email: ogis@nara.gov
Phone: 301-837-1996
Fax: 301-837-0348
Toll-free: 1-877-684-6448

3) Judicial Review

FOIA provides requesters with the right to challenge an agency's final action in federal court. Before doing so, an adjudication of an administrative appeal is ordinarily required

We continue to search for and process records responsive to your request. Please rest assured that your request is being handled as equitably as possible. As previously discussed, this complex request presents unusual circumstances. We will continue to provide interim responses as they become available.

If you have questions regarding your request, please contact Mr. Lamar Turner at nmfs.hq.pr.foia@noaa.gov or 301-427-8492.

Sincerely,

A handwritten signature in black ink, appearing to read "Lamar N. Turner".

Lamar N. Turner, FOIA Coordinator
Office of Protected Resources

Enclosures

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
District of Colorado

FRIENDS OF ANIMALS, a New York non-profit corporation, and
SEA SHEPHERD LEGAL, a Washington non-profit corporation
Plaintiff(s)
v.

Civil Action No. 16-3007

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, an agency of the United States
Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Bob Troyer
United States Attorney
1225 17th Street
Suit 700
Denver, CO 80202

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Michael Harris
Wildlife Law Program
Friends of Animals
7500 E. Arapahoe Road, Suite 385
Centennial, CO 80112

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 16-3007

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
FRIENDS OF ANIMALS, a New York non-profit corporation, and SEA SHEPHERD LEGAL, a Washington non-profit corporation
(b) County of Residence of First Listed Plaintiff Arapahoe County
(c) Attorneys Michael Harris, Friends of Animals, Wildlife Law Program, 7500 E. Arapahoe Rd., Suite 385, Centennial, CO 80112; Tel: (720) 949-7791

DEFENDANTS
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, an agency of the United States
County of Residence of First Listed Defendant District of Columbia
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question
4 Diversity

III. CITIZENSHIP OF PRINCIPAL PARTIES
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country

IV. NATURE OF SUIT
CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, TAX SUITS, OTHER STATUTES

V. ORIGIN
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district
6 Multidistrict litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing
5 U.S.C 552- Failure to respond to request under the Freedom of Information Act
Brief description of cause: AP Docket

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMANDS
JURY DEMAND: Yes No

DATE: 12/08/2016
SIGNATURE OF ATTORNEY OF RECORD: /s/ Michael Ray Harris

FOR OFFICE USE ONLY
RECEIPT #
AMOUNT
APPLYING IFP
JUDGE
MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows.

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment noting, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example:

U.S. Civil Statute: 47 USC 553

Brief Description:

Unauthorized reception of cable service

Or:

"AP Docket"

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

FRIENDS OF ANIMALS, and
SEA SHEPHERD LEGAL;

Plaintiffs,

v.

NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION
an agency of the United States,

Defendant.

Civ. No. 16-3007

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF
(FREEDOM OF INFORMATION ACT)**

INTRODUCTION

1. This action is brought to remedy violations of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et. seq.* Specifically, it challenges the failure of the National Oceanic and Atmospheric Administration (“Federal Defendant”) to provide a final determination, including all responsive documents, within the time required by FOIA in regard to Plaintiffs Friends of Animals’ and Sea Shepherd Legal’s (“Plaintiffs”) April 14, 2016 request for information (“Request”).

2. In the Request, Plaintiffs asked for all documents in Federal Defendant’s possession related to pending or final approvals under the Marine Mammal Protection Act, National Environmental Policy Act and the Endangered Species Act for anthropogenic activities affecting the Cook Inlet beluga whale. Plaintiffs also sought all documents related to biological analyses and threats to the Cook Inlet beluga whale. *See* Exhibit A.

3. As of the date on this Complaint, Federal Defendant has not made a final determination regarding the release of documents, nor has Federal Defendant provided a timeline or other plan for compliance with the requirements of FOIA to indicate when or whether the Request will be fully satisfied.

4. Federal Defendant is unlawfully withholding public disclosure of information that Plaintiffs are entitled to receive under FOIA. By failing to make either a timely determination or timely and complete releases after the initial tranche of documents, Federal Defendant failed to comply with the statutory mandates and deadlines imposed by FOIA.

5. Accordingly, Plaintiffs seek declaratory relief establishing that Federal Defendant has violated FOIA. Plaintiffs also seek injunctive relief directing Federal Defendant to make a determination on the Request, provide a timeline for the release of the remaining documents, and promptly provide the requested material free of cost.

6. Plaintiffs bring this lawsuit to obtain timely disclosure of critical information related to authorized takes, and to pending authorizations of requested takes, of hundreds of Cook Inlet beluga whales from multiple and geographically overlapping oil and gas projects in the Cook Inlet. Given the significant potential impact upon the rapidly diminishing population of Cook Inlet beluga whales and the strong public interest in disclosure of information that may directly assist Plaintiffs' ongoing efforts to protect this population, Plaintiffs seek expeditious treatment of their Complaint pursuant to 28 U.S.C. § 1657.

JURISDICTION AND VENUE

7. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA) and 28 U.S.C. § 1331 (federal question). This Court may grant the declaratory relief under 28 U.S.C. §§ 2201, *et seq.* (Declaratory Judgment Act) and injunctive relief under 5 U.S.C. § 552(a)(4)(B) (FOIA). An actual, justiciable controversy exists within the meaning of the Declaratory Judgment Act between Plaintiffs and Federal Defendant. The Court has jurisdiction, upon receipt of a complaint, "to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B).

8. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B), which provides venue for FOIA cases in this district as the district in which a plaintiff resides. Friends of Animals maintains a principle office here in Colorado. Venue is also proper under 28 U.S.C. § 1391(b) because the defendant is subject to personal jurisdiction in this federal district.

PARTIES

9. Friends of Animals is a nonprofit international advocacy organization with nearly 200,000 members, incorporated in the state of New York since 1957. Friends of Animals seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living and domestic animals. Friends of Animals engages in a variety of advocacy programs in support of these goals. Friends of Animals informs its members about animal advocacy issues as well as the organization's progress in addressing these issues through its magazine called *ActionLine*, its website, and other reports. Friends of Animals has published articles and information advocating for the protection of wild species so that they can live unfettered in their natural habitats.

10. In 2013, Friends of Animals created a federal wildlife law program. The program established its principle office in Centennial, Colorado. The office consists of four full-time employees and one part-time employee. Through this office, Friends of Animals submitted the Request at issue in this action.

11. Sea Shepherd Legal is a nonprofit public interest law organization dedicated to its mission to end the destruction of habitat and slaughter of wildlife in the world's oceans in order to conserve and protect ecosystems and species. In furtherance of that mission, Sea Shepherd Legal has been involved in protecting marine life throughout the world. Sea Shepherd Legal uses public outreach and education to advocate for and motivate the creation of greater protections for cetaceans and other marine life.

12. The interests of Plaintiffs and their members are harmed by Federal Defendant's failure to release the requested documents in a timely manner, which prevents Plaintiffs

from obtaining, analyzing, disseminating and using the requested information to advance Plaintiffs' missions of ensuring the protection of marine wildlife and, in particular here, the Cook Inlet beluga whale.

13. Federal Defendant is an agency within the meaning of 5 U.S.C. § 552(f)(1). Federal Defendant is responsible for fulfilling Plaintiffs' Request and complying with all federal laws.

STATUTORY BACKGROUND

14. Congress enacted FOIA to ensure public access to U.S. government records. FOIA carries a presumption of disclosure. *Dep't of State v Ray*, 502 U.S. 164 (1991). Upon receipt of a written request that "reasonably describes" the records sought and complies with "published rules . . . and procedures to be followed," agencies of the United States government are required to "promptly" disclose their records, unless they can be lawfully withheld from disclosure under one of nine specific exemptions in FOIA. 5 U.S.C. § 552(a)(3)(A). The burden is on the government—not the requestor or public—to justify why particular information may be withheld. *Ray*, 502 U.S. at 164.

15. FOIA requires agencies to "determine within 20 days . . . after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefore, and of the right of such person to appeal to the head of the agency any adverse determination." *Id.* at § 552(a)(6)(A)(i).

16. On determination by an agency to comply with the request, the records shall be made "promptly available." *Id.* at § 552(a)(6)(C).

17. In "unusual circumstances," an agency may extend the time limits for up to 10 working days by providing written notice to the requester setting forth the unusual circumstance(s) and the date on which the determination is expected to be dispatched. *Id.* at § 552(a)(6)(B).

18. In some limited circumstances, FOIA allows an agency to seek an extension potentially beyond 10 days. Specifically, FOIA requires an agency to provide written notification to the requester: (1) offering an opportunity to limit the scope of the request so that it may be processed within the 20 work-day limit, or (2) offering an opportunity to arrange with the agency an “alternative time frame” for processing the request. *Id.* at § 552(a)(6)(B)(ii). If the agency elects this option, it must make its FOIA Public Liaison available to the requester to assist in any disputes with the agency. *Id.*

19. If the agency fails to make a determination on a document request within 20 work-days, or within the limited additional time permitted upon proper notification of “unusual circumstances,” the requester is deemed to have constructively exhausted administrative remedies and may seek judicial review. *Id.* at § 552(a)(6)(C). *Oglesby v. Dep’t of Army*, 920 F.2d 57(D.C. Cir 1990), *Nurse v. Sec’y of the Air Force*, 231 F. Supp. 2d 323, 328 (D.D.C. 2002) (“The FOIA is considered a unique statute because it recognizes a constructive exhaustion doctrine for purposes of judicial review upon the expiration of certain relevant FOIA deadlines.”)

20. FOIA requires that the agency “shall make the records promptly available to any person” and may not defer release of responsive documents indefinitely. *Id.* at § 552(a)(3)(A). Failure to issue a determination and to complete the release of documents in a timely fashion is a violation of FOIA even if the initial response and releases may have been prompt. *Munger, Tolles, Olsen v. Dept. of Army*, 58 F. Supp. 3d 1050 (C.D. Cal 2014). *See also Fiduccia v. U.S. Dep’t of Justice*, 185 F.3d 1035, 1041 (9th Cir. 1999)(“Congress gave agencies 20 days, not years, to decide whether to comply with requests and notify the requesters”); *Long v. IRS*, 693 F.2d 907, 910 (9th Cir. 1982) (“[U]nreasonable delays in disclosing non-exempt documents violate the intent and purpose of the FOIA, and the courts have a duty to prevent these abuses.”).

FACTUAL BACKGROUND

21. On April 12, 2016, Plaintiffs submitted the Request under FOIA to Federal Defendant reasonably describing all documents of which Plaintiffs sought disclosure.

22. On April 21, 2016, Federal Defendant provided written notification confirming receipt of the Request and disclosing that the Request had been assigned for processing on April 14, 2016.

23. In the confirmation, Federal Defendant did not request any additional information needed to clarify the Request. Federal Defendant did request a Scope Conference with Friends of Animals.

24. On April 29, 2016, Federal Defendant and Friends of Animals conducted the Scope Conference. During this conference, Federal Defendant did not request any additional information needed to clarify the Request but asked Plaintiffs to prioritize the individual document categories identified in the Request. Friends of Animals instructed Federal Defendant to proceed with the original FOIA request, but agreed to send a letter outlining the priorities of the original FOIA request.

25. On May 10, 2016, Friends of Animals submitted a letter to Federal Defendant outlining the top priorities of the original FOIA request. In that letter, Friends of Animals stated as follows: "As discussed on the April 29, 2016 conference call, Friends of Animals has not changed or altered the original request, nor are we waiving under [sic] rights under FOIA. We provide the following priorities merely to assist the agency in processing our request."

26. On May 16, 2016, Federal Defendant confirmed receipt of Friends of Animals' May 10 letter outlining the top priorities of the original FOIA request and indicated the need for a 10-day extension due to "unusual circumstances." Federal Defendant further stated that the first interim release of records could be anticipated on May 25, 2016.

27. The 20 work-day time limit for providing a determination on the Request commenced on April 14 and, thus, expired on May 12, 2016.

28. Federal Defendant made two interim releases of documents. The first release was dated June 9, 2016. The second was dated July 26, 2016 (but not received until August 29, 2016).

29. Since August 29, 2016, no further documents have been released.

30. Since August 29, 2016, Federal Defendant has not provided any timeline for the release of any remaining documents.

31. As of the date of this complaint, Plaintiffs have not received a final determination on their Request.

32. Plaintiffs believe and allege that Federal Defendant is unlawfully withholding public disclosure of information sought by Plaintiffs, information to which they are entitled to receive promptly, and for which Federal Defendant has not provided a valid disclosure exemption.

33. Federal Defendant has offered no reasonable explanation for its delay, and it has failed to estimate when it will finally be able to comply with its obligations under FOIA.

34. Since Federal Defendant has neither produced responsive documents nor provided an appealable final determination, Plaintiffs have constructively exhausted their administrative remedies with respect to the requested documents.

CLAIM FOR RELIEF
Violation of Freedom of Information Act
Failure to Respond with a Determination

35. Plaintiffs herein incorporate all allegations contained in the proceeding paragraphs.

36. FOIA provides that any person may obtain those agency records that are not subject to the FOIA disclosure exemptions promptly. 5 U.S.C. § 552 (a)(3)(A).

37. Plaintiffs properly requested records within the control of Federal Defendant.

38. Federal Defendant failed to provide Plaintiffs with a final determination as to whether Federal Defendant has any non-exempt records responsive to the Request and whether it intended to release such records within the required timeframe. *Id.* § 552(a)(6)(A)(i) and § 552(a)(6)(B).

39. Federal Defendant failed to properly invoke and comply with FOIA's provision allowing a 10 working day extension for "unusual circumstances." *Id.* at § 552(a)(6)(B)(i).

40. Federal Defendant failed to properly invoke and comply with FOIA's provision permitting an extension of potentially greater than 10 working days by offering Plaintiffs an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. *Id.* at § 552(a)(6)(B)(ii).

41. Federal Defendant has failed to promptly make available responsive documents without unreasonable delay.

42. Federal Defendant's failures to comply with FOIA are subject to judicial review under 5 U.S.C. § 552 (a)(4)(B). Federal Defendant's failure to issue a determination within the statutory deadlines violates 5 U.S.C. § 552 (a)(3)(A).

43. Accordingly, Plaintiffs are entitled to injunctive and declaratory relief with respect to a determination on the Request.

PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court enter judgment providing the following relief:

1. Declare that Federal Defendant violated FOIA by failing to (1) make a determination on Plaintiffs' Request and (2) make records responsive to Plaintiffs' Request available within the statutory deadlines.
2. Order Federal Defendant to (1) provide Plaintiffs with a final determination and (2) process and release all records responsive to the Request at no cost to Plaintiffs within 10 days from the date of such order;

3. Retain jurisdiction of this action to ensure the processing of the Request, and to ensure that no agency records are wrongfully withheld;
4. Award Plaintiffs costs, including reasonable attorney fees and litigation costs in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
5. Grant Plaintiffs any other relief that the Court deems just and proper.

Dated: December 08, 2016

Respectfully Submitted,

/s/ Michael Harris
Michael Ray Harris
Director, Wildlife Law Program
Friends of Animals
7500 E. Arapahoe Road, Suite 385
Centennial, CO 80112
720-949-7791
michaelharris@friendsofanimals.org

Attorney for Plaintiff Friends of Animals

/s/ Brett Sommermeyer
Brett Sommermeyer (admission pending)
Legal Director
Sea Shepherd Legal
2226 Eastlake Ave., E.
No. 108
Seattle, WA 98102
brett@seashepherdlegal.org

Attorney for Plaintiff Sea Shepherd Legal

EXHIBIT A

~~EXPLOITERS~~
FRIENDS
of ANIMALS

April 12, 2016

Submitted Via U.S Certified Mail and FOIAonline

National Oceanic and Atmospheric Administration
Public Reference Facility (SOU1000)
1315 East-West Highway (SSMC3)
Room 9719
Silver Spring, Maryland 20910

Re: FOIA Request for Records Relating to Incidental Harassment Authorizations
Issued for Activities Impacting Cook Inlet Beluga Whales in Federal Waters
Administered by the National Oceanic and Atmospheric Administration

Dear FOIA Officer:

I am writing on behalf of Friends of Animals, Sea Shepherd Legal, and the Turtle Island Restoration Network (collectively, the "Requesters"). Pursuant to 43 C.F.R. Part 2, and the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, Requesters seek the disclosure of all documents¹ in the categories listed below regarding the harassment of the distinct population segment of Cook Inlet beluga whales in waters managed by the National Oceanic and Atmospheric Administration ("NOAA"). Unless otherwise specified, Requesters seek all documents for the time period starting January 26th, 2007 and ending April 11, 2016. Requesters also request a full waiver of all search and duplication fees.

¹ The terms "document(s)" and "records" are used in the broadest sense contemplated by Federal Rule of Civil Procedure 34. It means all written, transcribed, recorded or graphic matters, however produced or reproduced. This definition includes, but is not limited to, any and all original copies or drafts of any and all of the following: records; notes; nonconforming copies that contain deletions, insertions, corrections, handwritten notes or comment summaries; memoranda; schedules; contracts; binders; work papers; logs; diaries; work sheets; files; letters; correspondence; summaries of memoranda; reports or memoranda of telephone conversations or records of personal conversations or interviews; handwritten notes; telephone logs; facsimiles; summaries; invoices; promissory notes; contracts; loan agreements; vouchers; billing statements; tape recordings or transcripts of tape recordings; photographs; videotapes; computerized output or data bases; electronic files; computer disks; computer CDs' electronic mail transmittals; data and all other writings; calculations; and figures or symbols of any kind which, in any manner mentioned, relate to the subjects of the specific requests contained below. This request includes all documents that have ever been within your custody or control, including all inter and intra agency documents, whether they exist in agency working, investigative, retired, electronic mail, or other files currently or at any other time.

A. FOIA Request.

Over the course of several years, NOAA has issued multiple Letters of Authorization (“LoA”) and Incidental Harassment Authorizations (“IHA”) for Level B takes of Cook Inlet beluga whales under the Marine Mammal Protection Act (“MMPA”) incidental to anthropogenic activities in Cook Inlet. Under the MMPA, Level B takes have “the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, feeding, or sheltering.” 16 U.S.C. § 1362(18).

Please provide the following documents in your possession, whether received, created, and/or distributed by NOAA:

- (1) All documents regarding the status of any pending anthropogenic activities in the Cook Inlet area for which IHAs or LoAs have been requested for takes of Cook Inlet belugas;
- (2) All documents regarding the final IHAs or LoAs issued for anthropogenic activities in Cook Inlet, including all documents supporting a “negligible” impact finding pursuant to the MMPA;
- (3) All documents, including research or commentary, not currently available to the public concerning the specific effects of anthropogenic noise or cumulative effects of Level B takes on the Cook Inlet beluga population;
- (4) All documents regarding the cumulative or synergistic effects of Level B takes of Cook Inlet beluga whales resulting from anthropogenic development activities over the past ten years (2007-2016);
- (5) All documents regarding Level A² takes of Cook Inlet belugas resulting from anthropogenic activities;
- (6) All documents regarding the status of NOAA’s preparation of the programmatic EA and EIS analyzing takes of marine mammals of Cook Inlet incidental to anthropogenic activities and all records of anticipated new agency actions or research pertaining to Cook Inlet belugas;
- (7) All documents regarding the preparation of the final recovery plan for Cook Inlet belugas under the federal Endangered Species Act (“ESA”);
- (8) All documents regarding any limiting factors analysis completed or in progress for Cook Inlet belugas;
- (9) All documents regarding any prioritization of threats to Cook Inlet belugas;
- (10) All documents of any accounting(s) of anthropogenic activities in the Cook Inlet that may result in the taking of a beluga whale;

² As defined as having “the potential to injure a marine mammal or marine mammal stock in the wild.” 16 U.S.C. § 1362(18)(A)(i).

- (11) All documents regarding any population monitoring for Cook Inlet belugas planned or in progress for 2016;
- (12) All documents regarding any population monitoring for Cook Inlet belugas conducted within the last three years, including any population surveys (or similar activities) in proposed project areas conducted by the applicant(s) for an IHA or LoA;
- (13) All documents regarding any formal or informal consultations involving Cook Inlet belugas under Section 7 of the ESA.

The items specifically requested are not meant to be exclusive of any other documents that, although not specially requested, have a reasonable relationship to the subject matter of this request.

For purposes of this request, "anthropogenic activities" are defined to encompass any activity wholly or substantially relating to vessel or aircraft noise (if vessel or aircraft movements are products of an anthropogenic project), ship traffic, including strikes, dredging, pile driving, explosions, demolition, sonar use, oil and gas exploration (including seismic operations, drilling, platform noise, airguns, multibeam echosounders, and sub-bottom profilers), shore construction, military testing activities (i.e. explosions, sonar), pipe and cable laying, water pollution and any other activities reasonably affiliated with anthropogenic projects.

The Supreme Court has stated that FOIA establishes a "strong presumption in favor of disclosure" of requested information, and that the burden is on the government to substantiate why information may not be released under the act's various exemptions. *Department of State v. Ray*, 502 U.S. 164, 173 (1991). Congress affirmed these tenets of FOIA in the Open Government Act of 2007, finding that "the Government [should] remain open and accessible to the American people" and always be based "not upon the need to know but upon the fundamental right to know." Public Law 110-175, 121 Stat. 2524, 2525 (Dec. 31, 2007) (internal citations omitted). President Obama has also directed that "[t]he presumption of disclosure should be applied to all decisions involving FOIA." 74 Fed. Reg. 4683 (Jan. 26, 2009). Please consider the foregoing before withholding any documents that are responsive to this request.

The Requesters anticipate that you will make the requested materials available within the statutorily prescribed period. We also request that you waive any applicable fees since disclosure meets the statutory standard for a fee waiver in that it is clearly "in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii).

B. Fee Waiver Request.

FOIA provides that "documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). The legislative history of FOIA, as well as the case law interpreting the Act, indicates that the statute's fee waiver provision is to be liberally construed favoring the public interest. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 Cong. Rec. S14298 (Sept. 30, 1986) (Sen. Leahy)).

This request for information qualifies for a fee waiver under this standard and, accordingly, we request that all fees be waived. This request satisfies both statutory and regulatory requirements for granting a fee waiver. Below we explain how the request and the Requesters meet each of requirements for a fee waiver delineated in NOAA's FOIA regulations (under its parent agency, the Department of Commerce) 15 CFR § 4.11(k).

1. Disclosure of the Information Requested is in the Public Interest.

(i) *"The subject of the request: whether the subject of the requested records concerns the operations or activities of the Government."*

The requested records concern the operations and activities of NOAA, a federal agency. Specifically, they concern the operation of this federal agency, its management of federally protected Cook Inlet beluga whales, and its permitting decision-making process.

(ii) *"The informative value of the information to be disclosed: whether the disclosure is 'likely to contribute' to an understanding of Government operations or activities."*

(a) How the contents of the records are meaningfully informative;

The requested documents would have substantive, meaningfully informative value and would be likely to contribute to a better understanding of NOAA and its actions. The documents will illuminate in a clear and direct way the operations and activities of the federal government and the activities that it undertakes in regards to management of Cook Inlet beluga whales and the anthropogenic projects that affect them. Although Cook Inlet beluga whales have been in the public spotlight in recent years due to their dwindling numbers and Endangered Species Act listing in 2008, not much is definitively known about the Level B take, cumulative, and noise pollution impacts on Cook Inlet beluga whales from anthropogenic activities. The information requested concerns the operations of the agency responsible for approving activities that have the potential to seriously injure or even kill Cook Inlet

beluga whales and the details of NOAA's past and current permitting decisions and decision-making process in regards to these whales.

- (b) The logical connection between the content of the records and the operations or activities;

The release of the requested documents will significantly contribute to public understanding and oversight of the federal government's operations. For example, the records will help the public understand the status of current Cook Inlet projects, how often and to which activities the federal government authorizes Level B takes, how the government evaluates the significance of cumulative and noise impacts, and the process by which the government makes decisions that affect Cook Inlet beluga whales.

- (iii) *"The contribution to an understanding of the subject by the public likely to result from disclosure: whether disclosure of the requested information will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester."*

Friends of Animals:

Friends of Animals is a nonprofit, international animal advocacy organization incorporated in the state of New York since 1957. Friends of Animals seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living, and domestic animals. The public impact of this disclosed information would be magnified through Friends of Animals' public engagement mechanisms. Friends of Animals has a proven track record of contributing to public understanding of issues surrounding animal advocacy and human-wildlife interactions.

Friends of Animals informs its members about animal advocacy issues, as well as the organization's progress in addressing such issues, through its quarterly magazine called *ActionLine*, its website, and other reports. Friends of Animals has published articles and information advocating for the protection of animals so that they can live unfettered in their natural habitat. In particular, Friends of Animals has a long-standing commitment to protecting animals imperiled due to human-caused activities. Friends of Animals regularly publicizes information about wildlife. Friends of Animals employs several experts who are able to quickly digest and circulate the information obtained from this request, including attorneys and media correspondents.

Friends of Animals plans to disseminate the requested information to Friends of Animals' members, members of other conservation organizations, and other interested members of the public through its website, its quarterly magazine,

and through outreach to other media outlets. By disseminating and distributing this information, Friends of Animals will significantly contribute to the public's understanding of how the government manages harassment of Cook Inlet beluga whales. Friends of Animals also informs its members about animal advocacy issues—including government management of birds, wild horses, and other wildlife—through lawsuits.

Friends of Animals staff has the ability to review, consolidate, and disseminate this information to the public. By consolidating and releasing the information, Friends of Animals will significantly enhance the public's understanding of how the government is currently operating. Additionally, the requested information will constitute a significant contribution to public understanding because it will allow Friends of Animals and the public to determine how the federal government's actions are impacting Cook Inlet beluga whales and whether the federal government has met its obligations under the National Environmental Policy Act, the Marine Mammal Protection Act, and Endangered Species Act.

Sea Shepherd Legal

Sea Shepherd Legal is an international, nonprofit, public interest environmental law firm with a mission to save marine wildlife and habitats by enforcing, strengthening, and developing protective laws, treaties, policies, and practices worldwide. Sea Shepherd Legal works on a range of matters from ensuring proper governmental agency action to developing innovative policy approaches, in order to encourage greater protections for marine wildlife and ecosystems. Public outreach is a key aspect of Sea Shepherd Legal's work.

Sea Shepherd Legal engages in public outreach in order to raise awareness about marine conservation facts, law, resources and tools. Through outreach and education, Sea Shepherd Legal promotes public understanding regarding the importance of biodiversity conservation and how members of the public can play an essential role in protecting marine wildlife and habitats.

Sea Shepherd Legal's general public outreach work involves the bi-weekly publication of a blog, disseminating information regarding marine wildlife protection through social media, and initiating calls to action through online campaign petitions. Related Sea Shepherd entities selectively disseminate these materials to more than one million followers.

The public has a right to know which wildlife species and habitats are at risk, the nature of such risk – including anthropogenic impacts, the role the government is required to play in assessing and mitigating risks, and the government's official response thereto. Through its extensive public outreach endeavors, Sea Shepherd

Legal will ensure that the public acquires this knowledge.

Turtle Island Restoration Network

Turtle Island Restoration Network (“TIRN”) is an international public interest non-profit with a strong track record of disseminating information from FOIA requests to its own membership, decision-makers, the media and the general public. TIRN is a non-profit organization that informs, educates, and counsels the public regarding environmental issues, policies, and laws relating to imperiled species, including marine species. TIRN has been substantially involved in the management activities of numerous government agencies for years, and has consistently displayed its ability to disseminate information granted to it through FOIA requests. As a long established advocacy organization, our informational publications supply information not only to our membership, but also to the memberships of most other conservation organizations, locally as well as nationally. Our informational publications continue to contribute information to public media outlets, as well. TIRN routinely disseminates such information through e-mail alerts and newsletters, which are sent to over 200,000 members and activists. In addition, we disseminate information through our websites, which receives over 100,000 page views per month. Furthermore, we bring such information to our partner organizations and to the media for dissemination to the membership of other organizations and the public at large. Information and our analyses of NMFS’s compliance with the MSA, the MMPA and the ESA will likely be disseminated through all of these means.

TIRN will publicize the results of any analysis of the data to inform the public about the policy choices and information regarding the management of anthropogenic impacts to the Cook Inlet Beluga Whale. This is certain to result in a significant increase in public understanding of government agency activity, especially NOAA’s approach to the conservation of marine species. In addition to informing the public about information relevant to policy and management, TIRN has a proven track record of enforcing environmental laws and publicizing agency compliance with the provisions of various environmental laws through information gained from FOIA requests like this one. TIRN intends to use the documents requested in this request in a similar manner, as appropriate.

- (iv) *“The significance of the contribution to public understanding: whether the disclosure is likely to contribute ‘significantly’ to public understanding of Government operations or activities.”*

Requesters seek the requested documents to increase their understanding, and subsequently contribute to public understanding, of how the federal government is managing activities that affect Cook Inlet beluga whales in Alaska. Many anthropogenic projects are approved by NOAA each year, many of them

granted Level B takes of marine mammals, and the government claims that these actions have a negligible effect on marine mammals. However, the public does not have access to all of the documents available to NOAA and thus cannot understand exactly how NOAA makes its non-negligible impact determinations during agency review of project applications. Additionally, the public cannot understand the justifications used by NOAA staff, its decision-making process, or how risks associated with permitting are assessed without more information about the operations of NOAA.

If the information is not disclosed to the Requesters, the public will remain uninformed about what activities the federal government conducts and authorizes. Disclosure, however, will permit the Requesters to disseminate information to the public, and it will increase transparency surrounding the federal government's activities. This is particularly important because NEPA grants the public a right to this information and a right to participate in federal decisions, such as commenting on proposed anthropogenic activities in Cook Inlet.

The information requested is not, to our knowledge, publicly available. The government may omit sending us requested records that are available in publicly accessible forums (e.g. Internet) or in published materials that are routinely available at public or university libraries. If the government chooses to omit such information, please provide the Requesters with adequate references and/or website links so that we may obtain these materials on our own. We would request that the government provide us with an index of such omitted documents, so that we may have reasonable certainty that we have access to the complete record regarding the management and protection of the Cook Inlet Beluga whales. However, we suspect that the majority of requested materials will not be available unless we receive them from the government in satisfaction of this FOIA request.

2. Disclosure of the Information is Not Primarily in the Commercial Interest of the Requester

When considering whether a request for a fee waiver meets the second prong of the fee waiver requirement, the agency is directed to consider: (1) "whether or not the requester has a commercial interest that would be furthered by the requested disclosure," and (2) "the primary interest in disclosure," i.e. whether the interest of the requester is primarily commercial or public.

None of the Requesters have a commercial, trade, or profit interest in the requested records. In fact, the Requesters do not have any commercial, trade, or profit interests.

Friends of Animals is a non-profit, international animal advocacy organization, incorporated in the state of New York since 1957. It serves the public interest by increasing the general public's awareness of animal advocacy issues and

by teaching how to end animal cruelty and exploitation around the world. Friends of Animals seeks to promote a respectful view of nonhuman, free-living and domestic animals. The Internal Revenue Service recognizes Friends of Animals as a 501(c)(3) tax-exempt organization (IRS Employer Identification#: 13-6018549). Friends of Animals' successful and well-orchestrated public education programs on animal advocacy issues and government operations merit granting a fee waiver for the requested records.

Sea Shepherd Legal was established in 2014 for the purpose of saving marine wildlife and habitats by enforcing, strengthening, and developing protective laws, treaties, policies, and practices worldwide. Sea Shepherd Legal works on a range of matters to ensure greater protections for marine wildlife and ecosystems, via the use of tools including litigation, policy development and public outreach. The IRS recognizes Sea Shepherd Legal as a public interest environmental law firm. Sea Shepherd Legal's EIN number is 47-2272507.

Turtle Island Restoration Network is a 501(c)(3) that has been working to protect marine wildlife, especially sea turtles, but also marine mammals and other endangered species, since the early 1980s. TIRN works through a combination of legal and advocacy strategies and grassroots organizing and education to strengthen protections worldwide. TIRN's EIN is 91-1818080.

CONCLUSION

Please produce the records regarding this FOIA request by electronic mail to wlp_admin@friendsofanimals.org or to the physical address listed below:

Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112

Please produce the records on a rolling basis to the extent possible; at no point should the search for—or the deliberation concerning—certain records delay the production of others that the federal government has already retrieved and elected to produce.

Thank you for your attention to this request. If you have any questions about the requested documents or the requested fee waiver, please do not hesitate to contact me at 720-949-7791 or at wlp_admin@friendsofanimals.org.

Sincerely,



Kaylee Dolen, Administrative Assistant

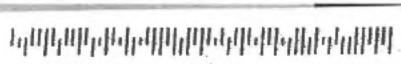
Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112
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U.S. DISTRICT COURT
DISTRICT OF COLORADO
CENTENNIAL

harris
Law P
Animal
Arapahoe Rd. Suite 385
A, CO 80112



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T.D.
12/11/2016

Bob Troyer
United States Attorney
1225 17th Street
Suite 700
Denver, CO 80202



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of the Chief Information Officer
High Performance Computing and Communications

Via FOIAonline

January 19, 2021

Attn: Kaylee Dolen
Office of the Administrator
Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112

Re: FOIA Request No. DOC-NOAA-2016-000959

Dear Ms. Dolen:

This letter is in response to your Freedom of Information Act (FOIA) request entered into FOIAonline on April 12, 2016, for the following records:

- (1) All documents regarding the status of any pending anthropogenic activities in the Cook Inlet area for which IHAs or LoAs have been requested for takes of Cook Inlet belugas;
- (2) All documents regarding the final IHAs or LoAs issued for anthropogenic activities in Cook Inlet, including all documents supporting a "negligible" impact finding pursuant to the MMPA;
- (3) All documents, including research or commentary, not currently available to the public concerning the specific effects of anthropogenic noise or cumulative effects of Level B takes on the Cook Inlet beluga population;
- (4) All documents regarding the cumulative or synergistic effects of Level B takes of Cook Inlet beluga whales resulting from anthropogenic development activities over the past ten years (2007-2016);
- (5) All documents regarding Level A2 takes of Cook Inlet belugas resulting from anthropogenic activities;
- (6) All documents regarding the status of NOAA's preparation of the programmatic EA and EIS analyzing takes of marine mammals of Cook Inlet incidental to anthropogenic activities and all records of anticipated new agency actions or research pertaining to Cook Inlet belugas;
- (7) All documents regarding the preparation of the final recovery plan for Cook Inlet belugas under the federal Endangered Species Act ("ESA");
- (8) All documents regarding any limiting factors analysis completed or in progress for Cook Inlet belugas;
- (9) All documents regarding any prioritization of threats to Cook Inlet belugas;
- (10) All documents of any accounting(s) of anthropogenic activities in the

- Cook Inlet that may result in the taking of a beluga whale;
- (11) All documents regarding any population monitoring for Cook Inlet belugas planned or in progress for 2016;
 - (12) All documents regarding any population monitoring for Cook Inlet belugas conducted within the last three years, including any population surveys (or similar activities) in proposed project areas conducted by the applicant(s) for an IHA or LoA;
 - (13) All documents regarding any formal or informal consultations involving Cook Inlet belugas under Section 7 of the ESA.

In order to determine whether your request qualifies for a fee waiver or reduction in fees, pursuant to 5 C.F.R. § 4.11(k) (2010), we must evaluate whether disclosure of the requested information is: 1) in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, and 2) not primarily in the commercial interest of the requester.

In determining whether your request meets the first fee waiver requirement, we considered the following factors.

- 1) Whether the subject of the requested records concerns the operations of activities of the Government.
- 2) Whether the disclosure is “Likely to contribute” to an understanding of Government operations or activities.
- 3) Whether disclosure of the requested information will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester.
- 4) Where the disclosure is likely to contribute “significantly” to public understanding of Government operations or activities.

In determining whether your request meets the second fee waiver requirement, we considered the following factors:

- 1) Whether the requester has a commercial interest that would be furthered by the requested disclosure.
- 2) Whether any identified commercial interests of the requester is sufficiently great, in comparison with the public interest in disclosure that disclosures are “primarily in the commercial interest of the requester.”

Based on the above criteria, we have determined that you adequately addressed the statutory requirements for a waiver of fees in your April 12, 2016 submission. You have been granted a full waiver for the records requested. Please be advised however, granting this waiver does not automatically apply to future requests submitted by you or your organization. Requests for fee waivers are determined on a case-by-case basis for the records requested under statutory fee waiver requirements.

If you have any questions concerning the response to your fee waiver request, please call (301) 628-5658.

Sincerely,

/S/

Mr. Mark Graff
NOAA FOIA Officer





April 12, 2016

Submitted Via U.S Certified Mail and FOIAonline

National Oceanic and Atmospheric Administration
Public Reference Facility (SOU1000)
1315 East-West Highway (SSMC3)
Room 9719
Silver Spring, Maryland 20910

Re: FOIA Request for Records Relating to Incidental Harassment Authorizations Issued for Activities Impacting Cook Inlet Beluga Whales in Federal Waters Administered by the National Oceanic and Atmospheric Administration

Dear FOIA Officer:

I am writing on behalf of Friends of Animals, Sea Shepherd Legal, and the Turtle Island Restoration Network (collectively, the "Requesters"). Pursuant to 43 C.F.R. Part 2, and the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, Requesters seek the disclosure of all documents¹ in the categories listed below regarding the harassment of the distinct population segment of Cook Inlet beluga whales in waters managed by the National Oceanic and Atmospheric Administration ("NOAA"). Unless otherwise specified, Requesters seek all documents for the time period starting January 26th, 2007 and ending April 11, 2016. Requesters also request a full waiver of all search and duplication fees.

¹ The terms "document(s)" and "records" are used in the broadest sense contemplated by Federal Rule of Civil Procedure 34. It means all written, transcribed, recorded or graphic matters, however produced or reproduced. This definition includes, but is not limited to, any and all original copies or drafts of any and all of the following: records; notes; nonconforming copies that contain deletions, insertions, corrections, handwritten notes or comment summaries; memoranda; schedules; contracts; binders; work papers; logs; diaries; work sheets; files; letters; correspondence; summaries of memoranda; reports or memoranda of telephone conversations or records of personal conversations or interviews; handwritten notes; telephone logs; facsimiles; summaries; invoices; promissory notes; contracts; loan agreements; vouchers; billing statements; tape recordings or transcripts of tape recordings; photographs; videotapes; computerized output or data bases; electronic files; computer disks; computer CDs' electronic mail transmittals; data and all other writings; calculations; and figures or symbols of any kind which, in any manner mentioned, relate to the subjects of the specific requests contained below. This request includes all documents that have ever been within your custody or control, including all inter and intra agency documents, whether they exist in agency working, investigative, retired, electronic mail, or other files currently or at any other time.

A. FOIA Request.

Over the course of several years, NOAA has issued multiple Letters of Authorization (“LoA”) and Incidental Harassment Authorizations (“IHA”) for Level B takes of Cook Inlet beluga whales under the Marine Mammal Protection Act (“MMPA”) incidental to anthropogenic activities in Cook Inlet. Under the MMPA, Level B takes have “the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, feeding, or sheltering.” 16 U.S.C. § 1362(18).

Please provide the following documents in your possession, whether received, created, and/or distributed by NOAA:

- (1) All documents regarding the status of any pending anthropogenic activities in the Cook Inlet area for which IHAs or LoAs have been requested for takes of Cook Inlet belugas;
- (2) All documents regarding the final IHAs or LoAs issued for anthropogenic activities in Cook Inlet, including all documents supporting a “negligible” impact finding pursuant to the MMPA;
- (3) All documents, including research or commentary, not currently available to the public concerning the specific effects of anthropogenic noise or cumulative effects of Level B takes on the Cook Inlet beluga population;
- (4) All documents regarding the cumulative or synergistic effects of Level B takes of Cook Inlet beluga whales resulting from anthropogenic development activities over the past ten years (2007-2016);
- (5) All documents regarding Level A² takes of Cook Inlet belugas resulting from anthropogenic activities;
- (6) All documents regarding the status of NOAA’s preparation of the programmatic EA and EIS analyzing takes of marine mammals of Cook Inlet incidental to anthropogenic activities and all records of anticipated new agency actions or research pertaining to Cook Inlet belugas;
- (7) All documents regarding the preparation of the final recovery plan for Cook Inlet belugas under the federal Endangered Species Act (“ESA”);
- (8) All documents regarding any limiting factors analysis completed or in progress for Cook Inlet belugas;
- (9) All documents regarding any prioritization of threats to Cook Inlet belugas;
- (10) All documents of any accounting(s) of anthropogenic activities in the Cook Inlet that may result in the taking of a beluga whale;

² As defined as having “the potential to injure a marine mammal or marine mammal stock in the wild.” 16 U.S.C. § 1362(18)(A)(i).

- (11) All documents regarding any population monitoring for Cook Inlet belugas planned or in progress for 2016;
- (12) All documents regarding any population monitoring for Cook Inlet belugas conducted within the last three years, including any population surveys (or similar activities) in proposed project areas conducted by the applicant(s) for an IHA or LoA;
- (13) All documents regarding any formal or informal consultations involving Cook Inlet belugas under Section 7 of the ESA.

The items specifically requested are not meant to be exclusive of any other documents that, although not specially requested, have a reasonable relationship to the subject matter of this request.

For purposes of this request, "anthropogenic activities" are defined to encompass any activity wholly or substantially relating to vessel or aircraft noise (if vessel or aircraft movements are products of an anthropogenic project), ship traffic, including strikes, dredging, pile driving, explosions, demolition, sonar use, oil and gas exploration (including seismic operations, drilling, platform noise, airguns, multibeam echosounders, and sub-bottom profilers), shore construction, military testing activities (i.e. explosions, sonar), pipe and cable laying, water pollution and any other activities reasonably affiliated with anthropogenic projects.

The Supreme Court has stated that FOIA establishes a "strong presumption in favor of disclosure" of requested information, and that the burden is on the government to substantiate why information may not be released under the act's various exemptions. *Department of State v. Ray*, 502 U.S. 164, 173 (1991). Congress affirmed these tenets of FOIA in the Open Government Act of 2007, finding that "the Government [should] remain open and accessible to the American people" and always be based "not upon the need to know but upon the fundamental right to know." Public Law 110-175, 121 Stat. 2524, 2525 (Dec. 31, 2007) (internal citations omitted). President Obama has also directed that "[t]he presumption of disclosure should be applied to all decisions involving FOIA." 74 Fed. Reg. 4683 (Jan. 26, 2009). Please consider the foregoing before withholding any documents that are responsive to this request.

The Requesters anticipate that you will make the requested materials available within the statutorily prescribed period. We also request that you waive any applicable fees since disclosure meets the statutory standard for a fee waiver in that it is clearly "in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii).

B. Fee Waiver Request.

FOIA provides that "documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). The legislative history of FOIA, as well as the case law interpreting the Act, indicates that the statute's fee waiver provision is to be liberally construed favoring the public interest. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 Cong. Rec. S14298 (Sept. 30, 1986) (Sen. Leahy)).

This request for information qualifies for a fee waiver under this standard and, accordingly, we request that all fees be waived. This request satisfies both statutory and regulatory requirements for granting a fee waiver. Below we explain how the request and the Requesters meet each of requirements for a fee waiver delineated in NOAA's FOIA regulations (under its parent agency, the Department of Commerce) 15 CFR § 4.11(k).

1. Disclosure of the Information Requested is in the Public Interest.

(i) *"The subject of the request: whether the subject of the requested records concerns the operations or activities of the Government."*

The requested records concern the operations and activities of NOAA, a federal agency. Specifically, they concern the operation of this federal agency, its management of federally protected Cook Inlet beluga whales, and its permitting decision-making process.

(ii) *"The informative value of the information to be disclosed: whether the disclosure is 'likely to contribute' to an understanding of Government operations or activities."*

(a) How the contents of the records are meaningfully informative;

The requested documents would have substantive, meaningfully informative value and would be likely to contribute to a better understanding of NOAA and its actions. The documents will illuminate in a clear and direct way the operations and activities of the federal government and the activities that it undertakes in regards to management of Cook Inlet beluga whales and the anthropogenic projects that affect them. Although Cook Inlet beluga whales have been in the public spotlight in recent years due to their dwindling numbers and Endangered Species Act listing in 2008, not much is definitively known about the Level B take, cumulative, and noise pollution impacts on Cook Inlet beluga whales from anthropogenic activities. The information requested concerns the operations of the agency responsible for approving activities that have the potential to seriously injure or even kill Cook Inlet

beluga whales and the details of NOAA's past and current permitting decisions and decision-making process in regards to these whales.

- (b) The logical connection between the content of the records and the operations or activities;

The release of the requested documents will significantly contribute to public understanding and oversight of the federal government's operations. For example, the records will help the public understand the status of current Cook Inlet projects, how often and to which activities the federal government authorizes Level B takes, how the government evaluates the significance of cumulative and noise impacts, and the process by which the government makes decisions that affect Cook Inlet beluga whales.

- (iii) *"The contribution to an understanding of the subject by the public likely to result from disclosure: whether disclosure of the requested information will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester."*

Friends of Animals:

Friends of Animals is a nonprofit, international animal advocacy organization incorporated in the state of New York since 1957. Friends of Animals seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living, and domestic animals. The public impact of this disclosed information would be magnified through Friends of Animals' public engagement mechanisms. Friends of Animals has a proven track record of contributing to public understanding of issues surrounding animal advocacy and human-wildlife interactions.

Friends of Animals informs its members about animal advocacy issues, as well as the organization's progress in addressing such issues, through its quarterly magazine called *ActionLine*, its website, and other reports. Friends of Animals has published articles and information advocating for the protection of animals so that they can live unfettered in their natural habitat. In particular, Friends of Animals has a long-standing commitment to protecting animals imperiled due to human-caused activities. Friends of Animals regularly publicizes information about wildlife. Friends of Animals employs several experts who are able to quickly digest and circulate the information obtained from this request, including attorneys and media correspondents.

Friends of Animals plans to disseminate the requested information to Friends of Animals' members, members of other conservation organizations, and other interested members of the public through its website, its quarterly magazine,

and through outreach to other media outlets. By disseminating and distributing this information, Friends of Animals will significantly contribute to the public's understanding of how the government manages harassment of Cook Inlet beluga whales. Friends of Animals also informs its members about animal advocacy issues—including government management of birds, wild horses, and other wildlife—through lawsuits.

Friends of Animals staff has the ability to review, consolidate, and disseminate this information to the public. By consolidating and releasing the information, Friends of Animals will significantly enhance the public's understanding of how the government is currently operating. Additionally, the requested information will constitute a significant contribution to public understanding because it will allow Friends of Animals and the public to determine how the federal government's actions are impacting Cook Inlet beluga whales and whether the federal government has met its obligations under the National Environmental Policy Act, the Marine Mammal Protection Act, and Endangered Species Act.

Sea Shepherd Legal

Sea Shepherd Legal is an international, nonprofit, public interest environmental law firm with a mission to save marine wildlife and habitats by enforcing, strengthening, and developing protective laws, treaties, policies, and practices worldwide. Sea Shepherd Legal works on a range of matters from ensuring proper governmental agency action to developing innovative policy approaches, in order to encourage greater protections for marine wildlife and ecosystems. Public outreach is a key aspect of Sea Shepherd Legal's work.

Sea Shepherd Legal engages in public outreach in order to raise awareness about marine conservation facts, law, resources and tools. Through outreach and education, Sea Shepherd Legal promotes public understanding regarding the importance of biodiversity conservation and how members of the public can play an essential role in protecting marine wildlife and habitats.

Sea Shepherd Legal's general public outreach work involves the bi-weekly publication of a blog, disseminating information regarding marine wildlife protection through social media, and initiating calls to action through online campaign petitions. Related Sea Shepherd entities selectively disseminate these materials to more than one million followers.

The public has a right to know which wildlife species and habitats are at risk, the nature of such risk – including anthropogenic impacts, the role the government is required to play in assessing and mitigating risks, and the government's official response thereto. Through its extensive public outreach endeavors, Sea Shepherd

Legal will ensure that the public acquires this knowledge.

Turtle Island Restoration Network

Turtle Island Restoration Network (“TIRN”) is an international public interest non-profit with a strong track record of disseminating information from FOIA requests to its own membership, decision-makers, the media and the general public. TIRN is a non-profit organization that informs, educates, and counsels the public regarding environmental issues, policies, and laws relating to imperiled species, including marine species. TIRN has been substantially involved in the management activities of numerous government agencies for years, and has consistently displayed its ability to disseminate information granted to it through FOIA requests. As a long established advocacy organization, our informational publications supply information not only to our membership, but also to the memberships of most other conservation organizations, locally as well as nationally. Our informational publications continue to contribute information to public media outlets, as well. TIRN routinely disseminates such information through e-mail alerts and newsletters, which are sent to over 200,000 members and activists. In addition, we disseminate information through our websites, which receives over 100,000 page views per month. Furthermore, we bring such information to our partner organizations and to the media for dissemination to the membership of other organizations and the public at large. Information and our analyses of NMFS’s compliance with the MSA, the MMPA and the ESA will likely be disseminated through all of these means.

TIRN will publicize the results of any analysis of the data to inform the public about the policy choices and information regarding the management of anthropogenic impacts to the Cook Inlet Beluga Whale. This is certain to result in a significant increase in public understanding of government agency activity, especially NOAA’s approach to the conservation of marine species. In addition to informing the public about information relevant to policy and management, TIRN has a proven track record of enforcing environmental laws and publicizing agency compliance with the provisions of various environmental laws through information gained from FOIA requests like this one. TIRN intends to use the documents requested in this request in a similar manner, as appropriate.

- (iv) *“The significance of the contribution to public understanding: whether the disclosure is likely to contribute ‘significantly’ to public understanding of Government operations or activities.”*

Requesters seek the requested documents to increase their understanding, and subsequently contribute to public understanding, of how the federal government is managing activities that affect Cook Inlet beluga whales in Alaska. Many anthropogenic projects are approved by NOAA each year, many of them

granted Level B takes of marine mammals, and the government claims that these actions have a negligible effect on marine mammals. However, the public does not have access to all of the documents available to NOAA and thus cannot understand exactly how NOAA makes its non-negligible impact determinations during agency review of project applications. Additionally, the public cannot understand the justifications used by NOAA staff, its decision-making process, or how risks associated with permitting are assessed without more information about the operations of NOAA.

If the information is not disclosed to the Requesters, the public will remain uninformed about what activities the federal government conducts and authorizes. Disclosure, however, will permit the Requesters to disseminate information to the public, and it will increase transparency surrounding the federal government's activities. This is particularly important because NEPA grants the public a right to this information and a right to participate in federal decisions, such as commenting on proposed anthropogenic activities in Cook Inlet.

The information requested is not, to our knowledge, publicly available. The government may omit sending us requested records that are available in publicly accessible forums (e.g. Internet) or in published materials that are routinely available at public or university libraries. If the government chooses to omit such information, please provide the Requesters with adequate references and/or website links so that we may obtain these materials on our own. We would request that the government provide us with an index of such omitted documents, so that we may have reasonable certainty that we have access to the complete record regarding the management and protection of the Cook Inlet Beluga whales. However, we suspect that the majority of requested materials will not be available unless we receive them from the government in satisfaction of this FOIA request.

2. Disclosure of the Information is Not Primarily in the Commercial Interest of the Requester

When considering whether a request for a fee waiver meets the second prong of the fee waiver requirement, the agency is directed to consider: (1) "whether or not the requester has a commercial interest that would be furthered by the requested disclosure," and (2) "the primary interest in disclosure," i.e. whether the interest of the requester is primarily commercial or public.

None of the Requesters have a commercial, trade, or profit interest in the requested records. In fact, the Requesters do not have any commercial, trade, or profit interests.

Friends of Animals is a non-profit, international animal advocacy organization, incorporated in the state of New York since 1957. It serves the public interest by increasing the general public's awareness of animal advocacy issues and

by teaching how to end animal cruelty and exploitation around the world. Friends of Animals seeks to promote a respectful view of nonhuman, free-living and domestic animals. The Internal Revenue Service recognizes Friends of Animals as a 501(c)(3) tax-exempt organization (IRS Employer Identification#: 13-6018549). Friends of Animals' successful and well-orchestrated public education programs on animal advocacy issues and government operations merit granting a fee waiver for the requested records.

Sea Shepherd Legal was established in 2014 for the purpose of saving marine wildlife and habitats by enforcing, strengthening, and developing protective laws, treaties, policies, and practices worldwide. Sea Shepherd Legal works on a range of matters to ensure greater protections for marine wildlife and ecosystems, via the use of tools including litigation, policy development and public outreach. The IRS recognizes Sea Shepherd Legal as a public interest environmental law firm. Sea Shepherd Legal's EIN number is 47-2272507.

Turtle Island Restoration Network is a 501(c)(3) that has been working to protect marine wildlife, especially sea turtles, but also marine mammals and other endangered species, since the early 1980s. TIRN works through a combination of legal and advocacy strategies and grassroots organizing and education to strengthen protections worldwide. TIRN's EIN is 91-1818080.

CONCLUSION

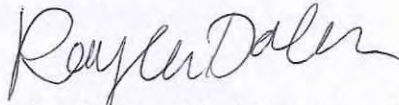
Please produce the records regarding this FOIA request by electronic mail to wlp_admin@friendsofanimals.org or to the physical address listed below:

Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112

Please produce the records on a rolling basis to the extent possible; at no point should the search for—or the deliberation concerning—certain records delay the production of others that the federal government has already retrieved and elected to produce.

Thank you for your attention to this request. If you have any questions about the requested documents or the requested fee waiver, please do not hesitate to contact me at 720-949-7791 or at wlp_admin@friendsofanimals.org.

Sincerely,

A handwritten signature in black ink that reads "Kaylee Dolen". The signature is written in a cursive, flowing style.

Kaylee Dolen, Administrative Assistant

Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112
720-949-7791
wlp_admin@friendsofanimals.org

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AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
District of Colorado

FRIENDS OF ANIMALS, a New York non-profit corporation, and
SEA SHEPHERD LEGAL, a Washington non-profit corporation
Plaintiff(s)
v.

Civil Action No. 16-3007

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, an agency of the United States
Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Bob Troyer
United States Attorney
1225 17th Street
Suit 700
Denver, CO 80202

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Michael Harris
Wildlife Law Program
Friends of Animals
7500 E. Arapahoe Road, Suite 385
Centennial, CO 80112

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 16-3007

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):*

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
FRIENDS OF ANIMALS, a New York non-profit corporation, and SEA SHEPHERD LEGAL, a Washington non-profit corporation
(b) County of Residence of First Listed Plaintiff Arapahoe County
(c) Attorneys (Firm Name, Address, and Telephone Number)
Michael Harris
Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Suite 385, Centennial, CO 80112; Tel: (720) 949-7791

DEFENDANTS
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, an agency of the United States
County of Residence of First Listed Defendant District of Columbia
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question
4 Diversity
Indicate Citizenship of Parties in Item III

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT
PERSONAL INJURY
REAL PROPERTY
TORTS
PRISONER PETITIONS
FORFEITURE/PENALTY
LABOR
IMMIGRATION
BANKRUPTCY
SOCIAL SECURITY
TAX SUITS
OTHER STATUTES

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
5 U.S.C 552- Failure to respond to request under the Freedom of Information Act
Brief description of cause: AP Docket

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMANDS
CHECK YES only if demanded in complaint.
JURY DEMAND: Yes No

DATE: 12/08/2016
SIGNATURE OF ATTORNEY OF RECORD: /s/ Michael Ray Harris

FOR OFFICE USE ONLY
RECEIPT #
AMOUNT
APPLYING IFP
JUDGE
MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows.

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment noting, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example:

U.S. Civil Statute: 47 USC 553

Brief Description:

Unauthorized reception of cable service

Or:

"AP Docket"

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

FRIENDS OF ANIMALS, and
SEA SHEPHERD LEGAL;

Plaintiffs,

v.

NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION
an agency of the United States,

Defendant.

Civ. No. 16-3007

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF
(FREEDOM OF INFORMATION ACT)**

INTRODUCTION

1. This action is brought to remedy violations of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et. seq.* Specifically, it challenges the failure of the National Oceanic and Atmospheric Administration (“Federal Defendant”) to provide a final determination, including all responsive documents, within the time required by FOIA in regard to Plaintiffs Friends of Animals’ and Sea Shepherd Legal’s (“Plaintiffs”) April 14, 2016 request for information (“Request”).

2. In the Request, Plaintiffs asked for all documents in Federal Defendant’s possession related to pending or final approvals under the Marine Mammal Protection Act, National Environmental Policy Act and the Endangered Species Act for anthropogenic activities affecting the Cook Inlet beluga whale. Plaintiffs also sought all documents related to biological analyses and threats to the Cook Inlet beluga whale. *See* Exhibit A.

3. As of the date on this Complaint, Federal Defendant has not made a final determination regarding the release of documents, nor has Federal Defendant provided a timeline or other plan for compliance with the requirements of FOIA to indicate when or whether the Request will be fully satisfied.

4. Federal Defendant is unlawfully withholding public disclosure of information that Plaintiffs are entitled to receive under FOIA. By failing to make either a timely determination or timely and complete releases after the initial tranche of documents, Federal Defendant failed to comply with the statutory mandates and deadlines imposed by FOIA.

5. Accordingly, Plaintiffs seek declaratory relief establishing that Federal Defendant has violated FOIA. Plaintiffs also seek injunctive relief directing Federal Defendant to make a determination on the Request, provide a timeline for the release of the remaining documents, and promptly provide the requested material free of cost.

6. Plaintiffs bring this lawsuit to obtain timely disclosure of critical information related to authorized takes, and to pending authorizations of requested takes, of hundreds of Cook Inlet beluga whales from multiple and geographically overlapping oil and gas projects in the Cook Inlet. Given the significant potential impact upon the rapidly diminishing population of Cook Inlet beluga whales and the strong public interest in disclosure of information that may directly assist Plaintiffs' ongoing efforts to protect this population, Plaintiffs seek expeditious treatment of their Complaint pursuant to 28 U.S.C. § 1657.

JURISDICTION AND VENUE

7. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA) and 28 U.S.C. § 1331 (federal question). This Court may grant the declaratory relief under 28 U.S.C. §§ 2201, *et seq.* (Declaratory Judgment Act) and injunctive relief under 5 U.S.C. § 552(a)(4)(B) (FOIA). An actual, justiciable controversy exists within the meaning of the Declaratory Judgment Act between Plaintiffs and Federal Defendant. The Court has jurisdiction, upon receipt of a complaint, "to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B).

8. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B), which provides venue for FOIA cases in this district as the district in which a plaintiff resides. Friends of Animals maintains a principle office here in Colorado. Venue is also proper under 28 U.S.C. § 1391(b) because the defendant is subject to personal jurisdiction in this federal district.

PARTIES

9. Friends of Animals is a nonprofit international advocacy organization with nearly 200,000 members, incorporated in the state of New York since 1957. Friends of Animals seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living and domestic animals. Friends of Animals engages in a variety of advocacy programs in support of these goals. Friends of Animals informs its members about animal advocacy issues as well as the organization's progress in addressing these issues through its magazine called *ActionLine*, its website, and other reports. Friends of Animals has published articles and information advocating for the protection of wild species so that they can live unfettered in their natural habitats.

10. In 2013, Friends of Animals created a federal wildlife law program. The program established its principle office in Centennial, Colorado. The office consists of four full-time employees and one part-time employee. Through this office, Friends of Animals submitted the Request at issue in this action.

11. Sea Shepherd Legal is a nonprofit public interest law organization dedicated to its mission to end the destruction of habitat and slaughter of wildlife in the world's oceans in order to conserve and protect ecosystems and species. In furtherance of that mission, Sea Shepherd Legal has been involved in protecting marine life throughout the world. Sea Shepherd Legal uses public outreach and education to advocate for and motivate the creation of greater protections for cetaceans and other marine life.

12. The interests of Plaintiffs and their members are harmed by Federal Defendant's failure to release the requested documents in a timely manner, which prevents Plaintiffs

from obtaining, analyzing, disseminating and using the requested information to advance Plaintiffs' missions of ensuring the protection of marine wildlife and, in particular here, the Cook Inlet beluga whale.

13. Federal Defendant is an agency within the meaning of 5 U.S.C. § 552(f)(1). Federal Defendant is responsible for fulfilling Plaintiffs' Request and complying with all federal laws.

STATUTORY BACKGROUND

14. Congress enacted FOIA to ensure public access to U.S. government records. FOIA carries a presumption of disclosure. *Dep't of State v Ray*, 502 U.S. 164 (1991). Upon receipt of a written request that "reasonably describes" the records sought and complies with "published rules . . . and procedures to be followed," agencies of the United States government are required to "promptly" disclose their records, unless they can be lawfully withheld from disclosure under one of nine specific exemptions in FOIA. 5 U.S.C. § 552(a)(3)(A). The burden is on the government—not the requestor or public—to justify why particular information may be withheld. *Ray*, 502 U.S. at 164.

15. FOIA requires agencies to "determine within 20 days . . . after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefore, and of the right of such person to appeal to the head of the agency any adverse determination." *Id.* at § 552(a)(6)(A)(i).

16. On determination by an agency to comply with the request, the records shall be made "promptly available." *Id.* at § 552(a)(6)(C).

17. In "unusual circumstances," an agency may extend the time limits for up to 10 working days by providing written notice to the requester setting forth the unusual circumstance(s) and the date on which the determination is expected to be dispatched. *Id.* at § 552(a)(6)(B).

18. In some limited circumstances, FOIA allows an agency to seek an extension potentially beyond 10 days. Specifically, FOIA requires an agency to provide written notification to the requester: (1) offering an opportunity to limit the scope of the request so that it may be processed within the 20 work-day limit, or (2) offering an opportunity to arrange with the agency an “alternative time frame” for processing the request. *Id.* at § 552(a)(6)(B)(ii). If the agency elects this option, it must make its FOIA Public Liaison available to the requester to assist in any disputes with the agency. *Id.*

19. If the agency fails to make a determination on a document request within 20 work-days, or within the limited additional time permitted upon proper notification of “unusual circumstances,” the requester is deemed to have constructively exhausted administrative remedies and may seek judicial review. *Id.* at § 552(a)(6)(C). *Oglesby v. Dep’t of Army*, 920 F.2d 57(D.C. Cir 1990), *Nurse v. Sec’y of the Air Force*, 231 F. Supp. 2d 323, 328 (D.D.C. 2002) (“The FOIA is considered a unique statute because it recognizes a constructive exhaustion doctrine for purposes of judicial review upon the expiration of certain relevant FOIA deadlines.”)

20. FOIA requires that the agency “shall make the records promptly available to any person” and may not defer release of responsive documents indefinitely. *Id.* at § 552 (a)(3)(A). Failure to issue a determination and to complete the release of documents in a timely fashion is a violation of FOIA even if the initial response and releases may have been prompt. *Munger, Tolles, Olsen v. Dept. of Army*, 58 F. Supp. 3d 1050 (C.D. Cal 2014). *See also Fiduccia v. U.S. Dep’t of Justice*, 185 F.3d 1035, 1041 (9th Cir. 1999)(“Congress gave agencies 20 days, not years, to decide whether to comply with requests and notify the requesters”); *Long v. IRS*, 693 F.2d 907, 910 (9th Cir. 1982) (“[U]nreasonable delays in disclosing non-exempt documents violate the intent and purpose of the FOIA, and the courts have a duty to prevent these abuses.”).

FACTUAL BACKGROUND

21. On April 12, 2016, Plaintiffs submitted the Request under FOIA to Federal Defendant reasonably describing all documents of which Plaintiffs sought disclosure.

22. On April 21, 2016, Federal Defendant provided written notification confirming receipt of the Request and disclosing that the Request had been assigned for processing on April 14, 2016.

23. In the confirmation, Federal Defendant did not request any additional information needed to clarify the Request. Federal Defendant did request a Scope Conference with Friends of Animals.

24. On April 29, 2016, Federal Defendant and Friends of Animals conducted the Scope Conference. During this conference, Federal Defendant did not request any additional information needed to clarify the Request but asked Plaintiffs to prioritize the individual document categories identified in the Request. Friends of Animals instructed Federal Defendant to proceed with the original FOIA request, but agreed to send a letter outlining the priorities of the original FOIA request.

25. On May 10, 2016, Friends of Animals submitted a letter to Federal Defendant outlining the top priorities of the original FOIA request. In that letter, Friends of Animals stated as follows: "As discussed on the April 29, 2016 conference call, Friends of Animals has not changed or altered the original request, nor are we waiving under [sic] rights under FOIA. We provide the following priorities merely to assist the agency in processing our request."

26. On May 16, 2016, Federal Defendant confirmed receipt of Friends of Animals' May 10 letter outlining the top priorities of the original FOIA request and indicated the need for a 10-day extension due to "unusual circumstances." Federal Defendant further stated that the first interim release of records could be anticipated on May 25, 2016.

27. The 20 work-day time limit for providing a determination on the Request commenced on April 14 and, thus, expired on May 12, 2016.

28. Federal Defendant made two interim releases of documents. The first release was dated June 9, 2016. The second was dated July 26, 2016 (but not received until August 29, 2016).

29. Since August 29, 2016, no further documents have been released.

30. Since August 29, 2016, Federal Defendant has not provided any timeline for the release of any remaining documents.

31. As of the date of this complaint, Plaintiffs have not received a final determination on their Request.

32. Plaintiffs believe and allege that Federal Defendant is unlawfully withholding public disclosure of information sought by Plaintiffs, information to which they are entitled to receive promptly, and for which Federal Defendant has not provided a valid disclosure exemption.

33. Federal Defendant has offered no reasonable explanation for its delay, and it has failed to estimate when it will finally be able to comply with its obligations under FOIA.

34. Since Federal Defendant has neither produced responsive documents nor provided an appealable final determination, Plaintiffs have constructively exhausted their administrative remedies with respect to the requested documents.

CLAIM FOR RELIEF
Violation of Freedom of Information Act
Failure to Respond with a Determination

35. Plaintiffs herein incorporate all allegations contained in the proceeding paragraphs.

36. FOIA provides that any person may obtain those agency records that are not subject to the FOIA disclosure exemptions promptly. 5 U.S.C. § 552 (a)(3)(A).

37. Plaintiffs properly requested records within the control of Federal Defendant.

38. Federal Defendant failed to provide Plaintiffs with a final determination as to whether Federal Defendant has any non-exempt records responsive to the Request and whether it intended to release such records within the required timeframe. *Id.* § 552(a)(6)(A)(i) and § 552(a)(6)(B).

39. Federal Defendant failed to properly invoke and comply with FOIA's provision allowing a 10 working day extension for "unusual circumstances." *Id.* at § 552(a)(6)(B)(i).

40. Federal Defendant failed to properly invoke and comply with FOIA's provision permitting an extension of potentially greater than 10 working days by offering Plaintiffs an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. *Id.* at § 552(a)(6)(B)(ii).

41. Federal Defendant has failed to promptly make available responsive documents without unreasonable delay.

42. Federal Defendant's failures to comply with FOIA are subject to judicial review under 5 U.S.C. § 552 (a)(4)(B). Federal Defendant's failure to issue a determination within the statutory deadlines violates 5 U.S.C. § 552 (a)(3)(A).

43. Accordingly, Plaintiffs are entitled to injunctive and declaratory relief with respect to a determination on the Request.

PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court enter judgment providing the following relief:

1. Declare that Federal Defendant violated FOIA by failing to (1) make a determination on Plaintiffs' Request and (2) make records responsive to Plaintiffs' Request available within the statutory deadlines.
2. Order Federal Defendant to (1) provide Plaintiffs with a final determination and (2) process and release all records responsive to the Request at no cost to Plaintiffs within 10 days from the date of such order;

3. Retain jurisdiction of this action to ensure the processing of the Request, and to ensure that no agency records are wrongfully withheld;
4. Award Plaintiffs costs, including reasonable attorney fees and litigation costs in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
5. Grant Plaintiffs any other relief that the Court deems just and proper.

Dated: December 08, 2016

Respectfully Submitted,

/s/ Michael Harris
Michael Ray Harris
Director, Wildlife Law Program
Friends of Animals
7500 E. Arapahoe Road, Suite 385
Centennial, CO 80112
720-949-7791
michaelharris@friendsofanimals.org

Attorney for Plaintiff Friends of Animals

/s/ Brett Sommermeyer
Brett Sommermeyer (admission pending)
Legal Director
Sea Shepherd Legal
2226 Eastlake Ave., E.
No. 108
Seattle, WA 98102
brett@seashepherdlegal.org

Attorney for Plaintiff Sea Shepherd Legal

EXHIBIT A

~~EXPLOITERS~~
FRIENDS
of ANIMALS

April 12, 2016

Submitted Via U.S Certified Mail and FOIAonline

National Oceanic and Atmospheric Administration
Public Reference Facility (SOU1000)
1315 East-West Highway (SSMC3)
Room 9719
Silver Spring, Maryland 20910

Re: FOIA Request for Records Relating to Incidental Harassment Authorizations
Issued for Activities Impacting Cook Inlet Beluga Whales in Federal Waters
Administered by the National Oceanic and Atmospheric Administration

Dear FOIA Officer:

I am writing on behalf of Friends of Animals, Sea Shepherd Legal, and the Turtle Island Restoration Network (collectively, the "Requesters"). Pursuant to 43 C.F.R. Part 2, and the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, Requesters seek the disclosure of all documents¹ in the categories listed below regarding the harassment of the distinct population segment of Cook Inlet beluga whales in waters managed by the National Oceanic and Atmospheric Administration ("NOAA"). Unless otherwise specified, Requesters seek all documents for the time period starting January 26th, 2007 and ending April 11, 2016. Requesters also request a full waiver of all search and duplication fees.

¹ The terms "document(s)" and "records" are used in the broadest sense contemplated by Federal Rule of Civil Procedure 34. It means all written, transcribed, recorded or graphic matters, however produced or reproduced. This definition includes, but is not limited to, any and all original copies or drafts of any and all of the following: records; notes; nonconforming copies that contain deletions, insertions, corrections, handwritten notes or comment summaries; memoranda; schedules; contracts; binders; work papers; logs; diaries; work sheets; files; letters; correspondence; summaries of memoranda; reports or memoranda of telephone conversations or records of personal conversations or interviews; handwritten notes; telephone logs; facsimiles; summaries; invoices; promissory notes; contracts; loan agreements; vouchers; billing statements; tape recordings or transcripts of tape recordings; photographs; videotapes; computerized output or data bases; electronic files; computer disks; computer CDs; electronic mail transmittals; data and all other writings; calculations; and figures or symbols of any kind which, in any manner mentioned, relate to the subjects of the specific requests contained below. This request includes all documents that have ever been within your custody or control, including all inter and intra agency documents, whether they exist in agency working, investigative, retired, electronic mail, or other files currently or at any other time.

A. FOIA Request.

Over the course of several years, NOAA has issued multiple Letters of Authorization (“LoA”) and Incidental Harassment Authorizations (“IHA”) for Level B takes of Cook Inlet beluga whales under the Marine Mammal Protection Act (“MMPA”) incidental to anthropogenic activities in Cook Inlet. Under the MMPA, Level B takes have “the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, feeding, or sheltering.” 16 U.S.C. § 1362(18).

Please provide the following documents in your possession, whether received, created, and/or distributed by NOAA:

- (1) All documents regarding the status of any pending anthropogenic activities in the Cook Inlet area for which IHAs or LoAs have been requested for takes of Cook Inlet belugas;
- (2) All documents regarding the final IHAs or LoAs issued for anthropogenic activities in Cook Inlet, including all documents supporting a “negligible” impact finding pursuant to the MMPA;
- (3) All documents, including research or commentary, not currently available to the public concerning the specific effects of anthropogenic noise or cumulative effects of Level B takes on the Cook Inlet beluga population;
- (4) All documents regarding the cumulative or synergistic effects of Level B takes of Cook Inlet beluga whales resulting from anthropogenic development activities over the past ten years (2007-2016);
- (5) All documents regarding Level A² takes of Cook Inlet belugas resulting from anthropogenic activities;
- (6) All documents regarding the status of NOAA’s preparation of the programmatic EA and EIS analyzing takes of marine mammals of Cook Inlet incidental to anthropogenic activities and all records of anticipated new agency actions or research pertaining to Cook Inlet belugas;
- (7) All documents regarding the preparation of the final recovery plan for Cook Inlet belugas under the federal Endangered Species Act (“ESA”);
- (8) All documents regarding any limiting factors analysis completed or in progress for Cook Inlet belugas;
- (9) All documents regarding any prioritization of threats to Cook Inlet belugas;
- (10) All documents of any accounting(s) of anthropogenic activities in the Cook Inlet that may result in the taking of a beluga whale;

² As defined as having “the potential to injure a marine mammal or marine mammal stock in the wild.” 16 U.S.C. § 1362(18)(A)(i).

- (11) All documents regarding any population monitoring for Cook Inlet belugas planned or in progress for 2016;
- (12) All documents regarding any population monitoring for Cook Inlet belugas conducted within the last three years, including any population surveys (or similar activities) in proposed project areas conducted by the applicant(s) for an IHA or LoA;
- (13) All documents regarding any formal or informal consultations involving Cook Inlet belugas under Section 7 of the ESA.

The items specifically requested are not meant to be exclusive of any other documents that, although not specially requested, have a reasonable relationship to the subject matter of this request.

For purposes of this request, "anthropogenic activities" are defined to encompass any activity wholly or substantially relating to vessel or aircraft noise (if vessel or aircraft movements are products of an anthropogenic project), ship traffic, including strikes, dredging, pile driving, explosions, demolition, sonar use, oil and gas exploration (including seismic operations, drilling, platform noise, airguns, multibeam echosounders, and sub-bottom profilers), shore construction, military testing activities (i.e. explosions, sonar), pipe and cable laying, water pollution and any other activities reasonably affiliated with anthropogenic projects.

The Supreme Court has stated that FOIA establishes a "strong presumption in favor of disclosure" of requested information, and that the burden is on the government to substantiate why information may not be released under the act's various exemptions. *Department of State v. Ray*, 502 U.S. 164, 173 (1991). Congress affirmed these tenets of FOIA in the Open Government Act of 2007, finding that "the Government [should] remain open and accessible to the American people" and always be based "not upon the need to know but upon the fundamental right to know." Public Law 110-175, 121 Stat. 2524, 2525 (Dec. 31, 2007) (internal citations omitted). President Obama has also directed that "[t]he presumption of disclosure should be applied to all decisions involving FOIA." 74 Fed. Reg. 4683 (Jan. 26, 2009). Please consider the foregoing before withholding any documents that are responsive to this request.

The Requesters anticipate that you will make the requested materials available within the statutorily prescribed period. We also request that you waive any applicable fees since disclosure meets the statutory standard for a fee waiver in that it is clearly "in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii).

B. Fee Waiver Request.

FOIA provides that "documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). The legislative history of FOIA, as well as the case law interpreting the Act, indicates that the statute's fee waiver provision is to be liberally construed favoring the public interest. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 Cong. Rec. S14298 (Sept. 30, 1986) (Sen. Leahy)).

This request for information qualifies for a fee waiver under this standard and, accordingly, we request that all fees be waived. This request satisfies both statutory and regulatory requirements for granting a fee waiver. Below we explain how the request and the Requesters meet each of requirements for a fee waiver delineated in NOAA's FOIA regulations (under its parent agency, the Department of Commerce) 15 CFR § 4.11(k).

1. Disclosure of the Information Requested is in the Public Interest.

(i) *"The subject of the request: whether the subject of the requested records concerns the operations or activities of the Government."*

The requested records concern the operations and activities of NOAA, a federal agency. Specifically, they concern the operation of this federal agency, its management of federally protected Cook Inlet beluga whales, and its permitting decision-making process.

(ii) *"The informative value of the information to be disclosed: whether the disclosure is 'likely to contribute' to an understanding of Government operations or activities."*

(a) How the contents of the records are meaningfully informative;

The requested documents would have substantive, meaningfully informative value and would be likely to contribute to a better understanding of NOAA and its actions. The documents will illuminate in a clear and direct way the operations and activities of the federal government and the activities that it undertakes in regards to management of Cook Inlet beluga whales and the anthropogenic projects that affect them. Although Cook Inlet beluga whales have been in the public spotlight in recent years due to their dwindling numbers and Endangered Species Act listing in 2008, not much is definitively known about the Level B take, cumulative, and noise pollution impacts on Cook Inlet beluga whales from anthropogenic activities. The information requested concerns the operations of the agency responsible for approving activities that have the potential to seriously injure or even kill Cook Inlet

beluga whales and the details of NOAA's past and current permitting decisions and decision-making process in regards to these whales.

- (b) The logical connection between the content of the records and the operations or activities;

The release of the requested documents will significantly contribute to public understanding and oversight of the federal government's operations. For example, the records will help the public understand the status of current Cook Inlet projects, how often and to which activities the federal government authorizes Level B takes, how the government evaluates the significance of cumulative and noise impacts, and the process by which the government makes decisions that affect Cook Inlet beluga whales.

- (iii) *"The contribution to an understanding of the subject by the public likely to result from disclosure: whether disclosure of the requested information will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester."*

Friends of Animals:

Friends of Animals is a nonprofit, international animal advocacy organization incorporated in the state of New York since 1957. Friends of Animals seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living, and domestic animals. The public impact of this disclosed information would be magnified through Friends of Animals' public engagement mechanisms. Friends of Animals has a proven track record of contributing to public understanding of issues surrounding animal advocacy and human-wildlife interactions.

Friends of Animals informs its members about animal advocacy issues, as well as the organization's progress in addressing such issues, through its quarterly magazine called *ActionLine*, its website, and other reports. Friends of Animals has published articles and information advocating for the protection of animals so that they can live unfettered in their natural habitat. In particular, Friends of Animals has a long-standing commitment to protecting animals imperiled due to human-caused activities. Friends of Animals regularly publicizes information about wildlife. Friends of Animals employs several experts who are able to quickly digest and circulate the information obtained from this request, including attorneys and media correspondents.

Friends of Animals plans to disseminate the requested information to Friends of Animals' members, members of other conservation organizations, and other interested members of the public through its website, its quarterly magazine,

and through outreach to other media outlets. By disseminating and distributing this information, Friends of Animals will significantly contribute to the public's understanding of how the government manages harassment of Cook Inlet beluga whales. Friends of Animals also informs its members about animal advocacy issues—including government management of birds, wild horses, and other wildlife—through lawsuits.

Friends of Animals staff has the ability to review, consolidate, and disseminate this information to the public. By consolidating and releasing the information, Friends of Animals will significantly enhance the public's understanding of how the government is currently operating. Additionally, the requested information will constitute a significant contribution to public understanding because it will allow Friends of Animals and the public to determine how the federal government's actions are impacting Cook Inlet beluga whales and whether the federal government has met its obligations under the National Environmental Policy Act, the Marine Mammal Protection Act, and Endangered Species Act.

Sea Shepherd Legal

Sea Shepherd Legal is an international, nonprofit, public interest environmental law firm with a mission to save marine wildlife and habitats by enforcing, strengthening, and developing protective laws, treaties, policies, and practices worldwide. Sea Shepherd Legal works on a range of matters from ensuring proper governmental agency action to developing innovative policy approaches, in order to encourage greater protections for marine wildlife and ecosystems. Public outreach is a key aspect of Sea Shepherd Legal's work.

Sea Shepherd Legal engages in public outreach in order to raise awareness about marine conservation facts, law, resources and tools. Through outreach and education, Sea Shepherd Legal promotes public understanding regarding the importance of biodiversity conservation and how members of the public can play an essential role in protecting marine wildlife and habitats.

Sea Shepherd Legal's general public outreach work involves the bi-weekly publication of a blog, disseminating information regarding marine wildlife protection through social media, and initiating calls to action through online campaign petitions. Related Sea Shepherd entities selectively disseminate these materials to more than one million followers.

The public has a right to know which wildlife species and habitats are at risk, the nature of such risk – including anthropogenic impacts, the role the government is required to play in assessing and mitigating risks, and the government's official response thereto. Through its extensive public outreach endeavors, Sea Shepherd

Legal will ensure that the public acquires this knowledge.

Turtle Island Restoration Network

Turtle Island Restoration Network (“TIRN”) is an international public interest non-profit with a strong track record of disseminating information from FOIA requests to its own membership, decision-makers, the media and the general public. TIRN is a non-profit organization that informs, educates, and counsels the public regarding environmental issues, policies, and laws relating to imperiled species, including marine species. TIRN has been substantially involved in the management activities of numerous government agencies for years, and has consistently displayed its ability to disseminate information granted to it through FOIA requests. As a long established advocacy organization, our informational publications supply information not only to our membership, but also to the memberships of most other conservation organizations, locally as well as nationally. Our informational publications continue to contribute information to public media outlets, as well. TIRN routinely disseminates such information through e-mail alerts and newsletters, which are sent to over 200,000 members and activists. In addition, we disseminate information through our websites, which receives over 100,000 page views per month. Furthermore, we bring such information to our partner organizations and to the media for dissemination to the membership of other organizations and the public at large. Information and our analyses of NMFS’s compliance with the MSA, the MMPA and the ESA will likely be disseminated through all of these means.

TIRN will publicize the results of any analysis of the data to inform the public about the policy choices and information regarding the management of anthropogenic impacts to the Cook Inlet Beluga Whale. This is certain to result in a significant increase in public understanding of government agency activity, especially NOAA’s approach to the conservation of marine species. In addition to informing the public about information relevant to policy and management, TIRN has a proven track record of enforcing environmental laws and publicizing agency compliance with the provisions of various environmental laws through information gained from FOIA requests like this one. TIRN intends to use the documents requested in this request in a similar manner, as appropriate.

- (iv) *“The significance of the contribution to public understanding: whether the disclosure is likely to contribute ‘significantly’ to public understanding of Government operations or activities.”*

Requesters seek the requested documents to increase their understanding, and subsequently contribute to public understanding, of how the federal government is managing activities that affect Cook Inlet beluga whales in Alaska. Many anthropogenic projects are approved by NOAA each year, many of them

granted Level B takes of marine mammals, and the government claims that these actions have a negligible effect on marine mammals. However, the public does not have access to all of the documents available to NOAA and thus cannot understand exactly how NOAA makes its non-negligible impact determinations during agency review of project applications. Additionally, the public cannot understand the justifications used by NOAA staff, its decision-making process, or how risks associated with permitting are assessed without more information about the operations of NOAA.

If the information is not disclosed to the Requesters, the public will remain uninformed about what activities the federal government conducts and authorizes. Disclosure, however, will permit the Requesters to disseminate information to the public, and it will increase transparency surrounding the federal government's activities. This is particularly important because NEPA grants the public a right to this information and a right to participate in federal decisions, such as commenting on proposed anthropogenic activities in Cook Inlet.

The information requested is not, to our knowledge, publicly available. The government may omit sending us requested records that are available in publicly accessible forums (e.g. Internet) or in published materials that are routinely available at public or university libraries. If the government chooses to omit such information, please provide the Requesters with adequate references and/or website links so that we may obtain these materials on our own. We would request that the government provide us with an index of such omitted documents, so that we may have reasonable certainty that we have access to the complete record regarding the management and protection of the Cook Inlet Beluga whales. However, we suspect that the majority of requested materials will not be available unless we receive them from the government in satisfaction of this FOIA request.

2. Disclosure of the Information is Not Primarily in the Commercial Interest of the Requester

When considering whether a request for a fee waiver meets the second prong of the fee waiver requirement, the agency is directed to consider: (1) "whether or not the requester has a commercial interest that would be furthered by the requested disclosure," and (2) "the primary interest in disclosure," i.e. whether the interest of the requester is primarily commercial or public.

None of the Requesters have a commercial, trade, or profit interest in the requested records. In fact, the Requesters do not have any commercial, trade, or profit interests.

Friends of Animals is a non-profit, international animal advocacy organization, incorporated in the state of New York since 1957. It serves the public interest by increasing the general public's awareness of animal advocacy issues and

by teaching how to end animal cruelty and exploitation around the world. Friends of Animals seeks to promote a respectful view of nonhuman, free-living and domestic animals. The Internal Revenue Service recognizes Friends of Animals as a 501(c)(3) tax-exempt organization (IRS Employer Identification#: 13-6018549). Friends of Animals' successful and well-orchestrated public education programs on animal advocacy issues and government operations merit granting a fee waiver for the requested records.

Sea Shepherd Legal was established in 2014 for the purpose of saving marine wildlife and habitats by enforcing, strengthening, and developing protective laws, treaties, policies, and practices worldwide. Sea Shepherd Legal works on a range of matters to ensure greater protections for marine wildlife and ecosystems, via the use of tools including litigation, policy development and public outreach. The IRS recognizes Sea Shepherd Legal as a public interest environmental law firm. Sea Shepherd Legal's EIN number is 47-2272507.

Turtle Island Restoration Network is a 501(c)(3) that has been working to protect marine wildlife, especially sea turtles, but also marine mammals and other endangered species, since the early 1980s. TIRN works through a combination of legal and advocacy strategies and grassroots organizing and education to strengthen protections worldwide. TIRN's EIN is 91-1818080.

CONCLUSION

Please produce the records regarding this FOIA request by electronic mail to wlp_admin@friendsofanimals.org or to the physical address listed below:

Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112

Please produce the records on a rolling basis to the extent possible; at no point should the search for—or the deliberation concerning—certain records delay the production of others that the federal government has already retrieved and elected to produce.

Thank you for your attention to this request. If you have any questions about the requested documents or the requested fee waiver, please do not hesitate to contact me at 720-949-7791 or at wlp_admin@friendsofanimals.org.

Sincerely,



Kaylee Dolen, Administrative Assistant

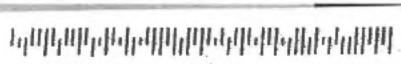
Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112
720-949-7791
wlp_admin@friendsofanimals.org

RECEIVED

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U.S. DISTRICT COURT
DISTRICT OF COLORADO
DENVER

harris
Law P
Animal
Arapahoe Rd. Suite 385
A, CO 80112



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T.D.
12/11/2016

Bob Troyer
United States Attorney
1225 17th Street
Suite 700
Denver, CO 80202

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From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Tuesday, December 20, 2016 5:04 PM
To: Chua, Alvin
Subject: Fwd: Friends of Animals v. NOAA, New FOIA Litigation
Attachments: 20161208 FOA v. NOAA Complaint.pdf; Original Request.pdf

Hi Alvin,

I left you off of this by mistake. (b)(5)

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) (C)

Confidentiality Notice: This e mail message is intended only for the named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.

----- Forwarded message -----

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Date: Tue, Dec 20, 2016 at 12:06 PM
Subject: Friends of Animals v. NOAA, New FOIA Litigation
To: foia.officer@fhwa.dot.gov, BOEMFOIA@boem.gov, hq.foia@epa.gov, DONFOIA-PA@navy.mil, "Toland, Michael" <mtoland@doc.gov>
Cc: Deborah Ben-David - NOAA Federal <deborah.ben-david@noaa.gov>, John Almeida - NOAA Federal <john.almeida@noaa.gov>, Robert Swisher - NOAA Federal <robert.swisher@noaa.gov>, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>, Stacey Nathanson - NOAA Federal <stacey.nathanson@noaa.gov>

Good Afternoon,

For awareness, a new FOIA lawsuit has been filed against NOAA in the District of Colorado. (b)(5)

The complaint and underlying FOIA request are attached for your reference.

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)

National Oceanic and Atmospheric Administration

[\(301\) 628-5658](tel:3016285658) (O)

(b)(6) (C)

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AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
District of Colorado

FRIENDS OF ANIMALS, a New York non-profit corporation, and
SEA SHEPHERD LEGAL, a Washington non-profit corporation
Plaintiff(s)
v.

Civil Action No. 16-3007

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, an agency of the United States
Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Bob Troyer
United States Attorney
1225 17th Street
Suit 700
Denver, CO 80202

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Michael Harris
Wildlife Law Program
Friends of Animals
7500 E. Arapahoe Road, Suite 385
Centennial, CO 80112

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 16-3007

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):*

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
FRIENDS OF ANIMALS, a New York non-profit corporation, and SEA SHEPHERD LEGAL, a Washington non-profit corporation
(b) County of Residence of First Listed Plaintiff Arapahoe County
(c) Attorneys (Firm Name, Address, and Telephone Number)
Michael Harris
Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Suite 385, Centennial, CO 80112; Tel: (720) 949-7791

DEFENDANTS
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, an agency of the United States
County of Residence of First Listed Defendant District of Columbia
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question
4 Diversity

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT
PERSONAL INJURY
REAL PROPERTY
CIVIL RIGHTS
PRISONER PETITIONS
FORFEITURE/PENALTY
LABOR
IMMIGRATION
BANKRUPTCY
SOCIAL SECURITY
TAX SUITS
OTHER STATUTES

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
5 U.S.C 552- Failure to respond to request under the Freedom of Information Act
Brief description of cause: AP Docket

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMANDS
CHECK YES only if demanded in complaint.
JURY DEMAND: Yes No

DATE: 12/08/2016
SIGNATURE OF ATTORNEY OF RECORD: /s/ Michael Ray Harris

FOR OFFICE USE ONLY
RECEIPT #
AMOUNT
APPLYING IFP
JUDGE
MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows.

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment noting, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example:

U.S. Civil Statute: 47 USC 553

Brief Description:

Unauthorized reception of cable service

Or:

"AP Docket"

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

FRIENDS OF ANIMALS, and
SEA SHEPHERD LEGAL;

Plaintiffs,

v.

NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION
an agency of the United States,

Defendant.

Civ. No. 16-3007

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF
(FREEDOM OF INFORMATION ACT)**

INTRODUCTION

1. This action is brought to remedy violations of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et. seq.* Specifically, it challenges the failure of the National Oceanic and Atmospheric Administration (“Federal Defendant”) to provide a final determination, including all responsive documents, within the time required by FOIA in regard to Plaintiffs Friends of Animals’ and Sea Shepherd Legal’s (“Plaintiffs”) April 14, 2016 request for information (“Request”).

2. In the Request, Plaintiffs asked for all documents in Federal Defendant’s possession related to pending or final approvals under the Marine Mammal Protection Act, National Environmental Policy Act and the Endangered Species Act for anthropogenic activities affecting the Cook Inlet beluga whale. Plaintiffs also sought all documents related to biological analyses and threats to the Cook Inlet beluga whale. *See* Exhibit A.

3. As of the date on this Complaint, Federal Defendant has not made a final determination regarding the release of documents, nor has Federal Defendant provided a timeline or other plan for compliance with the requirements of FOIA to indicate when or whether the Request will be fully satisfied.

4. Federal Defendant is unlawfully withholding public disclosure of information that Plaintiffs are entitled to receive under FOIA. By failing to make either a timely determination or timely and complete releases after the initial tranche of documents, Federal Defendant failed to comply with the statutory mandates and deadlines imposed by FOIA.

5. Accordingly, Plaintiffs seek declaratory relief establishing that Federal Defendant has violated FOIA. Plaintiffs also seek injunctive relief directing Federal Defendant to make a determination on the Request, provide a timeline for the release of the remaining documents, and promptly provide the requested material free of cost.

6. Plaintiffs bring this lawsuit to obtain timely disclosure of critical information related to authorized takes, and to pending authorizations of requested takes, of hundreds of Cook Inlet beluga whales from multiple and geographically overlapping oil and gas projects in the Cook Inlet. Given the significant potential impact upon the rapidly diminishing population of Cook Inlet beluga whales and the strong public interest in disclosure of information that may directly assist Plaintiffs' ongoing efforts to protect this population, Plaintiffs seek expeditious treatment of their Complaint pursuant to 28 U.S.C. § 1657.

JURISDICTION AND VENUE

7. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA) and 28 U.S.C. § 1331 (federal question). This Court may grant the declaratory relief under 28 U.S.C. §§ 2201, *et seq.* (Declaratory Judgment Act) and injunctive relief under 5 U.S.C. § 552(a)(4)(B) (FOIA). An actual, justiciable controversy exists within the meaning of the Declaratory Judgment Act between Plaintiffs and Federal Defendant. The Court has jurisdiction, upon receipt of a complaint, "to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B).

8. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B), which provides venue for FOIA cases in this district as the district in which a plaintiff resides. Friends of Animals maintains a principle office here in Colorado. Venue is also proper under 28 U.S.C. § 1391(b) because the defendant is subject to personal jurisdiction in this federal district.

PARTIES

9. Friends of Animals is a nonprofit international advocacy organization with nearly 200,000 members, incorporated in the state of New York since 1957. Friends of Animals seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living and domestic animals. Friends of Animals engages in a variety of advocacy programs in support of these goals. Friends of Animals informs its members about animal advocacy issues as well as the organization's progress in addressing these issues through its magazine called *ActionLine*, its website, and other reports. Friends of Animals has published articles and information advocating for the protection of wild species so that they can live unfettered in their natural habitats.

10. In 2013, Friends of Animals created a federal wildlife law program. The program established its principle office in Centennial, Colorado. The office consists of four full-time employees and one part-time employee. Through this office, Friends of Animals submitted the Request at issue in this action.

11. Sea Shepherd Legal is a nonprofit public interest law organization dedicated to its mission to end the destruction of habitat and slaughter of wildlife in the world's oceans in order to conserve and protect ecosystems and species. In furtherance of that mission, Sea Shepherd Legal has been involved in protecting marine life throughout the world. Sea Shepherd Legal uses public outreach and education to advocate for and motivate the creation of greater protections for cetaceans and other marine life.

12. The interests of Plaintiffs and their members are harmed by Federal Defendant's failure to release the requested documents in a timely manner, which prevents Plaintiffs

from obtaining, analyzing, disseminating and using the requested information to advance Plaintiffs' missions of ensuring the protection of marine wildlife and, in particular here, the Cook Inlet beluga whale.

13. Federal Defendant is an agency within the meaning of 5 U.S.C. § 552(f)(1). Federal Defendant is responsible for fulfilling Plaintiffs' Request and complying with all federal laws.

STATUTORY BACKGROUND

14. Congress enacted FOIA to ensure public access to U.S. government records. FOIA carries a presumption of disclosure. *Dep't of State v Ray*, 502 U.S. 164 (1991). Upon receipt of a written request that "reasonably describes" the records sought and complies with "published rules . . . and procedures to be followed," agencies of the United States government are required to "promptly" disclose their records, unless they can be lawfully withheld from disclosure under one of nine specific exemptions in FOIA. 5 U.S.C. § 552(a)(3)(A). The burden is on the government—not the requestor or public—to justify why particular information may be withheld. *Ray*, 502 U.S. at 164.

15. FOIA requires agencies to "determine within 20 days . . . after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefore, and of the right of such person to appeal to the head of the agency any adverse determination." *Id.* at § 552(a)(6)(A)(i).

16. On determination by an agency to comply with the request, the records shall be made "promptly available." *Id.* at § 552(a)(6)(C).

17. In "unusual circumstances," an agency may extend the time limits for up to 10 working days by providing written notice to the requester setting forth the unusual circumstance(s) and the date on which the determination is expected to be dispatched. *Id.* at § 552(a)(6)(B).

18. In some limited circumstances, FOIA allows an agency to seek an extension potentially beyond 10 days. Specifically, FOIA requires an agency to provide written notification to the requester: (1) offering an opportunity to limit the scope of the request so that it may be processed within the 20 work-day limit, or (2) offering an opportunity to arrange with the agency an “alternative time frame” for processing the request. *Id.* at § 552(a)(6)(B)(ii). If the agency elects this option, it must make its FOIA Public Liaison available to the requester to assist in any disputes with the agency. *Id.*

19. If the agency fails to make a determination on a document request within 20 work-days, or within the limited additional time permitted upon proper notification of “unusual circumstances,” the requester is deemed to have constructively exhausted administrative remedies and may seek judicial review. *Id.* at § 552(a)(6)(C). *Oglesby v. Dep’t of Army*, 920 F.2d 57(D.C. Cir 1990), *Nurse v. Sec’y of the Air Force*, 231 F. Supp. 2d 323, 328 (D.D.C. 2002) (“The FOIA is considered a unique statute because it recognizes a constructive exhaustion doctrine for purposes of judicial review upon the expiration of certain relevant FOIA deadlines.”)

20. FOIA requires that the agency “shall make the records promptly available to any person” and may not defer release of responsive documents indefinitely. *Id.* at § 552(a)(3)(A). Failure to issue a determination and to complete the release of documents in a timely fashion is a violation of FOIA even if the initial response and releases may have been prompt. *Munger, Tolles, Olsen v. Dept. of Army*, 58 F. Supp. 3d 1050 (C.D. Cal 2014). *See also Fiduccia v. U.S. Dep’t of Justice*, 185 F.3d 1035, 1041 (9th Cir. 1999)(“Congress gave agencies 20 days, not years, to decide whether to comply with requests and notify the requesters”); *Long v. IRS*, 693 F.2d 907, 910 (9th Cir. 1982) (“[U]nreasonable delays in disclosing non-exempt documents violate the intent and purpose of the FOIA, and the courts have a duty to prevent these abuses.”).

FACTUAL BACKGROUND

21. On April 12, 2016, Plaintiffs submitted the Request under FOIA to Federal Defendant reasonably describing all documents of which Plaintiffs sought disclosure.

22. On April 21, 2016, Federal Defendant provided written notification confirming receipt of the Request and disclosing that the Request had been assigned for processing on April 14, 2016.

23. In the confirmation, Federal Defendant did not request any additional information needed to clarify the Request. Federal Defendant did request a Scope Conference with Friends of Animals.

24. On April 29, 2016, Federal Defendant and Friends of Animals conducted the Scope Conference. During this conference, Federal Defendant did not request any additional information needed to clarify the Request but asked Plaintiffs to prioritize the individual document categories identified in the Request. Friends of Animals instructed Federal Defendant to proceed with the original FOIA request, but agreed to send a letter outlining the priorities of the original FOIA request.

25. On May 10, 2016, Friends of Animals submitted a letter to Federal Defendant outlining the top priorities of the original FOIA request. In that letter, Friends of Animals stated as follows: "As discussed on the April 29, 2016 conference call, Friends of Animals has not changed or altered the original request, nor are we waiving under [sic] rights under FOIA. We provide the following priorities merely to assist the agency in processing our request."

26. On May 16, 2016, Federal Defendant confirmed receipt of Friends of Animals' May 10 letter outlining the top priorities of the original FOIA request and indicated the need for a 10-day extension due to "unusual circumstances." Federal Defendant further stated that the first interim release of records could be anticipated on May 25, 2016.

27. The 20 work-day time limit for providing a determination on the Request commenced on April 14 and, thus, expired on May 12, 2016.

28. Federal Defendant made two interim releases of documents. The first release was dated June 9, 2016. The second was dated July 26, 2016 (but not received until August 29, 2016).

29. Since August 29, 2016, no further documents have been released.

30. Since August 29, 2016, Federal Defendant has not provided any timeline for the release of any remaining documents.

31. As of the date of this complaint, Plaintiffs have not received a final determination on their Request.

32. Plaintiffs believe and allege that Federal Defendant is unlawfully withholding public disclosure of information sought by Plaintiffs, information to which they are entitled to receive promptly, and for which Federal Defendant has not provided a valid disclosure exemption.

33. Federal Defendant has offered no reasonable explanation for its delay, and it has failed to estimate when it will finally be able to comply with its obligations under FOIA.

34. Since Federal Defendant has neither produced responsive documents nor provided an appealable final determination, Plaintiffs have constructively exhausted their administrative remedies with respect to the requested documents.

CLAIM FOR RELIEF
Violation of Freedom of Information Act
Failure to Respond with a Determination

35. Plaintiffs herein incorporate all allegations contained in the proceeding paragraphs.

36. FOIA provides that any person may obtain those agency records that are not subject to the FOIA disclosure exemptions promptly. 5 U.S.C. § 552 (a)(3)(A).

37. Plaintiffs properly requested records within the control of Federal Defendant.

38. Federal Defendant failed to provide Plaintiffs with a final determination as to whether Federal Defendant has any non-exempt records responsive to the Request and whether it intended to release such records within the required timeframe. *Id.* § 552(a)(6)(A)(i) and § 552(a)(6)(B).

39. Federal Defendant failed to properly invoke and comply with FOIA's provision allowing a 10 working day extension for "unusual circumstances." *Id.* at § 552(a)(6)(B)(i).

40. Federal Defendant failed to properly invoke and comply with FOIA's provision permitting an extension of potentially greater than 10 working days by offering Plaintiffs an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. *Id.* at § 552(a)(6)(B)(ii).

41. Federal Defendant has failed to promptly make available responsive documents without unreasonable delay.

42. Federal Defendant's failures to comply with FOIA are subject to judicial review under 5 U.S.C. § 552 (a)(4)(B). Federal Defendant's failure to issue a determination within the statutory deadlines violates 5 U.S.C. § 552 (a)(3)(A).

43. Accordingly, Plaintiffs are entitled to injunctive and declaratory relief with respect to a determination on the Request.

PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court enter judgment providing the following relief:

1. Declare that Federal Defendant violated FOIA by failing to (1) make a determination on Plaintiffs' Request and (2) make records responsive to Plaintiffs' Request available within the statutory deadlines.
2. Order Federal Defendant to (1) provide Plaintiffs with a final determination and (2) process and release all records responsive to the Request at no cost to Plaintiffs within 10 days from the date of such order;

3. Retain jurisdiction of this action to ensure the processing of the Request, and to ensure that no agency records are wrongfully withheld;
4. Award Plaintiffs costs, including reasonable attorney fees and litigation costs in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
5. Grant Plaintiffs any other relief that the Court deems just and proper.

Dated: December 08, 2016

Respectfully Submitted,

/s/ Michael Harris
Michael Ray Harris
Director, Wildlife Law Program
Friends of Animals
7500 E. Arapahoe Road, Suite 385
Centennial, CO 80112
720-949-7791
michaelharris@friendsofanimals.org

Attorney for Plaintiff Friends of Animals

/s/ Brett Sommermeyer
Brett Sommermeyer (admission pending)
Legal Director
Sea Shepherd Legal
2226 Eastlake Ave., E.
No. 108
Seattle, WA 98102
brett@seashepherdlegal.org

Attorney for Plaintiff Sea Shepherd Legal

EXHIBIT A

~~EXPLOITERS~~
FRIENDS
of ANIMALS

April 12, 2016

Submitted Via U.S Certified Mail and FOIAonline

National Oceanic and Atmospheric Administration
Public Reference Facility (SOU1000)
1315 East-West Highway (SSMC3)
Room 9719
Silver Spring, Maryland 20910

Re: FOIA Request for Records Relating to Incidental Harassment Authorizations
Issued for Activities Impacting Cook Inlet Beluga Whales in Federal Waters
Administered by the National Oceanic and Atmospheric Administration

Dear FOIA Officer:

I am writing on behalf of Friends of Animals, Sea Shepherd Legal, and the Turtle Island Restoration Network (collectively, the "Requesters"). Pursuant to 43 C.F.R. Part 2, and the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, Requesters seek the disclosure of all documents¹ in the categories listed below regarding the harassment of the distinct population segment of Cook Inlet beluga whales in waters managed by the National Oceanic and Atmospheric Administration ("NOAA"). Unless otherwise specified, Requesters seek all documents for the time period starting January 26th, 2007 and ending April 11, 2016. Requesters also request a full waiver of all search and duplication fees.

¹ The terms "document(s)" and "records" are used in the broadest sense contemplated by Federal Rule of Civil Procedure 34. It means all written, transcribed, recorded or graphic matters, however produced or reproduced. This definition includes, but is not limited to, any and all original copies or drafts of any and all of the following: records; notes; nonconforming copies that contain deletions, insertions, corrections, handwritten notes or comment summaries; memoranda; schedules; contracts; binders; work papers; logs; diaries; work sheets; files; letters; correspondence; summaries of memoranda; reports or memoranda of telephone conversations or records of personal conversations or interviews; handwritten notes; telephone logs; facsimiles; summaries; invoices; promissory notes; contracts; loan agreements; vouchers; billing statements; tape recordings or transcripts of tape recordings; photographs; videotapes; computerized output or data bases; electronic files; computer disks; computer CDs; electronic mail transmittals; data and all other writings; calculations; and figures or symbols of any kind which, in any manner mentioned, relate to the subjects of the specific requests contained below. This request includes all documents that have ever been within your custody or control, including all inter and intra agency documents, whether they exist in agency working, investigative, retired, electronic mail, or other files currently or at any other time.

A. FOIA Request.

Over the course of several years, NOAA has issued multiple Letters of Authorization (“LoA”) and Incidental Harassment Authorizations (“IHA”) for Level B takes of Cook Inlet beluga whales under the Marine Mammal Protection Act (“MMPA”) incidental to anthropogenic activities in Cook Inlet. Under the MMPA, Level B takes have “the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, feeding, or sheltering.” 16 U.S.C. § 1362(18).

Please provide the following documents in your possession, whether received, created, and/or distributed by NOAA:

- (1) All documents regarding the status of any pending anthropogenic activities in the Cook Inlet area for which IHAs or LoAs have been requested for takes of Cook Inlet belugas;
- (2) All documents regarding the final IHAs or LoAs issued for anthropogenic activities in Cook Inlet, including all documents supporting a “negligible” impact finding pursuant to the MMPA;
- (3) All documents, including research or commentary, not currently available to the public concerning the specific effects of anthropogenic noise or cumulative effects of Level B takes on the Cook Inlet beluga population;
- (4) All documents regarding the cumulative or synergistic effects of Level B takes of Cook Inlet beluga whales resulting from anthropogenic development activities over the past ten years (2007-2016);
- (5) All documents regarding Level A² takes of Cook Inlet belugas resulting from anthropogenic activities;
- (6) All documents regarding the status of NOAA’s preparation of the programmatic EA and EIS analyzing takes of marine mammals of Cook Inlet incidental to anthropogenic activities and all records of anticipated new agency actions or research pertaining to Cook Inlet belugas;
- (7) All documents regarding the preparation of the final recovery plan for Cook Inlet belugas under the federal Endangered Species Act (“ESA”);
- (8) All documents regarding any limiting factors analysis completed or in progress for Cook Inlet belugas;
- (9) All documents regarding any prioritization of threats to Cook Inlet belugas;
- (10) All documents of any accounting(s) of anthropogenic activities in the Cook Inlet that may result in the taking of a beluga whale;

² As defined as having “the potential to injure a marine mammal or marine mammal stock in the wild.” 16 U.S.C. § 1362(18)(A)(i).

- (11) All documents regarding any population monitoring for Cook Inlet belugas planned or in progress for 2016;
- (12) All documents regarding any population monitoring for Cook Inlet belugas conducted within the last three years, including any population surveys (or similar activities) in proposed project areas conducted by the applicant(s) for an IHA or LoA;
- (13) All documents regarding any formal or informal consultations involving Cook Inlet belugas under Section 7 of the ESA.

The items specifically requested are not meant to be exclusive of any other documents that, although not specially requested, have a reasonable relationship to the subject matter of this request.

For purposes of this request, "anthropogenic activities" are defined to encompass any activity wholly or substantially relating to vessel or aircraft noise (if vessel or aircraft movements are products of an anthropogenic project), ship traffic, including strikes, dredging, pile driving, explosions, demolition, sonar use, oil and gas exploration (including seismic operations, drilling, platform noise, airguns, multibeam echosounders, and sub-bottom profilers), shore construction, military testing activities (i.e. explosions, sonar), pipe and cable laying, water pollution and any other activities reasonably affiliated with anthropogenic projects.

The Supreme Court has stated that FOIA establishes a "strong presumption in favor of disclosure" of requested information, and that the burden is on the government to substantiate why information may not be released under the act's various exemptions. *Department of State v. Ray*, 502 U.S. 164, 173 (1991). Congress affirmed these tenets of FOIA in the Open Government Act of 2007, finding that "the Government [should] remain open and accessible to the American people" and always be based "not upon the need to know but upon the fundamental right to know." Public Law 110-175, 121 Stat. 2524, 2525 (Dec. 31, 2007) (internal citations omitted). President Obama has also directed that "[t]he presumption of disclosure should be applied to all decisions involving FOIA." 74 Fed. Reg. 4683 (Jan. 26, 2009). Please consider the foregoing before withholding any documents that are responsive to this request.

The Requesters anticipate that you will make the requested materials available within the statutorily prescribed period. We also request that you waive any applicable fees since disclosure meets the statutory standard for a fee waiver in that it is clearly "in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii).

B. Fee Waiver Request.

FOIA provides that "documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). The legislative history of FOIA, as well as the case law interpreting the Act, indicates that the statute's fee waiver provision is to be liberally construed favoring the public interest. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 Cong. Rec. S14298 (Sept. 30, 1986) (Sen. Leahy)).

This request for information qualifies for a fee waiver under this standard and, accordingly, we request that all fees be waived. This request satisfies both statutory and regulatory requirements for granting a fee waiver. Below we explain how the request and the Requesters meet each of requirements for a fee waiver delineated in NOAA's FOIA regulations (under its parent agency, the Department of Commerce) 15 CFR § 4.11(k).

1. Disclosure of the Information Requested is in the Public Interest.

(i) *"The subject of the request: whether the subject of the requested records concerns the operations or activities of the Government."*

The requested records concern the operations and activities of NOAA, a federal agency. Specifically, they concern the operation of this federal agency, its management of federally protected Cook Inlet beluga whales, and its permitting decision-making process.

(ii) *"The informative value of the information to be disclosed: whether the disclosure is 'likely to contribute' to an understanding of Government operations or activities."*

(a) How the contents of the records are meaningfully informative;

The requested documents would have substantive, meaningfully informative value and would be likely to contribute to a better understanding of NOAA and its actions. The documents will illuminate in a clear and direct way the operations and activities of the federal government and the activities that it undertakes in regards to management of Cook Inlet beluga whales and the anthropogenic projects that affect them. Although Cook Inlet beluga whales have been in the public spotlight in recent years due to their dwindling numbers and Endangered Species Act listing in 2008, not much is definitively known about the Level B take, cumulative, and noise pollution impacts on Cook Inlet beluga whales from anthropogenic activities. The information requested concerns the operations of the agency responsible for approving activities that have the potential to seriously injure or even kill Cook Inlet

beluga whales and the details of NOAA's past and current permitting decisions and decision-making process in regards to these whales.

- (b) The logical connection between the content of the records and the operations or activities;

The release of the requested documents will significantly contribute to public understanding and oversight of the federal government's operations. For example, the records will help the public understand the status of current Cook Inlet projects, how often and to which activities the federal government authorizes Level B takes, how the government evaluates the significance of cumulative and noise impacts, and the process by which the government makes decisions that affect Cook Inlet beluga whales.

- (iii) *"The contribution to an understanding of the subject by the public likely to result from disclosure: whether disclosure of the requested information will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester."*

Friends of Animals:

Friends of Animals is a nonprofit, international animal advocacy organization incorporated in the state of New York since 1957. Friends of Animals seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living, and domestic animals. The public impact of this disclosed information would be magnified through Friends of Animals' public engagement mechanisms. Friends of Animals has a proven track record of contributing to public understanding of issues surrounding animal advocacy and human-wildlife interactions.

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Friends of Animals plans to disseminate the requested information to Friends of Animals' members, members of other conservation organizations, and other interested members of the public through its website, its quarterly magazine,

and through outreach to other media outlets. By disseminating and distributing this information, Friends of Animals will significantly contribute to the public's understanding of how the government manages harassment of Cook Inlet beluga whales. Friends of Animals also informs its members about animal advocacy issues—including government management of birds, wild horses, and other wildlife—through lawsuits.

Friends of Animals staff has the ability to review, consolidate, and disseminate this information to the public. By consolidating and releasing the information, Friends of Animals will significantly enhance the public's understanding of how the government is currently operating. Additionally, the requested information will constitute a significant contribution to public understanding because it will allow Friends of Animals and the public to determine how the federal government's actions are impacting Cook Inlet beluga whales and whether the federal government has met its obligations under the National Environmental Policy Act, the Marine Mammal Protection Act, and Endangered Species Act.

Sea Shepherd Legal

Sea Shepherd Legal is an international, nonprofit, public interest environmental law firm with a mission to save marine wildlife and habitats by enforcing, strengthening, and developing protective laws, treaties, policies, and practices worldwide. Sea Shepherd Legal works on a range of matters from ensuring proper governmental agency action to developing innovative policy approaches, in order to encourage greater protections for marine wildlife and ecosystems. Public outreach is a key aspect of Sea Shepherd Legal's work.

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Sea Shepherd Legal's general public outreach work involves the bi-weekly publication of a blog, disseminating information regarding marine wildlife protection through social media, and initiating calls to action through online campaign petitions. Related Sea Shepherd entities selectively disseminate these materials to more than one million followers.

The public has a right to know which wildlife species and habitats are at risk, the nature of such risk – including anthropogenic impacts, the role the government is required to play in assessing and mitigating risks, and the government's official response thereto. Through its extensive public outreach endeavors, Sea Shepherd

Legal will ensure that the public acquires this knowledge.

Turtle Island Restoration Network

Turtle Island Restoration Network (“TIRN”) is an international public interest non-profit with a strong track record of disseminating information from FOIA requests to its own membership, decision-makers, the media and the general public. TIRN is a non-profit organization that informs, educates, and counsels the public regarding environmental issues, policies, and laws relating to imperiled species, including marine species. TIRN has been substantially involved in the management activities of numerous government agencies for years, and has consistently displayed its ability to disseminate information granted to it through FOIA requests. As a long established advocacy organization, our informational publications supply information not only to our membership, but also to the memberships of most other conservation organizations, locally as well as nationally. Our informational publications continue to contribute information to public media outlets, as well. TIRN routinely disseminates such information through e-mail alerts and newsletters, which are sent to over 200,000 members and activists. In addition, we disseminate information through our websites, which receives over 100,000 page views per month. Furthermore, we bring such information to our partner organizations and to the media for dissemination to the membership of other organizations and the public at large. Information and our analyses of NMFS’s compliance with the MSA, the MMPA and the ESA will likely be disseminated through all of these means.

TIRN will publicize the results of any analysis of the data to inform the public about the policy choices and information regarding the management of anthropogenic impacts to the Cook Inlet Beluga Whale. This is certain to result in a significant increase in public understanding of government agency activity, especially NOAA’s approach to the conservation of marine species. In addition to informing the public about information relevant to policy and management, TIRN has a proven track record of enforcing environmental laws and publicizing agency compliance with the provisions of various environmental laws through information gained from FOIA requests like this one. TIRN intends to use the documents requested in this request in a similar manner, as appropriate.

- (iv) *“The significance of the contribution to public understanding: whether the disclosure is likely to contribute ‘significantly’ to public understanding of Government operations or activities.”*

Requesters seek the requested documents to increase their understanding, and subsequently contribute to public understanding, of how the federal government is managing activities that affect Cook Inlet beluga whales in Alaska. Many anthropogenic projects are approved by NOAA each year, many of them

granted Level B takes of marine mammals, and the government claims that these actions have a negligible effect on marine mammals. However, the public does not have access to all of the documents available to NOAA and thus cannot understand exactly how NOAA makes its non-negligible impact determinations during agency review of project applications. Additionally, the public cannot understand the justifications used by NOAA staff, its decision-making process, or how risks associated with permitting are assessed without more information about the operations of NOAA.

If the information is not disclosed to the Requesters, the public will remain uninformed about what activities the federal government conducts and authorizes. Disclosure, however, will permit the Requesters to disseminate information to the public, and it will increase transparency surrounding the federal government's activities. This is particularly important because NEPA grants the public a right to this information and a right to participate in federal decisions, such as commenting on proposed anthropogenic activities in Cook Inlet.

The information requested is not, to our knowledge, publicly available. The government may omit sending us requested records that are available in publicly accessible forums (e.g. Internet) or in published materials that are routinely available at public or university libraries. If the government chooses to omit such information, please provide the Requesters with adequate references and/or website links so that we may obtain these materials on our own. We would request that the government provide us with an index of such omitted documents, so that we may have reasonable certainty that we have access to the complete record regarding the management and protection of the Cook Inlet Beluga whales. However, we suspect that the majority of requested materials will not be available unless we receive them from the government in satisfaction of this FOIA request.

2. Disclosure of the Information is Not Primarily in the Commercial Interest of the Requester

When considering whether a request for a fee waiver meets the second prong of the fee waiver requirement, the agency is directed to consider: (1) "whether or not the requester has a commercial interest that would be furthered by the requested disclosure," and (2) "the primary interest in disclosure," i.e. whether the interest of the requester is primarily commercial or public.

None of the Requesters have a commercial, trade, or profit interest in the requested records. In fact, the Requesters do not have any commercial, trade, or profit interests.

Friends of Animals is a non-profit, international animal advocacy organization, incorporated in the state of New York since 1957. It serves the public interest by increasing the general public's awareness of animal advocacy issues and

by teaching how to end animal cruelty and exploitation around the world. Friends of Animals seeks to promote a respectful view of nonhuman, free-living and domestic animals. The Internal Revenue Service recognizes Friends of Animals as a 501(c)(3) tax-exempt organization (IRS Employer Identification#: 13-6018549). Friends of Animals' successful and well-orchestrated public education programs on animal advocacy issues and government operations merit granting a fee waiver for the requested records.

Sea Shepherd Legal was established in 2014 for the purpose of saving marine wildlife and habitats by enforcing, strengthening, and developing protective laws, treaties, policies, and practices worldwide. Sea Shepherd Legal works on a range of matters to ensure greater protections for marine wildlife and ecosystems, via the use of tools including litigation, policy development and public outreach. The IRS recognizes Sea Shepherd Legal as a public interest environmental law firm. Sea Shepherd Legal's EIN number is 47-2272507.

Turtle Island Restoration Network is a 501(c)(3) that has been working to protect marine wildlife, especially sea turtles, but also marine mammals and other endangered species, since the early 1980s. TIRN works through a combination of legal and advocacy strategies and grassroots organizing and education to strengthen protections worldwide. TIRN's EIN is 91-1818080.

CONCLUSION

Please produce the records regarding this FOIA request by electronic mail to wlp_admin@friendsofanimals.org or to the physical address listed below:

Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112

Please produce the records on a rolling basis to the extent possible; at no point should the search for—or the deliberation concerning—certain records delay the production of others that the federal government has already retrieved and elected to produce.

Thank you for your attention to this request. If you have any questions about the requested documents or the requested fee waiver, please do not hesitate to contact me at 720-949-7791 or at wlp_admin@friendsofanimals.org.

Sincerely,



Kaylee Dolen, Administrative Assistant

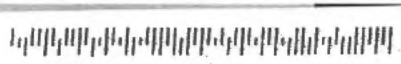
Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112
720-949-7791
wlp_admin@friendsofanimals.org

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DISTRICT OF COLORADO
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Arapahoe Rd. Suite 385
A, CO 80112



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T.D.
12/11/2016

Bob Troyer
United States Attorney
1225 17th Street
Suite 700
Denver, CO 80202



April 12, 2016

Submitted Via U.S Certified Mail and FOIAonline

National Oceanic and Atmospheric Administration
Public Reference Facility (SOU1000)
1315 East-West Highway (SSMC3)
Room 9719
Silver Spring, Maryland 20910

Re: FOIA Request for Records Relating to Incidental Harassment Authorizations Issued for Activities Impacting Cook Inlet Beluga Whales in Federal Waters Administered by the National Oceanic and Atmospheric Administration

Dear FOIA Officer:

I am writing on behalf of Friends of Animals, Sea Shepherd Legal, and the Turtle Island Restoration Network (collectively, the "Requesters"). Pursuant to 43 C.F.R. Part 2, and the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, Requesters seek the disclosure of all documents¹ in the categories listed below regarding the harassment of the distinct population segment of Cook Inlet beluga whales in waters managed by the National Oceanic and Atmospheric Administration ("NOAA"). Unless otherwise specified, Requesters seek all documents for the time period starting January 26th, 2007 and ending April 11, 2016. Requesters also request a full waiver of all search and duplication fees.

¹ The terms "document(s)" and "records" are used in the broadest sense contemplated by Federal Rule of Civil Procedure 34. It means all written, transcribed, recorded or graphic matters, however produced or reproduced. This definition includes, but is not limited to, any and all original copies or drafts of any and all of the following: records; notes; nonconforming copies that contain deletions, insertions, corrections, handwritten notes or comment summaries; memoranda; schedules; contracts; binders; work papers; logs; diaries; work sheets; files; letters; correspondence; summaries of memoranda; reports or memoranda of telephone conversations or records of personal conversations or interviews; handwritten notes; telephone logs; facsimiles; summaries; invoices; promissory notes; contracts; loan agreements; vouchers; billing statements; tape recordings or transcripts of tape recordings; photographs; videotapes; computerized output or data bases; electronic files; computer disks; computer CDs' electronic mail transmittals; data and all other writings; calculations; and figures or symbols of any kind which, in any manner mentioned, relate to the subjects of the specific requests contained below. This request includes all documents that have ever been within your custody or control, including all inter and intra agency documents, whether they exist in agency working, investigative, retired, electronic mail, or other files currently or at any other time.

A. FOIA Request.

Over the course of several years, NOAA has issued multiple Letters of Authorization (“LoA”) and Incidental Harassment Authorizations (“IHA”) for Level B takes of Cook Inlet beluga whales under the Marine Mammal Protection Act (“MMPA”) incidental to anthropogenic activities in Cook Inlet. Under the MMPA, Level B takes have “the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, feeding, or sheltering.” 16 U.S.C. § 1362(18).

Please provide the following documents in your possession, whether received, created, and/or distributed by NOAA:

- (1) All documents regarding the status of any pending anthropogenic activities in the Cook Inlet area for which IHAs or LoAs have been requested for takes of Cook Inlet belugas;
- (2) All documents regarding the final IHAs or LoAs issued for anthropogenic activities in Cook Inlet, including all documents supporting a “negligible” impact finding pursuant to the MMPA;
- (3) All documents, including research or commentary, not currently available to the public concerning the specific effects of anthropogenic noise or cumulative effects of Level B takes on the Cook Inlet beluga population;
- (4) All documents regarding the cumulative or synergistic effects of Level B takes of Cook Inlet beluga whales resulting from anthropogenic development activities over the past ten years (2007-2016);
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- (6) All documents regarding the status of NOAA’s preparation of the programmatic EA and EIS analyzing takes of marine mammals of Cook Inlet incidental to anthropogenic activities and all records of anticipated new agency actions or research pertaining to Cook Inlet belugas;
- (7) All documents regarding the preparation of the final recovery plan for Cook Inlet belugas under the federal Endangered Species Act (“ESA”);
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- (13) All documents regarding any formal or informal consultations involving Cook Inlet belugas under Section 7 of the ESA.

The items specifically requested are not meant to be exclusive of any other documents that, although not specially requested, have a reasonable relationship to the subject matter of this request.

For purposes of this request, "anthropogenic activities" are defined to encompass any activity wholly or substantially relating to vessel or aircraft noise (if vessel or aircraft movements are products of an anthropogenic project), ship traffic, including strikes, dredging, pile driving, explosions, demolition, sonar use, oil and gas exploration (including seismic operations, drilling, platform noise, airguns, multibeam echosounders, and sub-bottom profilers), shore construction, military testing activities (i.e. explosions, sonar), pipe and cable laying, water pollution and any other activities reasonably affiliated with anthropogenic projects.

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This request for information qualifies for a fee waiver under this standard and, accordingly, we request that all fees be waived. This request satisfies both statutory and regulatory requirements for granting a fee waiver. Below we explain how the request and the Requesters meet each of requirements for a fee waiver delineated in NOAA's FOIA regulations (under its parent agency, the Department of Commerce) 15 CFR § 4.11(k).

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Turtle Island Restoration Network

Turtle Island Restoration Network (“TIRN”) is an international public interest non-profit with a strong track record of disseminating information from FOIA requests to its own membership, decision-makers, the media and the general public. TIRN is a non-profit organization that informs, educates, and counsels the public regarding environmental issues, policies, and laws relating to imperiled species, including marine species. TIRN has been substantially involved in the management activities of numerous government agencies for years, and has consistently displayed its ability to disseminate information granted to it through FOIA requests. As a long established advocacy organization, our informational publications supply information not only to our membership, but also to the memberships of most other conservation organizations, locally as well as nationally. Our informational publications continue to contribute information to public media outlets, as well. TIRN routinely disseminates such information through e-mail alerts and newsletters, which are sent to over 200,000 members and activists. In addition, we disseminate information through our websites, which receives over 100,000 page views per month. Furthermore, we bring such information to our partner organizations and to the media for dissemination to the membership of other organizations and the public at large. Information and our analyses of NMFS’s compliance with the MSA, the MMPA and the ESA will likely be disseminated through all of these means.

TIRN will publicize the results of any analysis of the data to inform the public about the policy choices and information regarding the management of anthropogenic impacts to the Cook Inlet Beluga Whale. This is certain to result in a significant increase in public understanding of government agency activity, especially NOAA’s approach to the conservation of marine species. In addition to informing the public about information relevant to policy and management, TIRN has a proven track record of enforcing environmental laws and publicizing agency compliance with the provisions of various environmental laws through information gained from FOIA requests like this one. TIRN intends to use the documents requested in this request in a similar manner, as appropriate.

- (iv) *“The significance of the contribution to public understanding: whether the disclosure is likely to contribute ‘significantly’ to public understanding of Government operations or activities.”*

Requesters seek the requested documents to increase their understanding, and subsequently contribute to public understanding, of how the federal government is managing activities that affect Cook Inlet beluga whales in Alaska. Many anthropogenic projects are approved by NOAA each year, many of them

granted Level B takes of marine mammals, and the government claims that these actions have a negligible effect on marine mammals. However, the public does not have access to all of the documents available to NOAA and thus cannot understand exactly how NOAA makes its non-negligible impact determinations during agency review of project applications. Additionally, the public cannot understand the justifications used by NOAA staff, its decision-making process, or how risks associated with permitting are assessed without more information about the operations of NOAA.

If the information is not disclosed to the Requesters, the public will remain uninformed about what activities the federal government conducts and authorizes. Disclosure, however, will permit the Requesters to disseminate information to the public, and it will increase transparency surrounding the federal government's activities. This is particularly important because NEPA grants the public a right to this information and a right to participate in federal decisions, such as commenting on proposed anthropogenic activities in Cook Inlet.

The information requested is not, to our knowledge, publicly available. The government may omit sending us requested records that are available in publicly accessible forums (e.g. Internet) or in published materials that are routinely available at public or university libraries. If the government chooses to omit such information, please provide the Requesters with adequate references and/or website links so that we may obtain these materials on our own. We would request that the government provide us with an index of such omitted documents, so that we may have reasonable certainty that we have access to the complete record regarding the management and protection of the Cook Inlet Beluga whales. However, we suspect that the majority of requested materials will not be available unless we receive them from the government in satisfaction of this FOIA request.

2. Disclosure of the Information is Not Primarily in the Commercial Interest of the Requester

When considering whether a request for a fee waiver meets the second prong of the fee waiver requirement, the agency is directed to consider: (1) "whether or not the requester has a commercial interest that would be furthered by the requested disclosure," and (2) "the primary interest in disclosure," i.e. whether the interest of the requester is primarily commercial or public.

None of the Requesters have a commercial, trade, or profit interest in the requested records. In fact, the Requesters do not have any commercial, trade, or profit interests.

Friends of Animals is a non-profit, international animal advocacy organization, incorporated in the state of New York since 1957. It serves the public interest by increasing the general public's awareness of animal advocacy issues and

by teaching how to end animal cruelty and exploitation around the world. Friends of Animals seeks to promote a respectful view of nonhuman, free-living and domestic animals. The Internal Revenue Service recognizes Friends of Animals as a 501(c)(3) tax-exempt organization (IRS Employer Identification#: 13-6018549). Friends of Animals' successful and well-orchestrated public education programs on animal advocacy issues and government operations merit granting a fee waiver for the requested records.

Sea Shepherd Legal was established in 2014 for the purpose of saving marine wildlife and habitats by enforcing, strengthening, and developing protective laws, treaties, policies, and practices worldwide. Sea Shepherd Legal works on a range of matters to ensure greater protections for marine wildlife and ecosystems, via the use of tools including litigation, policy development and public outreach. The IRS recognizes Sea Shepherd Legal as a public interest environmental law firm. Sea Shepherd Legal's EIN number is 47-2272507.

Turtle Island Restoration Network is a 501(c)(3) that has been working to protect marine wildlife, especially sea turtles, but also marine mammals and other endangered species, since the early 1980s. TIRN works through a combination of legal and advocacy strategies and grassroots organizing and education to strengthen protections worldwide. TIRN's EIN is 91-1818080.

CONCLUSION

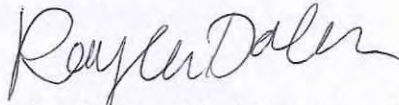
Please produce the records regarding this FOIA request by electronic mail to wlp_admin@friendsofanimals.org or to the physical address listed below:

Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112

Please produce the records on a rolling basis to the extent possible; at no point should the search for—or the deliberation concerning—certain records delay the production of others that the federal government has already retrieved and elected to produce.

Thank you for your attention to this request. If you have any questions about the requested documents or the requested fee waiver, please do not hesitate to contact me at 720-949-7791 or at wlp_admin@friendsofanimals.org.

Sincerely,

A handwritten signature in black ink that reads "Kaylee Dolen". The signature is written in a cursive, flowing style.

Kaylee Dolen, Administrative Assistant

Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112
720-949-7791
wlp_admin@friendsofanimals.org

Image not available for this document, ID: 0.7.3707.13567

**U.S. Department of Commerce
National Oceanic and Atmospheric Administration
(NOAA)**



**Privacy Threshold Analysis
for the
Web Operations Center (NOAA0201)**

U.S. Department of Commerce Privacy Threshold Analysis

NOAA/Web Operations Center

Unique Project Identifier: 006-000351100 00-48-03-17-01-00

Introduction: This Privacy Threshold Analysis (PTA) is a questionnaire to assist with determining if a Privacy Impact Assessment (PIA) is necessary for this IT system. This PTA is primarily based from the Office of Management and Budget (OMB) privacy guidance and the Department of Commerce (DOC) IT security/privacy policy. If questions arise or further guidance is needed in order to complete this PTA, please contact your Bureau Chief Privacy Officer (BCPO).

Description of the information system and its purpose: *Provide a general description of the information system and its purpose in a way that a non-technical person can understand.*

The E-Government Act of 2002 defines “information system” by reference to the definition section of Title 44 of the United States Code. The following is a summary of the definition: “Information system” means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information. See: 44. U.S.C. § 3502(8).

The Web Operations Center (WOC) is a diverse information technology services provider to Line and Staff Offices within NOAA. The WOC provide a wide range of information technology services and functions which include high availability, scalability, redundancy, clustering, and high performance computing to replicate and distributed general information as well as critical time sensitive life and property information to the general public and meteorology community.

The services and functions of the information system technology have been broken down into four (4) core services and functions: WOC Domain Name System Services (WOCDNSS), WOC Information Sharing Services (WOCISS), WOC Adoptive System Framework (WOCASF), and WOC Collaboration Services. These services and functions make up the subsystems within NOAA0201. Each subsystem has a different FIPS 199 security categorization as described in the NOAA0201 FIPS 199 Security Categorization document. NIST SP 300-37 rev1 describes how various independent subsystems could be grouped together for purpose of risk management into more comprehensive system (system of systems).

The WOC systems are physically located at 8 NOAA datacenters (W1: Silver Spring, Maryland W2: Largo, Maryland W3: Norman, Oklahoma W4: Boulder, Colorado W5: Fort Worth, Texas and W6: Seattle, Washington, W7 Ashville, NC, W8 Fairmont, WVA).

Note: NOAA0201 has been assessed on 1/12/2016 using NIST 800-53 Rev 4.

Questionnaire:

1. What is the status of this information system?

This is a new information system. *Continue to answer questions and complete certification.*

This is an existing information system with changes that create new privacy risks. *Complete chart below, continue to answer questions, and complete certification.*

Changes That Create New Privacy Risks (CTCNPR)					
a. Conversions		d. Significant Merging	x	g. New Interagency Uses	
b. Anonymous to Non-Anonymous		e. New Public Access		h. Internal Flow or Collection	
c. Significant System Management Changes		f. Commercial Sources		i. Alteration in Character of Data	
j. Other changes that create new privacy risks (specify):					

In 2016, the Message Operations Center (NOAA0300) was decommissioned and was combined into NOAA0201.

This is an existing information system in which changes do not create new privacy risks. *Continue to answer questions, and complete certification.*

Is the IT system or its information used to support any activity which may raise privacy concerns?

NIST Special Publication 800-53 Revision 4, Appendix J, states “Organizations may also engage in activities that do not involve the collection and use of PII, but may nevertheless raise privacy concerns and associated risk. The privacy controls are equally applicable to those activities and can be used to analyze the privacy risk and mitigate such risk when necessary.” Examples include, but are not limited to, audio recordings, video surveillance, building entry readers, and electronic purchase transactions.

Yes. *Please describe the activities which may raise privacy concerns.*

No

2. Does the IT system collect, maintain, or disseminate business identifiable information (BII)?

As per DOC Privacy Policy: “For the purpose of this policy, business identifiable information consists of (a) information that is defined in the Freedom of Information Act (FOIA) as "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." (5 U.S.C.552(b)(4)). This information is exempt from automatic release under the (b)(4) FOIA exemption. "Commercial" is not confined to records that reveal basic commercial operations" but includes any records [or information] in which the

submitter has a commercial interest" and can include information submitted by a nonprofit entity, or (b) commercial or other information that, although it may not be exempt from release under FOIA, is exempt from disclosure by law (e.g., 13 U.S.C.)."

___ Yes, the IT system collects, maintains, or disseminates BII about: *(Check all that apply.)*

___ Companies

___ Other business entities

x No, this IT system does not collect any BII.

3. Personally Identifiable Information

4a. Does the IT system collect, maintain, or disseminate personally identifiable information (PII)?

As per OMB 07-16, Footnote 1: "The term 'personally identifiable information' refers to information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc... alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc..."

___ Yes, the IT system collects, maintains, or disseminates PII about: *(Check all that apply.)*

x DOC employees

x Contractors working on behalf of DOC

___ Members of the public

___ No, this IT system does not collect any PII.

If the answer is "yes" to question 4a, please respond to the following questions.

4b. Does the IT system collect, maintain, or disseminate PII other than user ID?

x Yes, the IT system collects, maintains, or disseminates PII other than user ID.

No, the user ID is the only PII collected, maintained, or disseminated by the IT system.

4c. Will the purpose for which the PII is collected, stored, used, processed, disclosed, or disseminated (context of use) cause the assignment of a higher PII confidentiality impact level?

Examples of context of use include, but are not limited to, law enforcement investigations, administration of benefits, contagious disease treatments, etc.

Yes, the context of use will cause the assignment of a higher PII confidentiality impact level.

No, the context of use will not cause the assignment of a higher PII confidentiality impact level.

If any of the answers to questions 2, 3, 4b, and/or 4c are “Yes,” a Privacy Impact Assessment (PIA) must be completed for the IT system. This PTA and the approved PIA must be a part of the IT system’s Assessment and Authorization Package.

CERTIFICATION

X I certify the criteria implied by one or more of the questions above **apply** to the [IT SYSTEM NAME] and as a consequence of this applicability, I will perform and document a PIA for this IT system.

I certify the criteria implied by the questions above **do not apply** to the [IT SYSTEM NAME] and as a consequence of this non-applicability, a PIA for this IT system is not necessary.

Name of Information System Security Officer (ISSO) or System Owner (SO):

David J. Skiffington

Signature of ISSO or SO: SKIFFINGTON.DAVID.1374262730 Digitally signed by SKIFFINGTON.DAVID.1374262730
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI, ou=CONTRACTOR
cn=SKIFFINGTON.DAVID.1374262730
Date: 2016.12.07 08:01:42 -05'00' Date: _____

Name of Information Technology Security Officer (ITSO): Jean Apedo

Signature of ITSO: APEDO.JEAN.1188076064 Digitally signed by APEDO.JEAN.1188076064
DN: c=US, o=U.S. Government,
ou=DoD, ou=PKI, ou=OTHER,
cn=APEDO.JEAN.1188076064
Date: 2016.12.08 13:07:33 -05'00' Date: _____

Name of Authorizing Official (AO): Douglas Perry

Signature of AO: PERRY.DOUGLAS.A.1365847270 Digitally signed by PERRY.DOUGLAS.A.1365847270
Date: 2016.12.09 15:43:09 -05'00'

Name of Bureau Chief Privacy Officer (BCPO): MARK GRAFF

Signature of BCPO: GRAFF.MARK.HYRUM.1514447892 Digitally signed by GRAFF.MARK.HYRUM.1514447892
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI,
ou=OTHER, cn=GRAFF.MARK.HYRUM.1514447892
Date: 2016.12.12 09:01:44 -05'00' Date: _____

From: Kimberly Katzenbarger - NOAA FEDERAL <kimberly.katzenbarger@noaa.gov>
Sent: Friday, December 23, 2016 1:07 PM
To: Robert Moller - NOAA Federal
Cc: Mark Graff - NOAA Federal; Ayeisha Brinson - NOAA Federal; Lois Schiffer; Christine Blackburn; Velna Bullock; Lola Stith - NOAA Affiliate
Subject: Re: FOIA Request 0169 Documents Update
Attachments: Updated Partial Grant-Denial Template (1) kk edits.docx; 2016-000605 Interim1 Resp Ltr FINAL 4.18.16.docx; 2014-001474 interim5 resp ltr (draft-B) (2).doc

Hi Rob (b)(5) .

(b)(5)
[Redacted]

As always, feel free to call with any questions, Kim

On Fri, Dec 23, 2016 at 11:33 AM, Robert Moller - NOAA Federal <robert.moller@noaa.gov> wrote:
Hi Everyone:

As Mark, Ayeisha, Kim and I discussed the other day (b)(5)
[Redacted]

I've copied Lois and Chris for their awareness as well. Please just give me a call if you have any questions.

Many thanks,

Rob

--
Robert Moller
Deputy Director
Office of Legislative and Intergovernmental Affairs
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
1401 Constitution Ave., NW
Washington, DC 20230
Phone: [202-482-3596](tel:202-482-3596)
Fax: [202-482-4960](tel:202-482-4960)

--

Kimberly Katzenbarger, Attorney
National Oceanic and Atmospheric Administration
Office of General Counsel, Natural Resources Section
1315 East West Hwy, Suite 15104
Silver Spring, MD 20910 3282
Desk: 301 713 7448
Cell (b)(6)

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(b) (5)

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(b) (5)

From: Samuel Dixon <samuel.dixon@noaa.gov>
Sent: Friday, December 23, 2016 4:20 PM
To: NMFS FOIA Contacts
Subject: NMFS FOIA
Attachments: FOIA FY 2016 Annual Report.docx

Hi All,

I just want to thank everyone for all the hard work you've put in over the past few months, our backlog had been creeping steadily upwards for a while but is now back down to a reasonable 32. I still think we can get it below 25 if we can get a few months of low incoming requests (November was very slow, December has been surprisingly busy unfortunately). I have attached our FY2016 annual report if you are interested in looking at our NMFS wide numbers.

Our SERO coordinator Beverly Smith was able to close out our oldest outstanding FOIA request recently (after making 15 interim releases I believe) which is fantastic and great to have off the books. We now only have 4 2015 FOIAs on the books which are our oldest ones. Great job all around turning over FOIAs much faster than NMFS used to do everyone!

General NMFS FOIA Reminders:

- We no longer draw non-responsive redactions. Don't redact unless you are doing so under a FOIA exemption.
- Always remember to note the exemption you are using in text over the drawn redaction (ie b(6))
- Remember that we produce fully redacted records now. A clean copy should also be uploaded to FO for any record that has a redaction on it.
- **Please please please** get an interim release out before your FOIA request becomes overdue if you will not be able to close the request. This helps us avoid litigation.

I will be on leave until January 3rd, if you need FOIA assistance, routing, or review, please contact Steve Goodman or Kirk Essmyer. If it can wait I'll get back to you as soon as I return.

Thanks and Happy Holidays!

Samuel Dixon
Contractor IBSS Corp
NMFS Assistant FOIA Liaison
(301) 427 8739
samuel.dixon@noaa.gov



NOAA
FISHERIES

NOAA Fisheries Office of Management and Budget

FY 2016 ANNUAL REPORT of
FREEDOM of INFORMATION ACT PROGRAM

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EXECUTIVE SUMMARY

NOAA Fisheries FOIA is publishing this report to provide Fisheries leadership with a summary of FOIA work completed in FY 2016.

With oversight from Paul Doremus, Deputy Assistant Administrator for Operations (DAAO), and the Fisheries Office of Management and Budget (MB) Directorate, the Fisheries FOIA Office manages and processes all FOIA requests submitted to Fisheries. Fisheries FOIA oversees 18 Coordinators located in offices and programs across the country, and works closely with the NOAA FOIA Officer to perfect and process FOIA requests received by Fisheries.

Fisheries FOIA assigns and tracks requests; provides policy guidance; captures program statistics and metrics; communicates with Coordinators, Subject Matter Experts (SMEs), and NOAA Office of General Counsel (GC); trains new Coordinators and SMEs; manages backlogged requests; creates guidance materials; and standardizes FOIA business practices among Fisheries' offices and programs.

During FY 2016, Fisheries received 283 FOIA requests, consultations, and referrals; a 19% increase from the 237 received in FY 2015. Additionally, NOAA Fisheries closed 293 requests, consultations, and referrals; an 11% increase from the 265 closed in FY 2015.

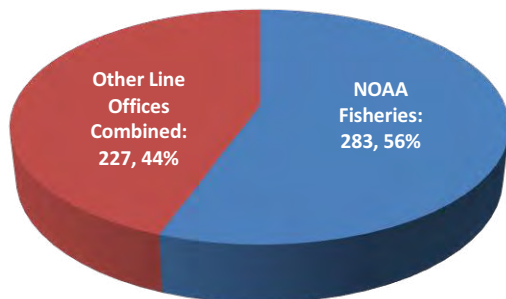
On October 1, 2015, the Fisheries FOIA backlog (requests open for longer than 20 business days) numbered 39; on September 30, 2016, the FOIA backlog remained at 39 requests.

NOAA FISHERIES FOIA ANALYSIS

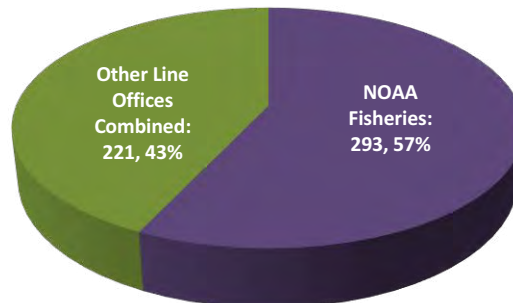
Fisheries FOIA Volume Comparisons:

In FY 2016, Fisheries received 283 (56%) of the 504 total NOAA FOIA requests, consultations and referrals. During that period, Fisheries was responsible for 293 (57%) of NOAA FOIA's 514 closures.

**FOIA Requests Received in
FY 2016**

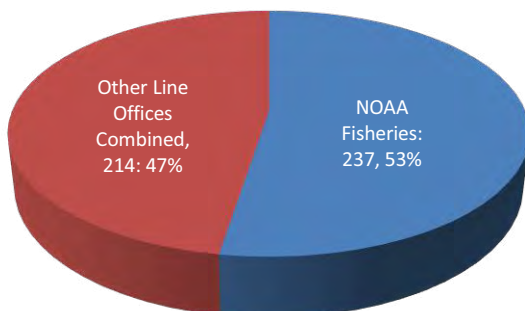


**FOIA Requests Closed in
FY 2016**

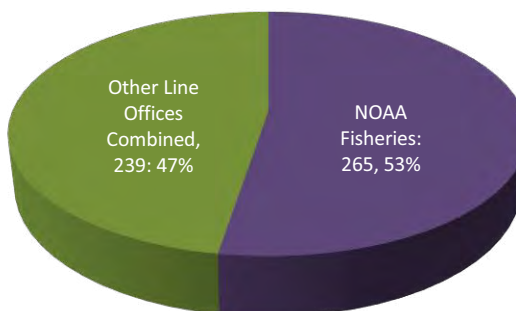


By comparison, in FY 2015, Fisheries received 237 (53%) of the 480 total NOAA FOIA requests, consultations and referrals. During that period, Fisheries was responsible for 265 (53%) of NOAA FOIA's 494 closures.

**FOIA Requests Received in
FY 2015**

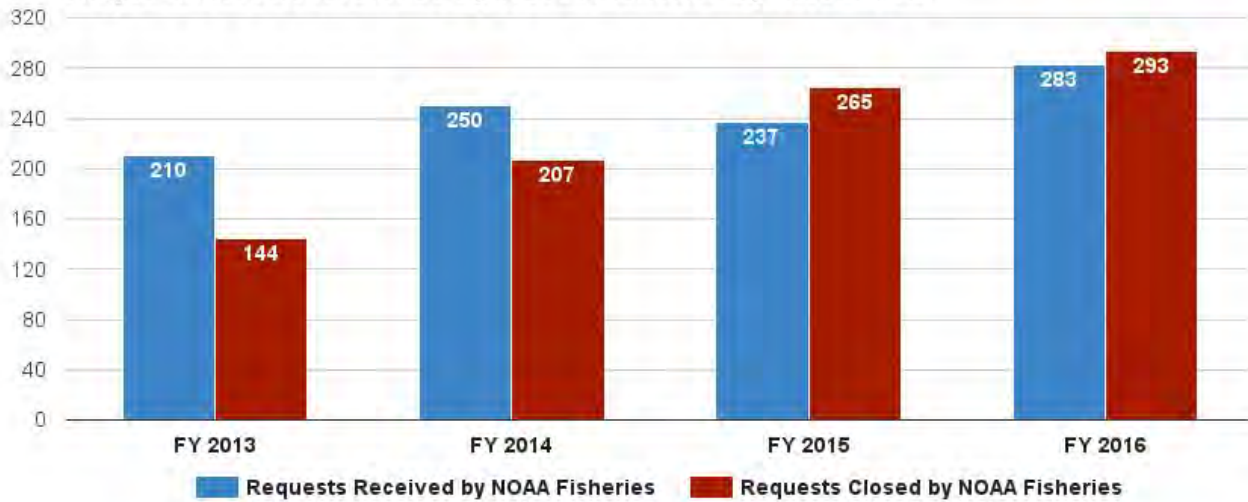


**FOIA Requests Closed in
FY 2015**



The following chart indicates year-over-year volume changes in Fisheries FOIA requests and closures. In each of the past two fiscal years Fisheries FOIA has realized a 19% increase in FOIA requests. Notably, however, in each of those years, Fisheries FOIA has closed more requests than it has received. Despite an increasing volume of requests each year, Fisheries FOIA has effectively managed the workload.

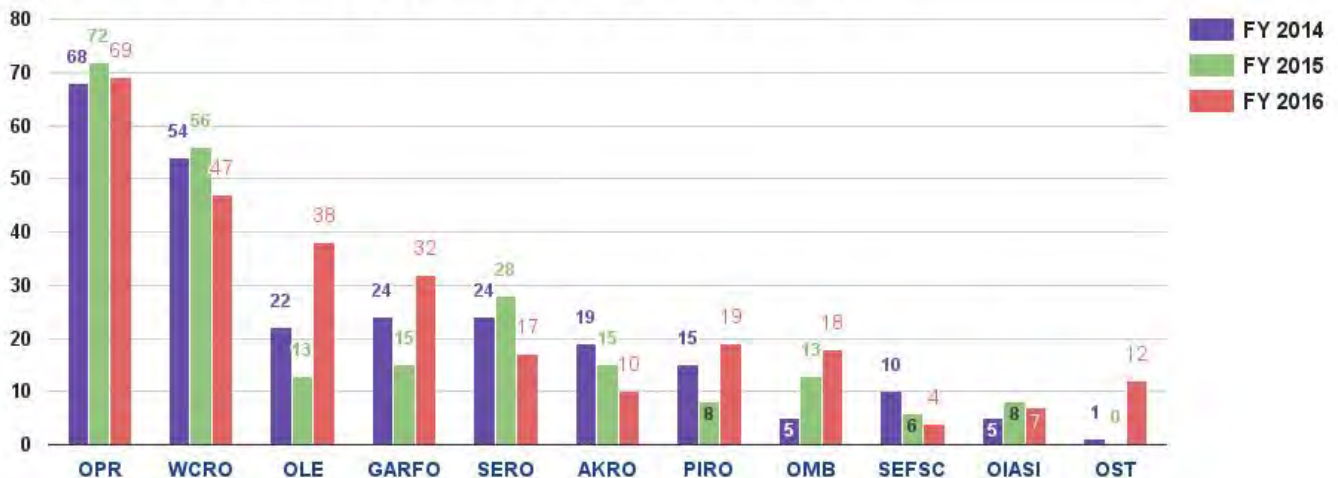
Requests Received/Closed by NOAA Fisheries by Fiscal Year



Fisheries FOIA Requests Received by Office and Program:

In FY 2016, The Office of Law Enforcement (OLE), Greater Atlantic Regional Fisheries Office (GARFO), Pacific Islands Regional Office (PIRO), and Office of Management and Budget (OMB) received significantly more requests than those offices received in FY 2015. Similar to FY 2015, The Office of Protected Resources (OPR) and the West Coast Regional Office (WCRO) received the largest number of FOIA requests in FY 2016, OPR receiving 69 and WCRO receiving 47 requests. Also of note, the Office of Science and Technology received no FOIA requests in FY 2015, but received 12 requests in FY 2016.

Requests Received By Office FY 2014 - FY 2016

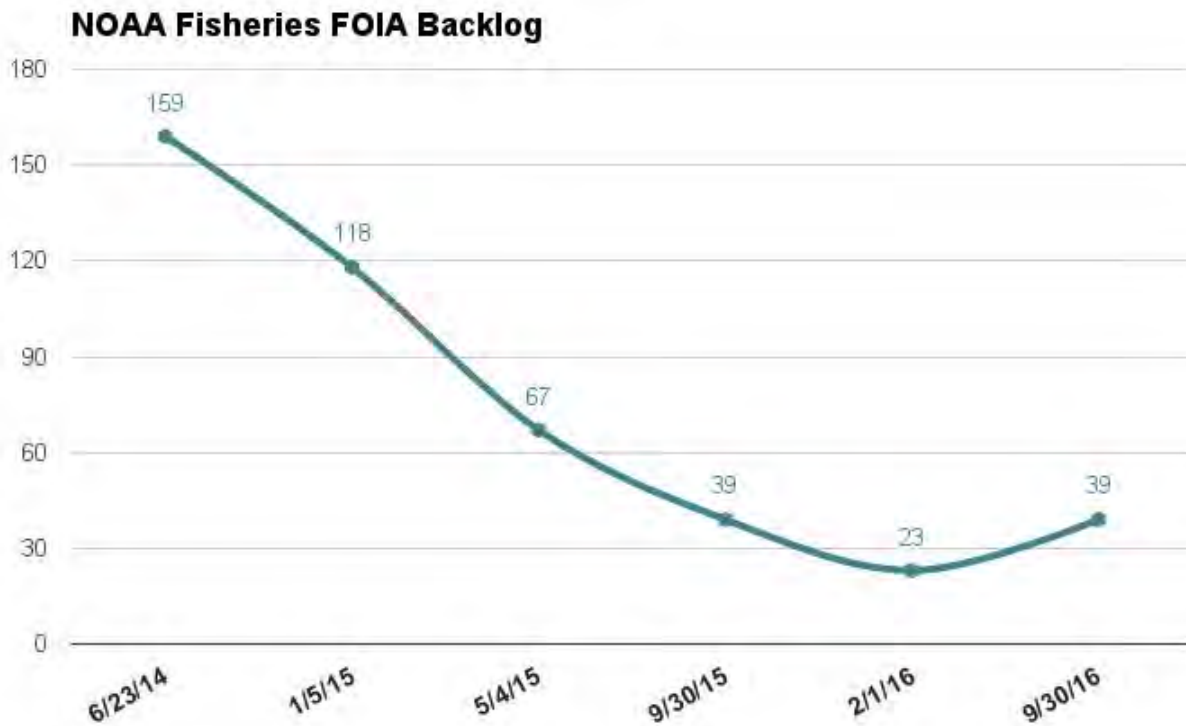


* Excludes offices that received less than 5 FOIA requests in FY 2016

Fisheries FOIA Backlog Status:

On January 5, 2015, the Fisheries FOIA backlog was 118 requests. As of September 30, 2016, the FOIA backlog was 39 requests; a 67% reduction. This reduction was accomplished by instituting the following strategies:

- deploying Clearwell software throughout Fisheries as a document organization, review, redaction, Vaughn index creation, and document export tool
- providing Clearwell support including: 1) a full time Clearwell technical expert to train users and provide individual support when needed; 2) a Clearwell Google website that includes the NMFS Clearwell Reviewer Guide, a Frequently Asked Questions page, and templates; and 3) a biweekly Clearwell User Group meeting
- regularly notifying FOIA Coordinators of their overdue requests and soliciting action plans to close requests
- maintaining a NMFS FOIA website containing standardized correspondence templates, a best practices repository, the NMFS FOIA Handbook, a FOIA contact list, and a landing page containing FOIA related information and updates.
- promoting the use of interim releases for FOIA requests, especially in cases where requests have not been fully completed in the statutorily allotted time



SUMMARY OF ACCOMPLISHMENTS

Statistics:

Fisheries FOIA has reduced backlogged requests by 67% since January 2015, and maintains a historically low number of overdue requests. In FY 2016, Fisheries both received and closed a higher percentage of NOAA FOIA requests as compared to the prior fiscal year. Specifically, Fisheries experienced a 19% increase in incoming FOIA request in FY 2016, and at the same time achieved an 11% increase in closures. Fisheries achieved an all-time low number of 23 overdue requests in February 2016.

Website:

In FY 2015, Fisheries FOIA created a website containing frequently used materials and information about both the FOIA process and Clearwell software. This site allows Coordinators and staff to process FOIA requests more efficiently by centralizing useful documents such as the handbook, templates, news, contacts, FAQs, newsletters, user forums, and best practices. Fisheries FOIA regularly updates and maintains the site.

Clearwell:

Fisheries selected Clearwell software for processing large complex FOIA requests. Clearwell is in use at all Fisheries Regional Offices and Science Centers, OLE, and Fisheries Headquarters. Clearwell provides a single tool for collecting potentially FOIA-responsive documents and emails, reviewing, marking and redacting that material, exporting the responsive material in a format that is directly releasable to the requestor, and generating a Vaughn index for the case. Automating this process has reduced human error, significantly improved efficiency, and delivered a more timely higher quality product to the requestor.

Templates:

Fisheries FOIA continuously revises FOIA templates to accurately reflect changes in both the FOIA and related case law. The templates provide a standardized structure to communicate with both requesters and other agencies. NOAA FOIA has adopted many Fisheries templates for agency wide use.

Support:

Because of Fisheries FOIA Clearwell expertise, requests for assistance were received and provided to NOAA FOIA, NOS, and USEC. Fisheries FOIA provided technical advice and logistical support to these offices so that they could improve their present and future FOIA processing capabilities. Fisheries FOIA also offered surplus Clearwell hardware to NOS to improve its FOIA processing capabilities.

FISCAL YEAR 2017 GOALS

- further reduce the Fisheries FOIA backlog to 25 or less overdue requests
- ensure interim releases are provided to requesters, especially in cases where requests have not been fully completed in the statutorily allotted time period
- provide FOIA training to all Fisheries Coordinators and SMEs
- finalize Fisheries FOIA Redaction Guidance
- complete the standardization of Fisheries FOIA processes and documentation
- increase the number of active negotiations with requesters to narrow the scope of their requests
- when appropriate, further utilize mediation services provided by the Department of Justice, Office of Government Information Services to narrow the scope of requests
- close all Fisheries FOIA requests from FY15 or earlier
- grow Clearwell-competent System Managers at each Fisheries installed location with the goal of each location becoming Clearwell self-sufficient
- provide additional Clearwell support to other NOAA line offices as appropriate, and as resources permit

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, December 28, 2016 12:43 PM
To: Charles Green - NOAA Federal; Charles Lynch - NOAA Federal; Cheryl Scannell - NOAA Federal; Chris Fontecchio - NOAA Federal; Jackie Rolleri - NOAA Federal; Jeff Dillen - NOAA Federal; John Almeida - NOAA Federal; Jonelle Dilley - NOAA Federal; Kamaile Turcan - NOAA Federal; Kate Barfield - NOAA Federal; Kathryn Kempton - NOAA Federal; Kimberly Katzenbarger - NOAA FEDERAL; Lauren Smoker - NOAA Federal; Leah Melendy - NOAA Federal; Louise Milkman - NOAA Federal; Martha McCoy - NOAA Federal; Rodney Vieira - NOAA Federal; Roxie Allison-Holman - NOAA Federal; Stacey Nathanson - NOAA Federal
Cc: Lola Stith - NOAA Affiliate; Robert Swisher - NOAA Federal; Samuel Dixon - NOAA Affiliate; Steven Goodman - NOAA Federal
Subject: Legal Experts Call: Judicial Watch FOIA MSJ Filings
Attachments: Dkt. 16 - 3 May 27 Cover Letter.pdf; Dkt. 16 - 4 Spinrad Declaration.pdf; Dkt. 16 - 5 Proposed Order.pdf; Dkt. 16 - Motion for Summary Judgment.pdf; Dkt. 16 - 1 Graff Declaration.pdf; Dkt. 16 - 2 Vaughn Index.pdf

Hi Everyone--

As requested on the legal experts call, here is a copy of the MSJ and supporting Declarations/Vaughn filed in the Judicial Watch FOIA litigation. Very interesting read an (b)(5) [REDACTED]. Have a great New Year everyone--

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) [REDACTED] (C)

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

)	
JUDICIAL WATCH, INC.,)	
425 Third Street, SW, Suite 800)	
Washington, D.C. 20024)	
)	
Plaintiff,)	
)	
v.	)	Civil Action No. 15-2088 (CRC)
)	
U.S. DEPARTMENT OF)	
COMMERCE,)	
1401 Constitution Avenue, NW)	
Washington, D.C. 20230)	
)	
Defendant.)	
_____)	

DECLARATION OF MARK H. GRAFF

Pursuant to 28 U.S.C. § 1746, I, Mark H. Graff, declare and state as follows:

1. I am currently the Freedom of Information Act (FOIA) Officer for the National Oceanic and Atmospheric Administration (NOAA), which is a part of the United States Department of Commerce (DOC). I have occupied this position since September 6, 2015. My primary duties include management of requests submitted to NOAA for records made under both the FOIA, 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a (PA). In that capacity, I oversee NOAA's receipt and log-in of in-coming FOIA requests, the tasking and coordination of searches for responsive records, and review of out-going responses.

2. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, upon conclusions and determinations reached and made in accordance therewith, and upon my personal examination of

the withheld and redacted documents. Additionally, this declaration includes the search terms, locations and parameters agreed upon with the plaintiffs and utilized by those who conducted the search. I am personally familiar with Plaintiff Judicial Watch's FOIA request, which is at issue in this civil action. I submit this declaration in support of a motion for summary judgment filed by the Department of Commerce in the above-captioned lawsuit.

3. This declaration provides background information on the development of a paper entitled *Possible Artifacts of Data Biases in the Recent Global Surface Warming Hiatus* ("Hiatus Paper" or "the Paper"), which was published in June 2015 in the journal *Science* and is the focus of the FOIA request at issue in this case. It also explains NOAA's search for records responsive to Plaintiff's FOIA request and the FOIA exemptions applied in processing the responsive records. A *Vaughn* index (Exhibit 1) provides a detailed description of information withheld by NOAA and challenged by Plaintiff, as well as NOAA's basis for those withholdings.

I. BACKGROUND

4. The National Centers for Environmental Information (NCEI), located within the NOAA's National Environmental Satellite, Data, and Information Service (NESDIS), develops use-inspired datasets, products and reports that describe average weather conditions (and changes therein) over the United States and the globe. NCEI acts as the "Nation's Scorekeeper" regarding the trends and anomalies of weather and climate, focusing on essential climatic elements such as temperature and rainfall, as well as extreme events such as hurricanes and droughts.

5. NCEI produces and maintains datasets for global ocean areas and global land areas. Changes in surface temperature over long periods are studied using several datasets that are continuously maintained and updated. There are separate datasets for the ocean and the land, which are then merged to create a global dataset.

6. Scientists throughout the government, including at agencies other than NOAA and researchers outside of the government, use NOAA's temperature datasets for a variety of purposes, including for climatic research and climate assessments. NCEI scientists are continually working on improving these datasets to provide scientists and the public with the most up-to-date and accurate information.

7. NCEI scientists periodically interpret and analyze global datasets and release to the public the most up-to-date climate science, often through publication in scientific journals. NCEI scientists use the most recent information from these datasets to propose new scientific theories and also re-evaluate earlier conclusions reached within the scientific community in light of new or updated data.

8. The Hiatus Paper is an example of analysis and interpretation of the updated underlying data, work which is consistent with the mission of NOAA. Nine NOAA scientists contributed to this paper: Thomas Karl (the lead author), Dr. Anthony Arguez, Dr. Boyin Huang, Mr. Jay Lawrimore, Mr. James McMahon, Dr. Matthew Menne, Dr. Thomas Peterson, Dr. Russell Vose, and Dr. Huai-min Zhang. Thomas Karl is the former Director of NCEI. Jay Lawrimore, Dr. Russell Vose, and Dr. Huai-min Zhang are supervisory scientists at NCEI. Dr. Anthony Arguez and Dr. Matthew Menne are climate scientists at NCEI. Since the publication

of the paper, Dr. Thomas Karl and Dr. Thomas Peterson have retired, and Mr. James McMahon no longer works at NCEI.

9. The Intergovernmental Panel on Climate Change (IPCC) released a report in stages between September 2013 and November 2014 that concluded that the upward global surface temperature trend from 1998-2012 was lower than the upward global surface temperature trend from 1951-2012. This apparent observed slowing was dubbed the “hiatus.”

10. There were significant developments related to the alleged “hiatus” in the two years immediately following the release of the IPCC report. In particular, both 2013 and 2014 were among the top-five warmest years on record for the globe. In addition, NOAA scientists made significant improvements to its sea surface temperature dataset, one of the largest being a correction that accounted for the difference in data collected from buoys and ships. (Until the mid-1970s, ships were used to measure sea surface temperatures; since then, buoys have increasingly been used.) Scientists developed a method to correct for the difference between these two observing systems, and incorporated those corrections into its dataset and subsequently the paper that is the subject of this request.

11. On or about October 31, 2014, Director Karl shared with a group of NOAA scientists a draft of a paper that he had worked on himself, inspired by some of the papers exchanged previously by the NCEI scientists. The draft developed an idea for properly accounting for the “hiatus,” based on the additional two years of global temperature data and the improvements to NOAA’s sea surface temperature dataset. Director Karl asked the scientists to provide feedback to his draft.

12. The scientists who received the draft responded with feedback in various forms, including exchanging drafts of the paper with edits done via track changes and sending emails providing feedback.

13. Until the paper was submitted to *Science*, many drafts and revisions were exchanged along with emails and one-on-one discussions about various aspects of the paper, including: suggestions on how best to describe the data, opinions on statistical error uncertainty ranges, thoughts on implications of other researchers' work, and so on. Such collaboration via drafts and discussions in emails and orally is standard practice at NCEI.

14. On or about December 23, 2014, a NOAA author submitted the draft paper to *Science* via an online portal.

15. *Science* follows a formal peer review process that is described on their public website. See <http://www.sciencemag.org/authors/peer-review-science-publications>. Peer reviewers are subject matter experts in the topic of the submitted paper who are able to use their expertise to evaluate the scientific rigor and merit of the paper.

16. Peer reviewers provide feedback on an array of issues, including making an overall recommendation as to whether the paper should be published, in view of *Science*'s mission and also providing more detailed critique on a range of issues. These issues include the technical rigor of the data and methods used and whether the conclusions of the report are novel or similar to work already published. See <http://www.sciencemag.org/sites/default/files/REinstr13.pdf>.

17. According to *Science*, their peer review process is anonymous. The identities of reviewers are never revealed to authors, and reviewers are instructed not to identify themselves to any entity, including the press. Reviews are shared only with the author, potentially other reviewers (for cross-comment), and the Board of the journal. See <http://www.sciencemag.org/authors/peer-review-science-publications>.

18. Reviewers are expressly instructed to treat the submitted manuscript as privileged and confidential:

The submitted manuscript is a privileged communication and must be treated as a confidential document. Please destroy all copies of the manuscript after review. Please do not share the manuscript with any colleagues without the explicit permission of the editor. Reviewers should not make personal or professional use of the data or interpretations before publication without the authors' specific permission (unless you are writing an editorial or commentary to accompany the article).

<http://www.sciencemag.org/authors/peer-review-science-publications>.

19. This is reinforced in the journal's Instructions to Peer Reviewers of reports, which states:

Confidentiality: We expect reviewers to protect the confidentiality of the manuscript and ensure that it is not disseminated or exploited. Please destroy your copy of the manuscript when you are done. Only discuss the paper with a colleague with permission from the editor. We do not disclose the identity of our reviewers.

<http://www.sciencemag.org/sites/default/files/REinstr13.pdf>.

20. The authors received via email the first round of reviews from *Science* on or about February 26, 2015. In this case, *Science* sent the manuscript to five peer reviewers. These reviewers provided their comments anonymously to NOAA through *Science*, as is standard in the peer review process for *Science*.

21. After determining the best response to all of the peer reviewer comments, the authors submitted the revised manuscript and a response to reviewer comments to *Science* via the online submission portal on or about March 27, 2015. See Categories C and D of part 2 of the *Vaughn* Index.

22. On or about April 22, 2015, the authors received the second round of reviews from *Science* via email. The authors developed responses to this second round of comments, made revisions accordingly, and submitted the revised manuscript and response to reviewer comments to *Science* via the online portal on or about May 5, 2015. *See id.*

23. After submitting the revised manuscript, the authors received notice that it would be published, received galley proofs, and approved them. On June 4, 2015, the paper was published online on the *Science* website. This was followed up by publication in the printed volume of *Science* on June 26, 2015 (Volume 348, Issue 6242, at 1469).

II. ADMINISTRATIVE PROCESSING OF PLAINTIFF'S REQUEST

24. Plaintiff's FOIA request was addressed to NOAA, which is located within the Department of Commerce ("the Department"). The request sought, in relevant part:

1. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the methodology and utilization of Night Marine Air Temperatures to adjust ship and buoy temperature data.
2. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the use of other global temperature datasets for both NOAA's in-house dataset improvements and monthly press releases conveying information to the public about global temperatures.

3. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the utilization and consideration of satellite bulk atmospheric temperature readings for use in global temperature datasets.

25. When NOAA officials first reviewed the request, they determined that it did not reasonably describe the records sought. NOAA and the Department, through counsel, conferred with Plaintiff's counsel to negotiate a clear description of the materials sought.

26. During the course of those discussions, NOAA indicated to Plaintiff that it understood Plaintiff's request to reflect an interest in the Hiatus Paper. Defendant suggested Plaintiff modify the FOIA request to call for a search for all documents and communications referring to the Hiatus Paper from October 1, 2014 through June 4, 2015. Defendant offered to search the files of the nine authors of the Study. Plaintiff confirmed its interest in the Hiatus Paper, but indicated that it sought only records referring to the topics listed in its initial FOIA request.

27. The parties ultimately "reached an agreement regarding the scope of the request and the relevant search parameters," which was memorialized in the Second Joint Status Report, submitted to this Court on March 1, 2016. Regarding the documents at issue in this litigation, the parties agreed that:

"Defendant will search the records of the nine authors of the June 4, 2015 study entitled Possible Artifacts of Data Biases in the Recent Global Surface Warming Hiatus published in Science ("Karl Study") for records referring to the Karl Study and that contain the following search terms:

(1) "NMAT" and "Night Marine Air Temperatures";

(2) "ISTU", "ICOADS", and "sea ice";

(3) "satellite", "Advanced Very High Resolution Radiometer", "AVHRR", "Advanced Microwave Scanning Radiometer", and "AMSR".

For items 1, 2, and 3 of Plaintiff's FOIA request, the timeframe for the searches will be October 1, 2014 to June 4, 2015."

See Second Joint Status Report, ECF No. 10.

28. In the Third Joint Status Report, submitted to this Court on March 22, 2016, the parties agreed that NOAA, through the Department, would produce responsive, non-exempt records, as described above, to Plaintiff by May 27, 2016. *See* ECF No. 11.

29. On May 27, 2016, the Department released 102 pages of material in its entirety and 90 partially redacted pages. Defendant withheld in their entirety 8,013 pages of records. *See* May 27 Cover Letter (Exhibit 2); *see also* Fourth Joint Status Report, ECF No. 12. In that letter, NOAA informed Plaintiff that "[b]ecause the request sought records of multiple custodians, there is a significant amount of duplicative material in the responsive records." Exhibit 2.

30. NOAA made a supplemental release of records on September 16, 2016, providing Plaintiff with an additional 44 pages of released material after further review the records identified and described in the letter accompanying the May 27, 2016, production, 7 of which were partially redacted because they included Tom Karl's personal telephone number.

31. After the September release, NOAA continued to evaluate the responsiveness and exemption status of the records that had been identified. Contemporaneously with this filing (on December 15), NOAA is releasing another 62 records providing Plaintiff with additional records that were previously withheld.

32. Because of the further segregation and responsiveness review NOAA conducted that led to the release of additional material to the Plaintiff, the page counts in the May 27 cover letter (and also the Fourth Joint Status Report) originally provided to Plaintiff are no longer accurate. A complete listing of all records withheld in full or in part pursuant to an exemption is reflected in the attached *Vaughn* Index.

II. THE SEARCH PROCESS

33. After NOAA and Plaintiffs, through counsel, reached an agreement as to the terms of the search for this FOIA request, it was determined that the records requested resided within one office: NCEI. NCEI's headquarters is located in Asheville, North Carolina. This determination was based on the fact that all of the agreed-upon custodians work or had worked within NCEI during the time in which responsive records were created.

34. The nine authors of the Hiatus Paper were Thomas R. Karl, Anthony Arguez, Boyin Huang, Jay H. Lawrimore, James R. McMahon, Matthew J. Menne, Thomas C. Peterson, Russell S. Vose, and Huai-Min Zhang.

35. NOAA instructed eight of the nine authors (record custodians) that were still within NCEI to conduct a search in accordance with the parameters agreed to by the parties and memorialized in the Second Joint Status Report. NOAA specified that custodians must search their email, electronic, and paper records.

36. Each records custodian still at NCEI¹ searched his own records in accordance with these instructions. As such, all search terms and parameters of the search as agreed upon by the Plaintiff were utilized by NOAA in the search of the files where responsive records were likely to be filed.

37. There were no common areas to be searched at NCEI because the authors all kept their own files separate.

38. After the custodians collected their records, they were forwarded for responsiveness and exemption review.

39. The search conducted was reasonably calculated to uncover all relevant, non-duplicative documents.

40. The Department compiled two sets of bates-numbered files, which included, in addition to the partially redacted and fully withheld email records, placeholder pages, which are discussed further in Paragraph 49. One bates-numbered file reflects the email records, and the other bates-numbered file reflects documents, as contained on parts 1 and 2 of the *Vaughn*.

41. Each record was evaluated separately for responsiveness, and each email was deemed to be one record.

42. In the case of an email with attachment(s), responsiveness determinations were made independently for that email and any attachment(s) to that email.

43. For email records that were joined with other emails in a chain, NOAA deemed responsive any email that related to the Paper and contained an agreed-upon search term as well

¹ One custodian (Thomas Peterson) had retired by the time of the search. His archived email inbox and outbox were searched by another author who was still with NOAA at the time. No additional, non-duplicative records created by Mr. Peterson that are responsive to this request are known to have existed following the retirement of Mr. Peterson.

as other, surrounding emails that were related to or provided important context for the email that contained the search term. If an email appeared to directly relate to the subject matter of the request in an email containing the search term, a case-by-case determination was made in good faith and in the effort to maximize transparency as to whether that record was responsive even though not technically within the search terms outlined in the Second Joint Status Report.

44. The search was reasonably calculated to uncover all relevant documents and there are no known locations where additional, non-duplicative, responsive material is likely to be found. Accordingly, all files determined to be reasonably likely to contain responsive, non-duplicative material were searched.

III. The Vaughn Index

45. I have read the *Vaughn* index attached as Exhibit 1 and reviewed the documents referenced in that index. Based on my review of the documents and on information provided me in the course of my official duties, I have determined that the material redacted from the referenced documents falls within the enumerated FOIA exemptions identified in the index.

46. The *Vaughn* index is divided into two parts. The first part covers responsive emails that were withheld or redacted. It identifies each record by Bates stamp numbers (which correspond to the numbering on records provided to Plaintiff), the originator, the recipient(s), the date of the record, the title of the email, the exemption invoked, and the basis for withholding.

47. Due to how the email records are stored in and were printed from the user's email accounts, some email records are duplicative but certain copies truncate the metadata for that record email (e.g., the sender, recipient, subject line, who was cc'd on the records). Sometimes

NOAA was able to reconstruct the information by looking to duplicate instances that were printed differently, or by going to the original files. We have generally inferred that the subject line that prints at the top of the printed email chain carried through for individual email records connected to that string of emails.

48. The second part of the *Vaughn* index covers non-email documents that were withheld in their entirety, except for a relatively small number of documents that were released to Plaintiffs upon further review. These documents consist almost exclusively of five categories of records. Records that fell into one of the five categories are labeled in the *Vaughn* index by a letter that corresponds to a category. The few exceptions that do not fall into one of the five categories have a more detailed description.

49. The *Vaughn* index reflects occasional “gaps” in the Bates stamp numbering. For example, *Vaughn* part one reflects an entry for bates page 1, and the next entry is for bates page 4. Such “gaps” exist for three reasons. First, not all pages had redacted information. Only pages with redacted information are accounted for on the *Vaughn*. Second, NOAA, in an effort to be transparent during production, included pages that served as “placeholders” for records in email chains that were removed because those records were either non-responsive or were fully withheld under Exemption 5. For example, if one page with responsive records was produced with redactions, followed by four fully withheld pages of records, the four fully withheld pages were represented in the production by a placeholder page that indicated four pages of material had been withheld as either not responsive or as exempt under Exemption 5. That placeholder page was bates stamped during the initial production, but NOAA has not listed it in the *Vaughn*

index. And third, NOAA removed bates-marked documents that were non-responsive that had been inadvertently bates stamped during the initial production. The withheld records, if responsive, are represented elsewhere in the *Vaughn* index.

50. As reflected in the first part of the *Vaughn* index, NOAA withheld or redacted emails under Exemption 5 because they are protected by the deliberative process privilege. *See, generally, Vaughn* part 1. These records are inter-agency or intra-agency communications. The bulk of this information reflects the predecisional and deliberative exchange of ideas and recommendations among scientists within and outside NOAA as NOAA scientists developed and edited the Hiatus Paper or discussed the underlying analysis of the datasets for purposes of developing the paper. The information also includes communications among NOAA personnel carrying out related agency deliberations such as development of public communications and presentations to Congress. The communications are, unless otherwise indicated, among NOAA personnel and reflect agency deliberations or input to agency determinations. These deliberations were in preparation for agency decisions, including how to analyze and present the data and interpretation. A relatively small number of the deliberative communications reflect input from non-federal scientists who were contacted either by one of the authors or by the journal *Science* to provide feedback and input on the Paper. These non-federal scientists provided NOAA's scientists input for the agency's ongoing processes of developing the Hiatus Paper, as well as providing input for the agency's potential updating of underlying datasets and analysis based on those datasets. Additionally, one scientist provided input to inform the agency's development of a communications plan for the paper.

51. In addition to the emails redacted or withheld, NOAA withheld drafts of the Hiatus Paper. *See Vaughn* part two Category A. These documents are inter-agency or intra-agency drafts. This category includes the drafts of the “supplementary materials” that accompanied the Hiatus Paper and were made available for download by *Science* upon publication of the Paper. Category A in the *Vaughn* Index sometimes lists the draft paper text, figures and supplementary materials as one entry and sometimes separately. These were pre-decisional drafts that contained the opinions and recommendations of one or more NOAA authors; draft language, data, and data interpretation for consideration by other NOAA authors; comments on previous drafts of the paper; and/or responses to other NOAA authors’ or expert reviewers’ comments on earlier drafts of the paper. Disclosure of deliberative draft documents that were not ultimately finalized or adopted by NOAA risks confusing the public concerning NOAA’s position and also risks data or statements being taken out of context. Disclosure of these deliberative draft materials would also seriously undermine the quality and integrity of NOAA’s decisionmaking process, by deterring NOAA staff or experts outside the agency who are collaborating in development of the agency’s work from expressing their candid views on the development of data analysis and presentation.

52. NOAA also withheld documents that contain questions for discussion and draft graphs that were circulated by an author and created for author discussions during the development of the Hiatus Paper. *See Vaughn* part two Category E. These records are inter-agency or intra-agency documents. These documents are deliberative and pre-decisional, as they

reflect NOAA scientists' deliberations as to what constitutes the best data analysis and presentation for the Hiatus Paper.

53. NOAA also withheld drafts of a cover letter from Tom Karl to *Science* magazine in response to peer review comments. *See Vaughn* part two Category B. These records are inter-agency or intra-agency drafts. These drafts are predecisional and deliberative in that they include discussions and exchanges among authors in determining what to include, and how to present, their formal letter to accompany their peer review responses. The draft cover letters to *Science* contain edits or otherwise do not include the final wording of the letter, reflecting that the scientists' approach had not been finalized at that point.

54. NOAA also withheld draft responses to peer reviewers enlisted by *Science* as part of that journal's peer review process. *See Vaughn* Index part two Category C. These records are inter-agency or intra-agency drafts. These drafts reflect pre-decisional discussions and proposed responses to peer review comments. The drafts contain opinions and recommendations of one or more NOAA authors; draft language, data, and data interpretation for consideration by other authors; comments on previous drafts of the responses to peer reviewers; and/or responses to other authors' comments on earlier drafts of the responses to peer reviewers. These drafts helped the NOAA authors determine how best to respond to comments provided during the peer review process initiated by the submission of the Hiatus Paper to *Science* for potential publication. These documents are internal, pre-decisional drafts that reflect the view of NOAA authors as to how to present their response to peer review feedback.

55. NOAA also withheld the final responses to peer reviewers enlisted by *Science* as part of that journal's peer review process. See *Vaughn* Index Part 2 Category D. These records are inter-agency or intra-agency documents. These documents are predecisional and deliberative because they are responses to constructive criticism and advice submitted by scientific experts as part of the confidential peer review process for papers submitted to scientific journals. The responses were submitted as part of a process to assist in the authors' deliberations regarding whether and in what form to publish the paper. Confidentiality is important to the peer review process, and disclosure of the responses to peer reviews would discourage the sharing of candid thoughts of both the reviewers and of the scientists.

56. In addition to this formal peer review, NOAA's authors also welcomed the assistance of informal peer review from a limited group of scientific experts in evaluating the underlying datasets and developing the Hiatus Paper. It is common for NOAA scientists to seek input from other qualified experts to get a second opinion on a working hypothesis or to provide expertise that an author's affiliated organization may lack. Sometimes those scientists are employed outside the federal government, but they share the common goal with NOAA of advancing scientific inquiry and developing accurate information on climate science.

57. This collegial relationship and shared goals lays the groundwork for an author to reach out for the kind of honest, confidential feedback necessary to formulate a sustainable, justified scientific conclusion.

58. Each of these scientists who offered their assistance is highly regarded in their specialized fields. Their prior work represents a portion of the prior published literature on the

alleged hiatus. Some of those works were consulted by the team in developing the “hiatus” paper and were cited as references in it.

59. One of the outside scientists who contributed (and is listed in the “Acknowledgements” section of the Hiatus Paper) is Dr. Gerald (Jerry) A. Meehl, an affiliate with the National Center for Atmospheric Research (NCAR), which is a National Science Foundation Federally Funded Research and Development Center. *See* <https://www2.ucar.edu/about-us/quick-facts>. In November 2014, Director Karl emailed Dr. Meehl and invited him to comment on drafts of the paper, and he provided insights and feedback in response. *See* Bates 66 (11/27/14) (released).

60. If a paper is expected to get an unusual amount of attention, a journal may seek pre-publication reactions from experts in the field outside of that journal’s formal peer review process. On occasion, those experts who are contacted by the journal will then directly communicate with the author(s) of the article and share their thoughts on the article.

61. These communications provide important feedback to the authors on the Hiatus Paper and often provide information, relied upon by NOAA, about the external expert’s own related recent or ongoing work. These communications provide input to the continuous, ongoing work to update and improve datasets and trend analyses, as described in Paragraphs 5 through 7.

62. One outside scientist who provided input (and is cited in the references for the Hiatus Paper) is Dr. Kevin E. Trenberth, who (like Dr. Meehl) is also affiliated with the NCAR. Dr. Trenberth was contacted for his expertise by a journalist prior to publication of the Hiatus Paper and asked to provide comment on the paper. Dr. Trenberth then contacted Director Karl

by email to provide feedback and discuss implications of the conclusion in light of other literature. *See* Bates 379 (6/1/15). As discussed in paragraph 61, above, this type of input provides important feedback and also helps inform the continuous, ongoing work to update and improve datasets and trend analyses. In part, this information was also provided to inform NOAA in its deliberations as it formulated its public communications messaging for the Hiatus Paper. *See* Bates 381-382 (6/1/15).

63. Last, Dr. Kevin Cowtan, who is affiliated with the University of York in the United Kingdom, is an outside scientist who contacted Dr. Boyin and Director Karl, after being contacted by a writer at *Science* who was seeking comment on the paper before publication, during the embargo period. *See* Bates 292-293 (6/2/15). Those emails indicate that all participants understood and respected that there was an embargo on publicly disseminating or discussing the work until it was officially released on June 4. *See, e.g.*, Bates 295 (6/2/15). Director Karl indicated in an email that he would like to continue to review and incorporate Dr. Cowtan's work in NOAA's ongoing work. *See* Bates 295-296 (6/2/15). As discussed in paragraph 61, above, this type of input provides important feedback and also helps inform the continuous, ongoing work to update and improve our datasets and trend analyses.

64. Disclosure of any of this information that is pre-decisional and deliberative would inhibit candid internal discussions and expressions of ideas, recommendations, criticism, and judgments regarding the development of scientific theories and presentations of information to the public and to Congress. Disclosure of the details of these confidential discussions, drafts, and responses, could reasonably be expected to chill the open and frank exchange of comments

and opinions that occurs between NOAA scientists and a limited group of qualified outside experts at such times. It would also inhibit candid internal discussions and the expression of recommendations and judgments regarding preferred courses of action for agency personnel.

65. To the extent the redacted or withheld information contains some factual material, the authors' selection and presentation of that factual material reflects the agency's deliberative process and is therefore protected from disclosure. Singling out a particular data point in the course of a deliberative discussion reflects a preliminary judgment or argument rather than an assertion of scientific fact. There is a risk of misconstruing or taking out of context an instance where one piece of information has been singled out for purposes of an informal discussion.

66. With regard to information withheld pursuant to exemption (b)(6), NOAA has determined that the individual privacy interests outweighed the public interest in disclosure.

67. I am further satisfied that NOAA has reasonably concluded that there was no additional non-exempt, responsive information that could be reasonably segregated and released to the plaintiff.

IV. CONCLUSION

In summary, the Department conducted thorough searches of all components that were reasonably likely to maintain responsive records and withheld only reasonably segregable information under exemption (b)(5) and (b)(6). Additionally, the search was reasonably calculated to uncover all relevant documents, and there are no known locations where additional, non-duplicative, responsive material is likely to be found.

Pursuant to 28 U.S.C. § 1746, I hereby affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 14th day of December, 2016, Silver Spring, Maryland.

A handwritten signature in blue ink, consisting of a stylized 'M' followed by a large, looped 'G' and 'A'.

Mark H. Graff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

Exhibit 1 to Declaration of Mark Graff

Vaughn Index Part 1: Emails

Bates Page	Originator	Addressee	Date	Time	Title	Exemption	Released Status	Basis
1	Maycock, Tom	Zhang, Huai-min	05/06/2015	9:30 AM	Re: NCEI communications: question re. uncertainty in "hiatus" paper	(b)(5)	Partially Redacted	NOAA affiliate asking NOAA scientist for clarification on data results from the paper prior to publication for development of communications materials related to the paper.
4	Peterson, Thomas C.	Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin; Zhang, Huai-min	3/16/2015	10:50 AM	Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper. Scientist is also asking for opinion of another scientist.
6	Huang, Boyin	Mcmahon, James; Vose, Russell; Peterson, Thomas C.; Tanner, Michael; Karl, Thomas R.; Menne, Matthew; Arguez, Anthony; Lawrimore, Jay; Zhang, Huai-min	3/19/2015	4:02 PM	Re: Invitation: Update on Science Hiatus paper @ Fri Mar 20, 2015 11am 12pm	(b)(5)	Partially Redacted	NOAA scientist sharing draft data analysis, based on scientist discussions, for development of the paper with other scientists.
14	Vose, Russell	Peterson, Thomas C.; McMahon, James; Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Lawrimore, Jay; Matthews, Jessica	3/23/2015	9:12 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist sharing drafts of the paper and discussing edits made to the paper. Email is duplicate of email found on page 102.
14	Peterson, Thomas C.	Mcmahon, James; Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	4:03 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist sharing drafts of supplemental materials for the paper and discussing edits made to the paper.
14-15	Mcmahon, James	Huang, Boyin; Peterson, Thomas C.; Karl, Thomas R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	2:15 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist sharing drafts of the paper and discussing edits made for the development the paper.

15	Huang, Boyin	Peterson, Thomas C.; Karl, Thomas R.; Arguez, Anthony; McMahan, James; Huai-min, Zhang; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	10:03 AM	Re: Science-hiatus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist sharing opinion on results of draft data analysis for development of the paper.
15	Peterson, Thomas C.	Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; McMahan, James; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	9:55 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist sharing opinion on results of draft data analysis for development of the paper.
17	Peterson, Thomas C.	Lawrimore, Jay; Huang, Boyin; Zhang, Huai-min	3/16/2015	2:51 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist discussing edits to be made for development of the paper. Asking another NOAA scientist about work to be done for the paper.
19	Peterson, Thomas C.	McMahon, James; Huang, Boyin; Karl, Thomas, R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	4:03 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 14.
22	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew	12/16/2014	1:02 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
22-23	McMahon, James	Zhang, Huai-min	12/16/2014	12:45 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist asking another scientist for clarification on data analysis conducted for the development of the paper.
23	Zhang, Huai-min	McMahon, James	12/16/2014	11:17 AM	Interpolation of LSAT over the arctic and antarctic	(b)(6)	Partially Redacted	Personal cell phone number of scientist.
25-26	McMahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew	12/16/2014	1:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper. Scientist is also asking for opinion of another scientist.

26	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	1:31 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper. Scientist is also asking for opinion of another scientist.
27	Huang, Boyin	Zhang, Huai-min; Mcmahon, James; Menne, Matthew; Lawrimore, Jay	12/16/2014	2:26 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
27-28	Mcmahon, James	Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Lawrimore, Jay	12/16/2014	2:55 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper. Scientist is also asking for opinion of another scientist.
28	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	3:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
28-29	Mcmahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	3:21 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
33	Maycock, Tom	Zhang, Huai-min	05/06/2015	9:30 AM	Re: NCEI communications: question re. uncertainty in "hiatus" paper	(b)(5)	Partially Redacted	Duplicate of page 1.
37	Huang, Boyin	Karl, Thomas R.; Zhang, Hai-min; Mcmahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	2:20 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist discussing proposed data analysis and potential research methods to be conducted for the development of the paper.

37-38	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	12:21 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist discussing proposed data analysis and potential research methods to be conducted for the development of the paper.
38-40	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	11:35 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper (the scientist's responses are inserted into text of earlier email).
41	Huang, Boyin	Zhang, Huai-min; Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	8:43 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
41	Zhang, Huai-min	Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:27 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the paper.
42	Karl, Thomas R.	Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:21 AM	Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to question from another scientist and offering personal opinion on data analysis and graphics for the paper.
42	Zhang, Huai-min	McMahon, James; Karl, Thomas R.; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	1:56 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist sharing data analysis and graphics for development of the paper with other scientists.
45	Zhang, Huai-min	Lawrimore, Jay; Huang, Boyin	11/20/2014	2:47 PM	article method	(b)(5)	Partially Redacted	NOAA scientist sharing drafts of the paper and asking about edits to be made to the paper.

48	Karl, Thomas R.	Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:21 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Email text is cut off but text is duplicate of full text on page 42.
48	Zhang, Huai-min	Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:27 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 41.
48	Huang, Boyin	Zhang, Huai-min; Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	8:43 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 41.
48-49	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	8:49 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist is responding to question from another scientist and offering personal opinion on draft data analysis for development of the paper.
49	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	10:39 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist is responding to question from another scientist and offering personal opinion on draft data analysis for development of the paper.
49-50	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	11:35 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of pages 38-40.
50	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	12:21 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37-38.

50-51	Huang, Boyin	Karl, Thomas R.; Zhang, Hai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	2:20 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37.
51	Menne, Matthew	Lawrimore, Jay; Karl, Thomas R.; Huang, Boyin; Zhang, Hai-min; McMahon, James; Vose, Russell	11/06/2014	10:55 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	NOAA scientist sharing proposed language for the paper as well as draft data analysis and graphics for development of the paper. Although this email was initially identified as not responsive, NOAA has determined the email to be responsive and exempt under (b)(5).
53	Huang, Boyin	Karl, Thomas R.; Zhang, Hai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	2:20 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37.
53	Karl, Thomas R.	Huang, Boyin; Zhang, Hai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	12:21 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37-38.
53	Huang, Boyin	Karl, Thomas R.; Zhang, Hai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	11:35 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of pages 38-40.
66-67	Meehl, Gerald	Karl, Thomas R.	11/28/2014	5:45 PM	Jerry this is not finished. We have another figure to add and describe, but it will give you an idea of where we are going with this	(b)(5)	Partially Redacted	Outside scientist is providing feedback and review of data analysis for the paper in response to request for feedback from Tom Karl (via email that was Released). The outside scientist is providing observations regarding the climatic data used in the paper and raising issues for further discussion and clarification.

67-68	Karl, Thomas R.	Meehl, Gerald	11/29/2014	9:41 AM	Jerry this is not finished. We have another figure to add and describe, but it will give you an idea of where we are going with this	(b)(5)	Fully Withheld	NOAA scientist is responding to feedback on the hiatus paper provided by outside scientist and discussing data analysis conducted for the development of the paper. Although this email was initially identified as not responsive, NOAA has determined the email to be responsive and exempt under (b)(5).
69	Huang, Boyin	Mcmahon, James; Vose, Russell; Peterson, Thomas, C.; Tanner, Michael; Karl, Thomas R.; Menne, Matthew; Arguez, Anthony; Lawrimore, Jay; Zhang, Huai-min	3/19/2015	4:02 PM	Re: Invitation: Update on Science Hiatus paper @ Fri Mar 20, 2015 11am 12pm	(b)(5)	Partially Redacted	Duplicate of page 6.
70	Kossin, James P.	Karl, Thomas R.	5/21/2015	11:44 AM	Science paper	(b)(5)	Partially Redacted	NOAA scientist asking paper author offering personal opinion and inquiring about potential data analysis for the paper.
70	Karl, Thomas R.	Kossin, James P.	5/21/2015	11:55 AM	Science paper	(b)(5)	Partially Redacted	Paper author responding to personal opinion of NOAA scientist and sharing his personal opinion on draft data analysis for the paper. Asking if NOAA scientist about involvement future research and data analysis.
75	Karl, Thomas R.	Holdren, John P.	3/26/2015	4:35 PM	Acceptance of your Science Manuscript aaa5632	(b)(5)	Partially Redacted	NOAA scientist sharing release date for paper. NOAA scientist is also discussing future climate research for the agency and asking for opinion of John Holdren on this research and on the possible role of NOAA scientists in this research.
88	Huang, Boyin	Karl, Thomas R.; Lawrimore, Jay	1/15/2015	4:16 PM	Your recent paper	(b)(5)	Partially Redacted	NOAA scientist is responding to question from another scientist and sharing results of data analysis he conducted for the paper and personal opinion on future research.
88	Karl, Thomas R.	Huang, Boyin; Lawrimore, Jay	1/15/2015	16:20	Your recent paper	(b)(5)	Partially Redacted	NOAA scientist asking other scientists about data to potentially be used in further research study.

88-89	Huang, Boyin	Karl, Thomas R.; Lawrimore, Jay	1/15/2015	4:33 PM	Your recent paper	(b)(5)	Partially Redacted	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to question from another scientist and offering personal opinion on data analysis for the paper and personal opinion on future research.
100	Huang, Boyin	Peterson, Thomas C.; Karl, Thomas R.; Arguez, Anthony; McMahon, James; Huai-min, Zhang; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	10:03 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 15.
100-101	Peterson, Thomas C.	Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; McMahon, James; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	9:55 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 15.
101	Mcmahon, James	Huang, Boyin; Peterson, Thomas C.; Karl, Thomas R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	2:15 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 15.
101-102	Peterson, Thomas C.	Mcmahon, James; Huang, Boyin; Karl, Thomas, R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	3/20/2015	4:03 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 14.
102	Vose, Russell	Peterson, Thomas C.; McMahon, James; Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; Zhang, Huai-min; Menne, Matthew; Lawrimore, Jay; Matthews, Jessica	3/23/2015	9:12 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 14.
104	Zhang, Huai-min	Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:27 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Email text is partially cut off. Duplicate of full email found on page 41.

104	Huang, Boyin	Zhang, Huai-min; Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	8:43 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 41.
104	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	8:49 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of pages 48-49.
104-105	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	10:39 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 49.
105-106	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	11:35 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of pages 38-40.
106	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	12:21 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37-38.
106	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	2:20 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37.

108-109	Meehl, Gerald	Karl, Thomas R.	11/28/2014	5:45 PM	Jerry this is not finished. We have another figure to add and describe, but it will give you an idea of where we are going with this	(b)(5)	Partially Redacted	Email addresses are cut off. Duplicate of full email found on pages 66-67.
112	Zhang, Huai-min	Mcmahon, James	12/16/2014	11:17 AM	Interpolation of LSAT over the arctic and antarctic	(b)(6)	Partially Redacted	Duplicate of page 23.
112	Mcmahon, James	Zhang, Huai-min	12/16/2014	12:45 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22-23.
112	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew	12/16/2014	1:02 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22.
112-113	Mcmahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew	12/16/2014	1:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 25-26.
113	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	1:31 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 26.
113	Huang, Boyin	Zhang, Huai-min; Mcmahon, James; Menne, Matthew; Lawrimore, Jay	12/16/2014	2:26 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 27.
113-114	Mcmahon, James	Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Lawrimore, Jay	12/16/2014	2:55 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of pages 27-28.
114	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	3:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 28.
114	Mcmahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	3:21 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 28-29.
116	Karl, Thomas R.	Sessing, Janice; Vose, Russell; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; Mcmahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/21/2015	2:54 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Partially Redacted	NOAA scientist sharing with other NOAA affiliates his thoughts on presenting the agency's climate change research to Congress.

128	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew	12/16/2014	1:02 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22.
128	Mcmahon, James	Zhang, Huai-min	12/16/2014	12:45 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22-23.
128	Zhang, Huai-min	Mcmahon, James	12/16/2014	11:17 AM	Interpolation of LSAT over the arctic and antarctic	(b)(6)	Partially Redacted	Duplicate of 23.
128-129	Mcmahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew	12/16/2014	1:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22-23.
129	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	1:31 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 26.
129	Huang, Boyin	Zhang, Huai-min; Mcmahon, James; Menne, Matthew; Lawrimore, Jay	12/16/2014	2:26 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 27.
130	Mcmahon, James	Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Lawrimore, Jay	12/16/2014	2:55 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of pages 27-28.
130	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	3:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 28.
130	Mcmahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	3:21 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of pages 28-29.
131	Huang, Boyin	Lawrimore, Jay; Peterson, Thomas C.; Zhang, Huai-min; Mcmahon, James; Karl, Thomas R.; Vose, Russell; Menne, Matthew	03/06/2015	8:33 AM	SST trend experiment	(b)(5)	Partially Redacted	NOAA scientist is sharing data analysis he conducted for the paper offering his opinion of the best approach to take in the paper.
133	Huang, Boyin	Mcmahon, James; Vose, Russell; Peterson, Thomas, C.; Tanner, Michael; Karl, Thomas R.; Menne, Matthew; Arguez, Anthony; Lawrimore, Jay; Zhang, Huai-min	3/19/2015	4:02 PM	Re: Invitation: Update on Science Hiatus paper @ Fri Mar 20, 2015 11am 12pm	(b)(5)	Partially Redacted	Duplicate of page 6.

137-138	Peterson, Thomas C.	Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin; Zhang, Huai-min	3/16/2015	10:50 AM	Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 4.
139-140	Lawrimore, Jay	Peterson, Thomas C.; Huang, Boyin; Zhang, Huai-min	3/16/2015	2:47 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	NOAA scientist sharing data analysis to be used in the paper and asking for clarification on data analysis conducted for development of the paper.
140	Peterson, Thomas C.	Lawrimore, Jay; Huang, Boyin; Zhang, Huai-min	3/16/2015	2:51 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Partially Redacted	Duplicate of page 17.
143	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Kris	5/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17 th warmest April on record for contiguous U.S.	(b)(5)	Partially Redacted	NOAA scientist discussing agency's climate change research and developing the agency's presentation for Congress.
156	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	2:20 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37.
156	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	12:21 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 37-38.
156-157	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	11:35 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 38-40.

157	Huang, Boyin	Zhang, Huai-min; Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	8:43 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 41.
157	Zhang, Huai-min	Karl, Thomas R.; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:27 AM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 41.
158	Karl, Thomas R.	Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:21 AM	Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Fully Withheld	Duplicate of page 42. Although this email was initially identified as not responsive, NOAA has determined the email to be responsive and exempt under (b)(5).
158	Zhang, Huai-min	McMahon, James; Karl, Thomas R.; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	1:56 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Fully Withheld	Duplicate of page 42. Although this email was initially identified as not responsive, NOAA has determined the email to be responsive and exempt under (b)(5).
160	Zhang, Huai-min	Lawrimore, Jay; Huang, Boyin	11/20/2014	2:47 PM	article method	(b)(5)	Partially Redacted	Duplicate of page 45.
162-163	Meehl, Gerald	Karl, Thomas R.	11/28/2014	5:45 PM	Jerry this is not finished. We have another figure to add and describe, but it will give you an idea of where we are going with this	(b)(5)	Partially Redacted	Duplicate of pages 66-67.
164	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Lawrimore, Jay	12/16/2014	1:31 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 26.
164	McMahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew	12/16/2014	1:15 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 25-26.

164	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew	12/16/2014	1:02 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22.
164	Mcmahon, James	Zhang, Huai-min	12/16/2014	12:45 PM	Interpolation of LSAT over the arctic and antarctic	(b)(5)	Partially Redacted	Duplicate of page 22-23.
166	Huang, Boyin	Mcmahon, James; Vose, Russell; Peterson, Thomas, C.; Tanner, Michael; Karl, Thomas R.; Menne, Matthew; Arguez, Anthony; Lawrimore, Jay; Zhang, Huai-min	3/19/2015	4:02 PM	Re: Invitation: Update on Science Hiatus paper @ Fri Mar 20, 2015 11am 12pm	(b)(5)	Partially Redacted	Duplicate of page 6.
167	Maycock, Tom	Zhang, Huai-min	05/06/2015	12:58 PM	Re: NCEI communications: question re. uncertainty in "hiatus" paper	(b)(5)	Partially Redacted	Duplicate of page 1.
234	Huang, Boyin	Karl, Thomas R.; Lawrimore, Jay	1/15/2015	4:16 PM	Your recent paper	(b)(5)	Partially Redacted	Duplicate of page 88.
234	Karl, Thomas R.	Huang, Boyin; Lawrimore, Jay	1/15/2015	4:20 PM	Your recent paper	(b)(5)	Partially Redacted	Duplicate of page 88.
234-235	Huang, Boyin	Karl, Thomas R.; Lawrimore, Jay	1/15/2015	4:33 PM	Your recent paper	(b)(5)	Partially Redacted	Duplicate of pages 88-89.
240-241	Huang, Boyin	Karl, Thomas R.; Lawrimore, Jay	1/15/2015	4:16 PM	Your recent paper	(b)(5)	Partially Redacted	Duplicate of page 88.
242	Karl, Thomas R.	Huang, Boyin; Lawrimore, Jay	1/15/2015	4:20 PM	Your recent paper	(b)(5)	Partially Redacted	Duplicate of page 88.
242	Huang, Boyin	Karl, Thomas R.; Lawrimore, Jay	1/15/2015	4:33 PM	Your recent paper	(b)(5)	Partially Redacted	Duplicate of pages 88-89.
243	Peterson, Thomas C.	Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; Mcmahon, James; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Matthews, Jessica	03/20/2015	9:55 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	NOAA scientist sharing opinion on results of data analysis for development of the paper.

243	Huang, Boyin	Peterson, Thomas C.; Karl, Thomas R.; Arguez, Anthony; McMahon, James; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Matthews, Jessica	03/20/2015	10:03 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of 15.
245	McMahon, James	Arguez, Anthony; Zhang, Huai-min; Karl, Thomas R.	03/25/2015	10:30 AM	new comparisons	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering personal opinion on statistical error uncertainty ranges for development of the paper.
245	Zhang, Huai-min	McMahon, James; Arguez, Anthony; Karl, Thomas R.	03/25/2015	10:52 AM	new comparisons	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to question from another scientist and offering personal opinion on statistical error uncertainty ranges for development of the paper.
245-246	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin; McMahon, James; Arguez, Anthony	03/25/2015	11:17 AM	new comparisons	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering personal opinion on statistical error uncertainty ranges for development of the paper and his opinion of the best approach to take in the paper.
246	Zhang, Huai-min	Karl, Thomas R.; Huang, Boyin; McMahon, James; Arguez, Anthony	03/25/2015	11:40 AM	new comparisons	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering personal opinion on statistical error uncertainty ranges for development of the paper and his opinion of future revisions.
246	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin; McMahon, James; Arguez, Anthony	03/25/2015	11:52 AM	new comparisons	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering personal opinion on statistical error uncertainty ranges for development of the paper and his opinion of the best approach to take in the paper.

247-248	Peterson, Thomas C.	Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin; Zhang, Huai-min	03/16/2015	10:50 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another scientist and offering his opinion of the best approach to take in the development of the paper. Scientist is also asking for opinion of another scientist.
249	Lawrimore, Jay	Peterson, Thomas C.; Huang, Boyin; Zhang, Huai-min	03/16/2015	2:47 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	NOAA scientist discussing how to interpret and apply data trends in the paper as well as plans for discussing a related issue at an upcoming call.
249	Peterson, Thomas C.	Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin; Zhang, Huai-min	03/16/2015	10:50 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of pages 247-248.
251	Zhang, Huai-min	Peterson, Thomas C.; Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin	03/19/2015	1:34 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Text of email is partially cut off but full text of email is on page 300.
251-252	Peterson, Thomas C.	Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin; Zhang, Huai-min	03/16/2015	10:50 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of pages 247-248.
254	Peterson, Thomas C.	Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; McMahon, James; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Matthews, Jessica	03/20/2015	9:55 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of page 243.
257-259	Zhang, Huai-min	Menne, Matthew; McMahon, James; Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Vose, Russell	12/03/2014	10:50 AM	Trend plots	(b)(5)	Fully Withheld	NOAA scientist sharing updated and revised data analysis for the paper with another scientist and indicating what his next step will be.
262	Huang, Boyin	McMahon, James; Vose, Russell; Peterson, Thomas C.; Tanner, Michael; Karl, Thomas R.; Menne, Matthew; Arguez, Anthony; Lawrimore, Jay; Zhang, Huai-min	03/19/2015	4:02 PM	Invitation: Update on Science Hiatus paper @ Fri Mar 20, 2015 11am 12pm	(b)(5)	Fully Withheld	Duplicate of page 6.

263	Huang, Boyin	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/05/2014	2:20 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Fully Withheld	NOAA scientist explaining how he will analyze data for development of the paper and explaining next steps by another scientist for the same.
265	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/20/2014	7:53 AM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to question from another scientist and offering personal opinion on data for the paper.
265-266	McMahon, James	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	3:51 PM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist asking another scientist to write up a description of the draft analysis to include in the paper and sharing update on draft data analysis and draft figure for development of the paper.
266	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:47 PM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist sharing draft data analysis and explaining data analysis for the development of the paper.
266-267	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:46 PM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist sharing draft data analysis and draft figures for development of the paper. Scientist is also discussing his next steps for working on the draft paper.
270	Karl, Thomas R.	Zhang, Huai-min; McMahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:21 AM	Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Fully Withheld	Text of email is partially cut off. Email is duplicate of full email found on page 42.
271	Zhang, Huai-min	Lawrimore, Jay; Karl, Thomas R.; Huang, Boyin; McMahon, James; Menne, Matthew; Vose, Russell	11/13/2014	10:42 AM	Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Fully Withheld	NOAA scientist sharing edits he made to the paper the in preparation of meeting to discuss the paper.
272	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/20/2014	7:53 AM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 265.

272	Mcmahon, James	Zhang, Huai-min; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	3:51 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 265-266.
272	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:47 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 266.
272-273	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:46 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 266-267.
273	Karl, Thomas	Zhang, Huai-min; Mcmahon, James; Huang, Boyin; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/20/2014	7:59 AM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist discussing writing of methods section for data analysis methods to use in the paper.
273	Lawrimore, Jay	Karl, Thomas R.; Zhang, Huai-min; Mcmahon, James; Huang, Boyin; Menne, Matthew; Vose, Russell	11/20/2014	10:39 AM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist is offering his opinion of the best approach to take in the paper and sharing proposed references to use in the paper. Text of email here is partially cut off but full text can be found on page 350.
275-276	Zhang, Huai-min	Menne, Matthew; Mcmahon, James; Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Vose, Russell	12/03/2014	10:50 AM	Trend plots	(b)(5)	Fully Withheld	Duplicate of pages 257-259.
280	Zhang, Huai-min	Mcmahon, James; Arguez, Anthony; Karl, Thomas R.	03/25/2015	10:52 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of page 245.
280	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin; Mcmahon, James; Arguez, Anthony	03/25/2015	11:17 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of pages 245-246.
281	Zhang, Huai-min	Karl, Thomas R.; Huang, Boyin; Mcmahon, James; Arguez, Anthony	03/25/2015	11:40 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of page 246.
281	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin; Mcmahon, James; Arguez, Anthony	03/25/2015	11:52 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of page 246.
281	Karl, Thomas R.	Zhang, Huai-min	03/25/2015	12:05 PM	Fwd: new comparisons	(b)(5)	Fully Withheld	NOAA scientist asking another scientist about potential references to use in developing methods for data analysis for the paper.

281-282	Zhang, Huai-min	Zhang, Huai-min; Huang, Boyin	03/25/2015	12:19 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist sharing sharing potential references to use in developing methods for data analysis for the paper.
282	Karl, Thomas R.	Zhang, Huai-min	03/25/2015	12:56 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist inquiring about status of data analysis to be used in development of the paper.
282	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin	03/25/2015	12:58 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist inquiring about status of data analysis to be used in development of the paper.
282	Zhang, Huai-min	Karl, Thomas R.	03/25/2015	12:59 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist discussing sharing of draft data analysis for the development of the paper. Scientist discusses next steps he will take regarding the paper.
282	Zhang, Huai-min	Karl, Thomas R.; Huang, Boyin	03/25/2015	12:59 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist discussing sharing of draft data analysis for the development of the paper.
282	Karl, Thomas R.	Zhang, Huai-min	03/25/2015	1:03 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist asking another scientist about data analysis methods used in the development of the paper.
283	Zhang, Huai-min	Karl, Thomas R.	03/25/2015	1:15 PM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist responding to question about data analysis methods used in development of the paper and awaiting information on another method from another scientist.
283	Huang, Boyin	Zhang, Huai-min; Karl, Thomas R.	03/26/2015	8:56 AM	Fwd: new comparisons	(b)(5)	Partially Redacted	NOAA scientist responding to question about data analysis methods used in draft of the paper.
285	Huang, Boyin	Karl, Thomas R.; Vose, Russell	05/05/2015	8:22 AM	Reference	(b)(5)	Fully Withheld	NOAA scientist sharing draft data analysis and potential references on methods for data analysis to be conducted for the paper.
287	Tepel, Mackenzie	Karl, Thomas R.	5/21/2015	3:45 PM	Re: FYI . . . Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA affiliate discussing the agency's climate change research and developing agency's presentation for Congress.

287	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; O'Connor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	5/21/2015	2:54 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 116.
287	Sessing, Janice	Karl, Thomas R.	5/21/2015	2:41 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA affiliate discussing the agency's climate change research and developing agency's presentation for Congress.
287	Karl, Thomas R.	Sessing, Janice	5/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 143.
287	Sessing, Janice	Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Karl, Thomas R.; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	6:28 PM	Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA affiliate discussing the agency's climate change research and developing agency's presentation for Congress.
289	Vincent, Katy	Karl, Thomas R.	06/03/2015	1:26 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	NOAA affiliate discussing plan for communications and press release in preparation for publication of the paper.
289-290	Karl, Thomas R.	Vincent, Katy	06/03/2015	1:34 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	NOAA scientist discussing plan for communications with NOAA affiliate and press release in preparation for publication of the paper. Scientist is explaining data and methods in order to create public communications materials.
290	Vincent, Katy	Karl, Thomas R.	06/03/2015	2:21 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	NOAA affiliate discussing plan for communications and press release in preparation for publication of the paper.

290	Karl, Thomas R.	Vincent, Katy	06/03/2015	3:29 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	NOAA scientist discussing plan for communications and press release in preparation for publication of the paper.
290	Vincent, Katy	Karl, Thomas R.	06/03/2015	3:31 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	NOAA affiliate discussing plan for communications and press release in preparation for publication of the paper.
291	Karl, Thomas R.	Holdren, John P.	06/04/2015	10:16 AM	Acceptance of your Science Manuscript aaa5632	(b)(5)	Partially Redacted	NOAA scientist offering opinion on temperature trends assessment and potential future research needs and inquiring about the same.
292	Huang, Boyin	Cowtan, Kevin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	9:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	NOAA scientist responding to data analysis shared by outside scientist as relevant to paper. NOAA scientist is sharing his interpretations and asking for clarification on data analysis and conclusions reached by outside scientist. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.
292-293	Cowtan, Kevin	Huang, Boyin	06/02/2015	5:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Outside scientist sharing data analysis he conducted on datasets relevant to the analysis presented in the paper. Scientist is sharing his interpretations and discussing his conclusions. Scientist notes he was contacted by the Journal Science for comment on the NOAA paper. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.

294-295	Karl, Thomas R.	Huang, Boyin; Cowtan, Kevin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	9:37 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	NOAA scientist responding to data analysis shared by outside scientist and explaining how data corrections in the paper were derived. NOAA scientist is sharing his interpretations with the outside scientist and other NOAA scientists and asking for clarification on data analysis and conclusions reached by outside scientist. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.
295	Cowtan, Kevin	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	3:25 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Outside scientist is discussing interpretations and conclusions as relevant to analysis in the paper. Scientist is sharing his interpretations and asking NOAA scientists for clarification on data analysis. Scientist references additional, relevant ongoing research. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.
295-296	Karl, Thomas R.	Cowtan, Kevin; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Tanner, Michael; Privette, Jeff	06/02/2015	3:33 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	NOAA scientist acknowledges further ongoing work of outside scientist, indicates that the work would be relevant to inform future NOAA processes to update dataset methodology, and seeks thoughts from outside scientist regarding implications of other scientists' work.
296	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:36 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Outside scientist commits to continuing the conversation with NOAA scientists regarding ongoing work and noting the further analysis he plans to do relevant to the analysis in the paper in order to provide comment on the paper.

296	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:57 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Outside scientist sharing further analysis he conducted relevant to the analysis in the paper. Scientist is sharing his interpretations and discussing the conclusions he made. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.
296	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; Lawrimore, Jay; Vose, Russell; Peterson, Thomas C.; Arguez, Anthony; Menne, Matthew; McMahon, James	06/02/2015	4:04 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	NOAA scientist forwarding to other NOAA scientists the comments and explanation of further analysis from outside scientist relevant to the analysis in the paper. NOAA scientist provides translation of short-hand used by the outside scientist. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.
296-297	Cowtan, Kevin	Huang, Boyin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Ruedy, Reto	06/07/2015	3:08 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Outside scientist sharing further data analysis he conducted on specific data sets as relevant to the paper. Scientist is sharing his interpretations and discussing the conclusions he made for NOAA's consideration. Surrounding records indicate that outside scientist's work would be considered in future agency processes to update the datasets and related analysis.
298-299	Peterson, Thomas C.	Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin; Zhang, Huai-min	03/16/2015	10:50 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of pages 247-248.
299-300	Lawrimore, Jay	Peterson, Thomas C.; Huang, Boyin; Zhang, Huai-min	03/16/2015	2:47 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of page 249.
300	Zhang, Huai-min	Peterson, Thomas C.; Menne, Matthew; McMahon, James; Vose, Russell; Karl, Thomas R.; Lawrimore, Jay; Arguez, Anthony; Huang, Boyin	03/19/2015	1:34 PM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of page 6. Here email addresses are partially cut off but full email is on page 6.

302	Zhang, Huai-min	Mcmahon, James; Karl, Thomas R.; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	1:56 PM	Re: Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 42.
302	Karl, Thomas R.	Zhang, Huai-min; Mcmahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:21 AM	Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Partially Redacted	Duplicate of page 42.
302	Zhang, Huai-min	Karl, Thomas R.; Mcmahon, James; Menne, Matthew; Vose, Russell; Lawrimore, Jay; Huang, Boyin	11/05/2014	8:27 AM	Latest version of EOS attached for tomorrow's discussion. Note this is now a Max word count!	(b)(5)	Fully Withheld	Email text is partially cut off. Duplicate of full text of email found on page 41.
303-304	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:46 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 266-267.
304	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:47 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 266.
304	Mcmahon, James	Mcmahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	3:51 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 265-266.
304	Zhang, Huai-min	Mcmahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/20/2014	7:53 AM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 265.
304	Karl, Thomas	Zhang, Huai-min; Mcmahon, James; Huang, Boyin; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/20/2014	7:59 AM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 273.
307	Zhang, Huai-min	Menne, Matthew; Mcmahon, James; Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Vose, Russell	12/3/2014	10:50 AM	Re: Trend plots	(b)(5)	Fully Withheld	Email text is partially cut off. Duplicate of full text of email found on pages 257-259.

309	Huang, Boyin	Lawrimore, Jay; Peterson, Thomas C.; Zhang, Huai-min; McMahon, James; Karl, Thomas R.; Vose, Russell; Menne, Matthew	03/06/2015	8:33 AM	SST trend experiment	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is offering his interpretation of experiments conducted in development of the paper.
309-310	Peterson, Thomas C.	Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahon, James; Karl, Thomas R.; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	8:50 AM	SST trend experiment	(b)(5)	Fully Withheld	NOAA scientist sharing references in developing the paper.
310	Karl, Thomas R.	Peterson, Thomas C.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahon, James; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	9:00 AM	SST trend experiment	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is offering his opinion in developing the paper.
310-311	Peterson, Thomas C.	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahon, James; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	9:02 AM	SST trend experiment	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to another NOAA scientist and offering his interpretation of data analysis used in developing the paper.
311	Karl, Thomas R.	Peterson, Thomas C.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahon, James; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	9:21 AM	SST trend experiment	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is asking other NOAA scientists for clarification regarding data analysis for development of the paper.
315	McMahon, James	Menne, Matthew	03/24/2015	12:32 PM	Science paper	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is asking other NOAA scientist for clarification regarding data analysis for development of the paper.
315	Menne, Matthew	McMahon, James	03/24/2015	12:35 PM	Science paper	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to inquiring and explaining his understanding on data analysis for development of the paper.
315	McMahon, James	Menne, Matthew	03/24/2015	12:36 PM	Science paper	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is responding to a question from another NOAA scientists regarding data analysis for development of the paper.

317	Zhang, Huai-min	Mcmahon, James; Arguez, Anthony; Karl, Thomas R.	03/25/2015	10:52 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of page 245.
317	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin; Mcmahon, James; Arguez, Anthony	03/25/2015	11:17 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of pages 245-246.
318	Zhang, Huai-min	Karl, Thomas R.; Huang, Boyin; Mcmahon, James; Arguez, Anthony	03/25/2015	11:40 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of page 246.
318	Karl, Thomas R.	Zhang, Huai-min; Huang, Boyin; Mcmahon, James; Arguez, Anthony	03/25/2015	11:52 AM	new comparisons	(b)(5)	Fully Withheld	Duplicate of page 246.
318	Zhang, Huai-min	Zhang, Huai-min; Huang, Boyin	03/25/2015	12:19 PM	Fwd: new comparisons	(b)(5)	Fully Withheld	Duplicate of pages 281-282.
320	Huang, Boyin	Karl, Thomas R.; Vose, Russell	05/05/2015	8:22 AM	Reference	(b)(5)	Fully Withheld	Duplicate of page 285.
322	Sessing, Janice	Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Karl, Thomas R.; Vincent, Katy; Gregg, Margarita; Mcmahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	6:28 PM	Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 287.
324	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; Mcmahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 143.
324	Sessing, Janice	Karl, Thomas R.; Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; Mcmahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	6:56 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA affiliate discussing the agency's climate change research and developing the agency's presentation for Congress.

324	Vose, Russell	Karl, Thomas R.; Sessing, Janice; Hammer, Gregory; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	7:47 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA scientist discussing the agency's climate change research and developing the agency's presentation for Congress.
324	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 143.
325	Sessing, Janice	Karl, Thomas R.	5/21/2015	2:41 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 287. Here email is partially cut off, but full text can be found on page 287.
325	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; OConnor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	05/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 143.
325	Sessing, Janice	Gregg, Margarita; Karl, Thomas R.	5/11/2015	6:28 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 287.
330	Vincent, Katy	Karl, Thomas R.	06/03/2015	1:26 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	Duplicate of page 289.
330-331	Vincent, Katy	Karl, Thomas R.	6/3/2015	2:21 PM	Re: Outstanding items for reporters	(b)(5)	Fully Withheld	Duplicate of page 290.

331	Karl, Thomas R.	Vincent, Katy	06/03/2015	1:34 PM	Outstanding items for reporters	(b)(5)	Fully Withheld	Duplicate of pages 290-291.
331	Vincent, Katy	Karl, Thomas R.	6/3/2015	3:31 PM	Re: Outstanding items for reporters	(b)(5)	Fully Withheld	Duplicate of page 291.
334-335	Meehl, Gerald	Karl, Thomas R.	11/28/2014	5:45 PM	Jerry this is not finished. We have another figure to add and describe, but it will give you an idea of where we are going with this	(b)(5)	Fully Withheld	Duplicate of pages 66-67.
335	Zhang, Huai-min	Karl, Thomas R.; Huang, Boyin; Menne, Matthew; Vose, Russell; McMahon, James; Lawrimore, Jay	12/1/2014	7:48 PM	Re: Our Science paper	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is discussing how to respond to reviewer feedback and is offering his opinion of the best approach to take for development of the paper.
338	Matthews, Jessica	Peterson, Thomas	3/6/2015	8:32 AM	Fwd: new confidence intervals	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is discussing data analysis methodology to be used in development of the paper.
339	Peterson, Thomas C.	Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahon, James; Karl, Thomas R.; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	8:50 AM	SST trend experiment	(b)(5)	Fully Withheld	Email addresses are partially cut off. Duplicate of full email on pages 309-310.
339	Karl, Thomas R.	Peterson, Thomas C.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahon, James; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	9:00 AM	SST trend experiment	(b)(5)	Fully Withheld	Duplicate of page 310.
340	Peterson, Thomas C.	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahon, James; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	9:02 AM	SST trend experiment	(b)(5)	Fully Withheld	Duplicate of page 310.

340	Karl, Thomas R.	Peterson, Thomas C.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; McMahon, James; Vose, Russell; Menne, Matthew; Matthews, Jessica	03/06/2015	9:21 AM	SST trend experiment	(b)(5)	Fully Withheld	Duplicate of page 311.
341	Peterson, Thomas C.	Huang, Boyin; Karl, Thomas R.; Arguez, Anthony; McMahon, James; Zhang, Huai-min; Menne, Matthew; Vose, Russell; Matthews, Jessica	03/20/2015	9:55 AM	Re: Science-haitus-supplement.docx - Invitation to edit	(b)(5)	Fully Withheld	Duplicate of page 243.
342	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; O'Connor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	5/21/2015	2:54 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 116.
342	Sessing, Janice	Karl, Thomas R.	5/21/2015	2:41 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 287.
342	Karl, Thomas R.	Sessing, Janice	5/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA scientist discussing the agency's climate change research and developing the agency's presentation for Congress.
342	Sessing, Janice	Gregg, Margarita; Karl, Thomas R.	5/11/2015	6:28 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Email is partially cut off. Duplicate of full email found on page 287.

343, 348	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; Lawrimore, Jay; Vose, Russell; Peterson, Thomas C.; Arguez, Anthony; Menne, Matthew; McMahon, James	06/02/2015	4:04 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
343	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:57 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
343	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	20:36	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
343, 347	Karl, Thomas R.	Cowtan, Kevin; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Tanner, Michael; Privette, Jeff	06/02/2015	20:33	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 295-296.
343-344	Cowtan, Kevin	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	3:25 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 295.
344, 347	Karl, Thomas R.	Huang, Boyin; Cowtan, Kevin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	14:37	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 294.
344	Huang, Boyin	Cowtan, Kevin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	9:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 295.
344-345	Cowtan, Kevin	Huang, Boyin	06/02/2015	5:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 292-293.
348	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:46 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 266-267.
350	Zhang, Huai-min	Lawrimore, Jay; Karl, Thomas, R.; McMahon, James; Huang, Boyin; Menne, Matthew; Vose, Russell	11/21/2014	9:04 AM	Re: article update	(b)(5)	Fully Withheld	NOAA scientist sharing and discussing drafts for development of the paper, including status of the paper.

350	Lawrimore, Jay	Karl, Thomas R.; Zhang, Huai-min; McMahon, James; Huang, Boyin; Menne, Matthew; Vose, Russell	11/20/2014	10:39 AM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 273.
350	Karl, Thomas R.	Zhang, Huai-min; McMahon, James; Huang, Boyin; Menne, Matthew; Vose, Russell; Lawrimore, Jay	11/20/2014	7:59 AM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 273.
350	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/20/2014	7:53 AM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 274.
350-351	McMahon, James	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	3:51 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 265-266.
351	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:46 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of page 266.
351	Zhang, Huai-min	McMahon, James; Huang, Boyin; Menne, Matthew; Karl, Thomas R.; Lawrimore, Jay; Vose, Russell	11/19/2014	12:47 PM	Re: article update	(b)(5)	Fully Withheld	Duplicate of pages 266-267.
353-354	Zhang, Huai-min	Menne, Matthew; McMahon, James; Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Vose, Russell	12/3/2014	10:50 AM	Re: Trend plots	(b)(5)	Fully Withheld	Duplicate of pages 257-259.
362-363	Zhang, Huai-min	McMahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:42 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	NOAA scientist analyzing climate and temperature datasets. Scientist is discussing how to respond to reviewer feedback and is offering his opinion of the best approach to take in the paper as well as providing information on data for purposes of discussion.
363-364	Huang, Boyin	McMahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:48 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	NOAA scientist explaining data that he is sharing for development of the paper.

365-366	Zhang, Huai-min	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:42 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 362-363.
368	Huang, Boyin	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:48 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 363-364.
368-369	Zhang, Huai-min	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:24 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 362-363.
371	Huang, Boyin	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:48 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 363-364.
371-374	Zhang, Huai-min	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:42 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 362-363.
377-378	Zhang, Huai-min	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Huang, Boyin; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:42 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 362-363.
378	Huang, Boyin	Mcmahon, James; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Zhang, Huai-min; Menne, Matthew; Arguez, Anthony; Tanner, Michael; Karl, Thomas R.	3/13/2015	8:48 AM	Re: Preparing a Report for Science ID: aaa5632	(b)(5)	Fully Withheld	Duplicate of pages 363-364.

379	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	12:38 PM	Re: your new science paper	(b)(5)	Fully Withheld	Outside scientist contacts NOAA scientist, noting that he was contacted for comment on the paper, referencing prior work bearing on the issues reviewed in the paper, and explaining the analysis used in the outside scientist's work. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
379-380	Karl, Thomas R.	Trenberth, Kevin; Vose, Russell; Lawrimore, Jay; Peterson, Thomas; Huang, Boyin; Zhang, Huai-min; McMahon, James; Menne, Matthew; Arguez, Anthony	6/1/2015	1:19 PM	Re: your new science paper	(b)(5)	Fully Withheld	NOAA scientist explains scope of hiatus paper to outside scientist and noting relationship to existing literature. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
380	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	1:40 PM	Re: your new science paper	(b)(5)	Fully Withheld	Outside scientist provides comments in response to hiatus paper including evaluation of significance of the paper. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
380-381	Karl, Thomas R.	Trenberth, Kevin	6/1/2015	2:26 PM	Re: your new science paper	(b)(5)	Fully Withheld	NOAA scientist responds to various points made in the outside scientist's comments, including pointing to figure in paper. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
381-382	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	2:57 PM	Re: your new science paper	(b)(5)	Fully Withheld	Outside scientist clarifies data underlying prior work, clarifies one of his comments on hiatus paper, and explains that reason for sharing the comments was to help inform agency process of developing public communications relating to paper.

382	Karl, Thomas R.	Trenberth, Kevin	6/1/2015	3:14 PM	Re: your new science paper	(b)(5)	Fully Withheld	NOAA scientist compares conclusions in outside scientist's prior work with conclusions in hiatus paper. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
382	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	2:57 PM	Re: your new science paper	(b)(5)	Fully Withheld	Duplicate of pages 381-382.
382	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	3:37 PM	Re: your new science paper	(b)(5)	Fully Withheld	Outside scientist cites figure in prior work to support his position. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
382	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	3:40 PM	Re: your new science paper	(b)(5)	Fully Withheld	Outside scientist cites additional figures from another prior work to support his position. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
382-383	Karl, Thomas R.	Trenberth, Kevin	6/1/2015	3:49 PM	Re: your new science paper	(b)(5)	Fully Withheld	NOAA scientist requests clarification of finding from outside scientist's prior work and suggests potential explanation. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.
383	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	3:37 PM	Re: your new science paper	(b)(5)	Fully Withheld	Duplicate of email at page 382.
383-384	Trenberth, Kevin	Karl, Thomas R.	6/1/2015	3:57 PM	Re: your new science paper	(b)(5)	Fully Withheld	Outside scientist provides additional explanation and cites figures in prior work regarding Arctic temperatures. Outside scientist also opines on other scientists' work and notes possible interactions and questions for future research. Surrounding records indicate outside scientist intended to help inform agency process of developing public communications relating to paper.

385-386	Peterson, Thomas	Kennedy, John; Huang, Boyin	3/9/2015	10:01 AM	Re: SST adjustment question	(b)(5)	Fully Withheld	NOAA scientist contacts outside scientist to request insight and clarification regarding the outside scientist's work on data corrections in sea surface temperature data set and how such corrections may relate to the alleged hiatus in order to better understand data analysis as related to the alleged hiatus for development of the paper.
389-390	Peterson, Thomas	Kennedy, John; Huang, Boyin	3/9/2015	3:41 PM	Re: SST adjustment question	(b)(5)	Partially Redacted	NOAA scientist responds to clarification and analysis from outside scientist by characterizing preliminary finding and discussing time scales.
396	Huang, Boyin	Cowtan, Kevin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	9:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 292.
396-397	Cowtan, Kevin	Huang, Boyin	06/02/2015	5:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 292-293.
398-399	Cowtan, Kevin	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	3:25 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 295.
399	Karl, Thomas R.	Huang, Boyin; Cowtan, Kevin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	14:37	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 294-295.
399	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:36 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
399-400	Karl, Thomas R.	Cowtan, Kevin; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Tanner, Michael; Privette, Jeff	06/02/2015	20:33	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 295-296.
400	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:57 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.

400	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; Lawrimore, Jay; Vose, Russell; Peterson, Thomas C.; Arguez, Anthony; Menne, Matthew; McMahan, James	06/02/2015	4:04 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
400	Cowtan, Kevin	Huang, Boyin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Ruedy, Reto	06/07/2015	3:08 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 296-297.
402	Peterson, Thomas	Kennedy, John; Huang, Boyin	3/9/2015	10:01 AM	Re: SST adjustment question	(b)(5)	Partially Redacted	Duplicate of pages 385-386.
403-404	Peterson, Thomas	Kennedy, John; Huang, Boyin	3/9/2015	3:41 PM	Re: SST adjustment question	(b)(5)	Partially Redacted	Duplicate of pages 389-390.
407, 412	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; Lawrimore, Jay; Vose, Russell; Peterson, Thomas C.; Arguez, Anthony; Menne, Matthew; McMahan, James	06/02/2015	4:04 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
407	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:57 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
407	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	20:36	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
407, 411	Karl, Thomas R.	Cowtan, Kevin; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Tanner, Michael; Privette, Jeff	06/02/2015	20:33	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 295-296.
407-408	Cowtan, Kevin	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	3:25 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 295.
408, 411	Karl, Thomas R.	Huang, Boyin; Cowtan, Kevin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	14:37	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 294.

408	Huang, Boyin	Cowtan, Kevin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	9:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 292.
408-409	Cowtan, Kevin	Huang, Boyin	06/02/2015	5:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 292-293.
413, 418	Karl, Thomas R.	Huang, Boyin; Zhang, Huai-min; Lawrimore, Jay; Vose, Russell; Peterson, Thomas C.; Arguez, Anthony; Menne, Matthew; McMahon, James	06/02/2015	4:04 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
413	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	3:57 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
413	Cowtan, Kevin	Karl, Thomas R.	06/02/2015	20:36	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 296.
413, 417	Karl, Thomas R.	Cowtan, Kevin; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew; Tanner, Michael; Privette, Jeff	06/02/2015	20:33	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 295-296.
413-414	Cowtan, Kevin	Karl, Thomas R.; Huang, Boyin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	3:25 PM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 295.
414, 417	Karl, Thomas R.	Huang, Boyin; Cowtan, Kevin; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	14:37	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of pages 294.
414	Huang, Boyin	Cowtan, Kevin; Karl, Thomas R.; Lawrimore, Jay; Zhang, Huai-min; Vincent, Katy; Menne, Matthew	06/02/2015	9:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 292.
414-415	Cowtan, Kevin	Huang, Boyin	06/02/2015	5:24 AM	Re: ERSST version 4	(b)(5)	Fully Withheld	Duplicate of page 292-293.

422	Karl, Thomas R.	Tepel, Mackenzie; Sessing, Janice; Vose, Russell; Vincent, Katy; Leslie, John;	5/21/2015	4:08 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	NOAA scientist discussing the agency's climate change research and developing the agency's presentation for Congress.
422	Tepel, Mackenzie	Karl, Thomas R.	5/21/2015	3:45 PM	Re: FYI . . . Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of 287.
422	Karl, Thomas R.	Sessing, Janice; Hammer, Gregory; Vose, Russell; Lind, Clark; O'Connor, Megan; Vincent, Katy; Gregg, Margarita; McMahon, James; Johnson, Cherish; Donnellon, James; Hampton, Karl	5/21/2015	2:54 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 116.
422	Sessing, Janice	Karl, Thomas R.	5/21/2015	2:41 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 287.
422	Karl, Thomas R.	Sessing, Janice	5/11/2015	6:44 PM	Re: Briefing request from House Approps staff: NOAA: April 2015 was 17th warmest April on record for contiguous U.S.	(b)(5)	Fully Withheld	Duplicate of page 287.

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3390-3395	Category A	(b)(5)	
3397-3404	Category A	(b)(5)	
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3602-3610	Category A	(b)(5)	
3621-3633	Category A	(b)(5)	
3638-3643	Draft graphs and charts of SST data to be used in development of the paper.	(b)(5)	
3669-3672	Category A	(b)(5)	
3672-3688	Category A	(b)(5)	
3689-3692	Draft graphs of SST and land temperature data to be used in development of the paper.	(b)(5)	
3693-3694	Duplicates of emails processed elsewhere	(b)(5)	
3695-3703	Category E	(b)(5)	
3705-3719	Category A	(b)(5)	
3720-3730	Category C	(b)(5)	
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3735-3744	Category A	(b)(5)	
3745-3755	Category C	(b)(5)	
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3799-3809	Category C	(b)(5)	

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3858 -3868	Category C	(b)(5)	
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4297-4301	Category A	(b)(5)	
4302-4307	Category C	(b)(5)	
4308	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
4309-4314	Category D	(b)(5)	
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4437-4447	Category A	(b)(5)	
4448-4453	Category A	(b)(5)	
4454-4464	Category C	(b)(5)	
4465-4475	Category A	(b)(5)	
4476-4486	Category A	(b)(5)	
4487-4496	Category A	(b)(5)	
4497-4502	Category A	(b)(5)	
4503	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
4504-4509	Category C	(b)(5)	
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4520-4525	Category A	(b)(5)	
4533-4543	Category A	(b)(5)	
4544-4549	Category A	(b)(5)	

4550	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
4551-4556	Category D	(b)(5)	
4557-4567	Category A	(b)(5)	
4568-4573	Category A	(b)(5)	
4574-4578	NOAA draft communications plan regarding publication of the paper.	(b)(5)	
4579-4589	Category A	(b)(5)	
4591-4599	Draft FAQs for communications plan related to release of paper.	(b)(5)	
4600-4607	Category A	(b)(5)	
4614-4619	Category C	(b)(5)	
4620-4630	Category A	(b)(5)	
4631-4636	Category A	(b)(5)	
4637-4639	Category A	(b)(5)	
4640-4650	Category C	(b)(5)	
4651-4654	Draft chart of MLOST data created by NOAA scientists to be used in development of the paper.	(b)(5)	
4655-4665	Category A	(b)(5)	
4666-4675	Category A	(b)(5)	
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4737-4750	Category A	(b)(5)	
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4767-4770	Category A	(b)(5)	
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5335-45	Category A	(b)(5)	
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5360-70	Category C	(b)(5)	
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5461-71 PR	Category C	(b)(5)	
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5477-81	Category E	(b)(5)	
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5535-45 PR	Category C	(b)(5)	
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5666-71	Category C	(b)(5)	
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5681-5688	Category A	(b)(5)	
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5690-95	Category C	(b)(5)	
5696-5706	Category A	(b)(5)	
5707-5712	Category A	(b)(5)	
5713-5723	Category A	(b)(5)	
5724-5729	Category A	(b)(5)	
5730	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
5731-36	Category C	(b)(5)	
5738-41	Draft charts of annual global temperatures for use in development of the paper.	(b)(5)	
5742-5752	Category A	(b)(5)	
5753-5758	Category A	(b)(5)	
5781-5791	Category A	(b)(5)	
5792-5797	Category A	(b)(5)	
5798-5808	Draft powerpoint by author presenting information on global temperature and presenting data analysis conducted by NOAA scientists for the paper.	(b)(5)	
5809-11	Category C	(b)(5)	
5812-5822	Category A	(b)(5)	
5823-5828	Category A	(b)(5)	
5829-5837	Category A	(b)(5)	
5840-5849	Category C	(b)(5)	
5850-5858	Category C	(b)(5)	
5859-5860	Category C	(b)(5)	
5861-5865	Category C	(b)(5)	
5866-5868	Category C	(b)(5)	
5869-5879	Category A	(b)(5)	
5880-5890	Category A	(b)(5)	
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5919-5924	Category A	(b)(5)	
5925-45	Category C	(b)(5)	
5946-5956	Category A	(b)(5)	
5957-5962	Category A	(b)(5)	
5963-75	Category C	(b)(5)	

5976-5986	Category A	(b)(5)	
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6008-6016	Category C	(b)(5)	
6017-6027	Category A	(b)(5)	
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6068-6071	Category C	(b)(5)	
6072-6074	Category C	(b)(5)	
6075-6077	Category C	(b)(5)	
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6111-6133	Category A	(b)(5)	
6134-45	Category C	(b)(5)	
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6339-57	Category C	(b)(5)	

6358	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
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6408-09	Category A	(b)(5)	
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6470-6478	Category A	(b)(5)	
6479-6488	Category C	(b)(5)	
6489-6499	Draft graphs of SST data created by NOAA scientists to be used in development of the paper.	(b)(5)	
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6509-6532	Category A	(b)(5)	
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6538-6545	Category A	(b)(5)	
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6640-6649	Category A	(b)(5)	
6650-6671	Category A	(b)(5)	
6672-8882	Category E	(b)(5)	
6683-6699	Category A	(b)(5)	
6700-6710	Category C	(b)(5)	
6711	Category B	(b)(5)	
6712-6720	Category C	(b)(5)	
6721-6731	Category A	(b)(5)	
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6766-6761	Category A	(b)(5)	

6772	Cover letter exchanged from Tom Karl to Science magazine in response to peer review comments.	(b)(6)	Released in part; information redacted was Tom Karl's cell phone number
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7424-7434	Category C	(b)(5)	
7435-7445	Category C	(b)(5)	
7446-7450	Draft FAQs for communications plan related to publication of paper.	(b)(5)	
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7522-7535	Category A	(b)(5)	
7536-7551	Category A	(b)(5)	
7552-7559	Category A	(b)(5)	
7560-7567	Category A	(b)(5)	
7568-7573	Category A	(b)(5)	
7574-7582	Category A	(b)(5)	
7583-7593	Category A	(b)(5)	
7594-7604	Category A	(b)(5)	

7605-7613	Category A	(b)(5)	
7614-7623	Category A	(b)(5)	
7624-7633	Category A	(b)(5)	
7634-7643	Category A	(b)(5)	
7644-7653	Category A	(b)(5)	
7654-7664	Category A	(b)(5)	
7665-7674	Category A	(b)(5)	
7675-7689	Category A	(b)(5)	
7690-7700	Category A	(b)(5)	
7701-7712	Category A	(b)(5)	
7713-7724	Category A	(b)(5)	
7725-7736	Category A	(b)(5)	
7737-7739	Category A	(b)(5)	
7740-7751	Category A	(b)(5)	
7752-7764	Category A	(b)(5)	
7765-7777	Category A	(b)(5)	
7778-7789	Category A	(b)(5)	
7790-7802	Category A	(b)(5)	
7803-7815	Category A	(b)(5)	
7816-7823	Category A	(b)(5)	
7824-7832	Category A	(b)(5)	
7833-7842	Category A	(b)(5)	
7843-7848	Category A	(b)(5)	
7849-7854	Category A	(b)(5)	
7855-7860	Category A	(b)(5)	
7861-7866	Category A	(b)(5)	
7867-7873	Category A	(b)(5)	
7874-7877	Category A	(b)(5)	

Categories	Descriptions
A	Draft of paper "Possible artifacts of data biases in the recent global surface warming hiatus" by Thomas Karl, et al. as well as the drafts of the "supplementary materials" that accompanied the paper and were made available for download by Science upon publication of the paper. Non-final, pre-decisional draft contains opinions and recommendations of one or more NOAA authors; draft language, data, and data interpretation for consideration by other NOAA authors; comments on previous drafts of the paper, and/or responses to other NOAA authors' or
B	Drafts of cover letter exchanged between authors, from Tom Karl to Science magazine, in response to peer review comments.

C	Draft responses to external peer review. Draft responses exchanged among NOAA authors to determine how best to respond to comments provided by external peer reviewers. Pre-decisional discussions that reflect proposed responses to peer review comments. Drafts contain opinions and recommendations of one or more NOAA authors; draft language, data, and data interpretation for consideration by other authors; comments on previous drafts of the responses to peer reviewers; and/or responses to other authors' comments on earlier drafts of the responses to peer reviewers.
D	Responses to external peer reviews. NOAA's Responses to constructive criticism and advice submitted by scientific experts as part of the confidential peer review process for papers submitted to scientific journals. Responses were submitted as part of process to assist in authors' deliberations whether and in what form to publish the paper.
E	Questions for discussion and draft graphs circulated by one author and created for author discussions during development of the paper.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

Exhibit 2 to Declaration of Mark Graff



May 27, 2016

Mr. Bill Marshall
425 Third St., SW
Suite 800
Washington, DC 20024

Re: FOIA Request No. DOC-NOAA-2016-000351

Dear Mr. Marshall:

This letter is in response to your Freedom of Information Act (FOIA) request entered into FOIAOnline on December 15, 2015, for certain records of the National Oceanic and Atmospheric Administration (NOAA). Pursuant to the Joint Status Report filed on March 22, 2016 in *Judicial Watch v. U.S. Department of Commerce*, 1:15-cv-2088-CRC (D.D.C.), and the Court's March 24, 2016 Minute Order in that action, on April 15, 2016, we released in their entirety 122 pages of records that are responsive to item 4 of your FOIA request, as modified by the March 1, 2016 Joint Status Report.

Pursuant to the March 22, 2016 Status Report and the Court's March 24, 2016 Minute Order, this letter responds to items 1-3 of your request, as modified by the March 1, 2016 Joint Status Report. We are providing 242 pages, including:

- 102 pages of records that we are releasing in their entirety.
- 57 pages of records that have been partially redacted under FOIA Exemption (b)(5), 5 U.S.C. 552(b)(5), which exempts from disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." The redacted material is protected by the deliberative process privilege.
- 13 pages of records that contain redactions of non-responsive material.
- 17 pages of records that have been partially redacted under FOIA Exemption (b)(5) (deliberative process) and also contain redactions of non-responsive material.
- 3 pages of records that are partially redacted under FOIA Exemption (b)(5) and FOIA Exemption (b)(6), 5 U.S.C. 552(b)(6), which protects "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

In this release, we have also noted, on 50 separate pages, where pages of email chains have been withheld in their entirety as non-responsive or under a FOIA exemption. We are withholding in their entirety 8,013 pages of records under FOIA Exemption (b)(5) that are pre-decisional and deliberative, and protected under the deliberative process privilege. 7,877 of these pages are drafts and other documents. 136 of these pages are deliberative email communications. Because the request sought records of multiple custodians, there is a significant amount of duplicative material in the responsive records.

If you have any questions, your attorney may contact Kevin Snell, Trial Attorney, at 202-305-0924. Please be sure to refer to the civil action number, 1:15-cv-2088-CRC, and the FOIA Request Number, DOC-NOAA-2016-00351, in all correspondence regarding this case.

Sincerely,

A handwritten signature in blue ink that reads "Mark S. Paese". The signature is fluid and cursive, with the first name "Mark" being the most prominent part.

Mark S. Paese
Deputy Assistant Administrator
NOAA Satellite and Information Service

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,)	
425 Third Street, SW, Suite 800)	
Washington, D.C. 20024)	
)	
Plaintiff,)	
)	
v.	)	Civil Action No. 15-2088 (CRC)
)	
U.S. DEPARTMENT OF)	
COMMERCE,)	
1401 Constitution Avenue, NW)	
Washington, D.C. 20230)	
)	
Defendant.)	
_____)	

DECLARATION OF DR. RICHARD W. SPINRAD

1. I am Dr. Richard W. Spinrad, and I have been the Chief Scientist of the National Oceanic and Atmospheric Administration (NOAA) since May 9, 2014. As Chief Scientist, I provide policy and program direction for the agency’s science and technology priorities. I have 30 years of scientific and executive experience. At different points in my career, I have worked as a research scientist, including for the Navy; held faculty appointments at three universities; directed a national non-profit organization; and presided over a private company.

2. I am aware that the pending litigation regards NOAA’s decision to withhold certain substantive communications among scientists from its response to a request under the Freedom of Information Act (FOIA), in light of the exception from disclosure under FOIA that applies to material generated in connection with a “deliberative process.” At issue are email

discussions among NOAA scientists at the National Centers for Environmental Information (NCEI) who authored a report published in June 2015 addressing climate trends, as well as communications between those NOAA scientists and scientists located outside the federal government. I am, further, aware that a separate declaration from the NOAA FOIA Officer (Mark H. Graff) will address the particular facts of the specific report and specific communications at issue in this litigation.

3. I submit this declaration to describe more generally the harm that would result to our agency and to federal scientists if the deliberative communications among NOAA's scientists, or between NOAA's scientists and outside experts providing input to the agency's processes, were to be released. Such harm would result from release of either deliberative communications among federal scientists, or of deliberative communications between federal scientists and scientists outside the federal government (whom I refer to as "outside scientists"). Such outside scientists may work, for example, in academia, international data-collecting organizations, non-governmental research organizations, state agencies, or private industry.

4. My education includes a Bachelor of Arts degree (1975) in Earth and Planetary Sciences from The Johns Hopkins University in Baltimore, Maryland, and Master of Science (1978) and Doctoral degrees (1982) in oceanography from Oregon State University.

5. Prior to joining NOAA, I served as a Program Manager and Division Director with the United States Navy Office of Naval Research (1987 - 1994); the Executive Director for the Consortium for Oceanographic Research and Education, a non-profit research advocacy organization (1994 - 1999); and Technical Director (senior civilian) at the United States Navy Office of the Oceanographer of the Navy (1999 - 2003). In connection with my service, I was

awarded the U.S. Navy Distinguished Civilian Service Award, which is the highest civilian award given by the Navy.

6. From 2003 to 2010, I served as Assistant Administrator at NOAA in two sequential capacities, as head of the National Ocean Service and as head of NOAA's Office of Oceanic and Atmospheric Research.

7. I then served as Vice President for Research at Oregon State University in Corvallis, Oregon (2010 - 2014) before being appointed as NOAA's Chief Scientist.

8. Among my other duties during my career at NOAA, I have served as co-lead of the White House committee that developed the first national set of ocean research priorities and as the representative from the Department of Commerce to the White House Office of Science and Technology Policy (OSTP) committee addressing scientific integrity, culminating in guidance from OSTP in December 2010.

9. As NOAA's Assistant Administrator for Oceanic and Atmospheric Research (2005 - 2010), I directed the agency's programs in oceanography, atmospheric science, and climate science. I directly supervised significant research efforts including those relating to ocean exploration, the National Sea Grant College Program, and the Climate Program Office. I also supervised seven NOAA laboratories around the United States.

10. As NOAA's Assistant Administrator for Ocean Services and Coastal Zone Management (2003 - 2005), I directed the agency's navigation and coastal services, including the National Geodetic Survey, the Office of National Marine Sanctuaries, and the Office of Coastal Resource Management. As part of my duties, I represented the interests of the United States in

the establishment of a global tsunami warning system. I also served as the United States permanent representative to the United Nations' Intergovernmental Oceanographic Commission.

11. I have received several high honors during my tenure at NOAA, including Presidential Rank Awards from Presidents George W. Bush and Barack H. Obama.

12. During my career, I have belonged to several professional societies designed to advance research and education and to promote communication among the scientific community. Such organizations bring together scientists from different settings, including government, academia, and industry, recognizing their shared goals. I am a fellow of the American Meteorological Society, the Marine Technology Society, and the Institute of Marine Engineering, Science and Technology. I am the past president of the Oceanography Society and president-elect of the Marine Technology Society.

13. Because I have worked as a scientist in multiple settings, including NOAA, the Navy and in academia, I have a broad perspective on the key importance of collaboration to the scientific community. My experiences have included a broad array of types and intensities of collaboration. I have worked alongside researchers in the field and at sea, and have co-authored dozens of peer-reviewed publications with collaborators from all of the sectors identified above.

14. The heart of the scientific method is the formulation, refining, and testing of hypotheses using available facts, which must be gathered through research and then analyzed. Scientists pursuing a research objective may begin with only rough ideas or ideas that are not yet fully formed. Those ideas are then developed, tested, and revised as data are collected and interpreted. The possible interpretations are generated and tested in part through exchanges and

candid debates with peers inside and outside the federal government. The set of available information, and our understanding of it, evolves through this process.

15. Focusing on the work we do at NOAA, I would point to the exchange and debate among peers as the mechanism that allows us to ensure that the scientific products we develop and release to the public are robustly developed and accurately tested. Such rigorous vetting is critical to developing and releasing scientific information of the highest possible quality to inform the public and decision-makers.

16. When we are developing and refining hypotheses, then, we value input and feedback from the community of scientists who have expertise in the field relating to a particular project. The relevant expertise will likely not be located in just one organization, but most often will be shared among several different scientists, each of whom may have a specialized focus.

17. In seeking out expert feedback and input, scientists generally do not distinguish between colleagues who work within federal agencies and scientists who work in other settings. Rather, our scientific peers who have expertise to offer are generally considered as belonging to one scientific community that shares the overall goal of advancing scientific understanding in their fields. Sometimes experts located outside the federal government have a specialized area of expertise that the agency lacks, or they may be respected peers who can offer a second opinion.

18. Indeed, in some scientific fields (including climate science) there are only a limited number of scientists with the relevant, specialized expertise. Many of them are federal employees, and having a strong scientific team in-house enables our agencies to produce very high quality scientific products. Integrating the perspectives and information from outside scientists allows us to produce even more robust scientific products.

19. It is therefore commonplace, as a research project proceeds, for federal scientists to reach out to request feedback and input from colleagues both inside and outside the federal government who have relevant knowledge and expertise. As I noted above (§ 3), these colleagues may be located in such settings as academia, international data-collecting organizations, non-governmental organizations, or private industry, and may have a common history of collaborating with federal scientists on working groups and panels. These requests for input often lead to candid discussions and debates that can be thought of as a type of informal peer review that fulfills a valuable role in developing scientific thought and promoting scientific understanding. In an earlier era, such discussions were limited to conversations among scientists at irregular intervals, such as at professional society gatherings. The advent of electronic communications has facilitated more frequent and regular discussions, to the great advancement of science.

20. There is a general and well-established presumption, often implied rather than explicit, that such discussions are not intended to be, and will not be, shared with a wider audience. Confidentiality is essential to ensuring the participants are free to propose new ideas or explanations without fear of misinterpretation or being taken out of context, and without slowing down the exchange of ideas. Sometimes the communications are very informal and are developed quickly, which is helpful particularly at the initial stages of project development when it is important to generate new ideas.

21. By allowing for the testing and refinement of ideas, such confidential discussions help ensure that scientific products are more well-developed and robust. If such discussions

could not take place, the exchange of scientific understanding would be hampered and the pace of scientific progress would slow.

22. I believe several types of harm would likely result to the agency, to federal scientists, and ultimately to the public if federal scientists could not engage in the type of confidential, candid discussions with each other or with outside experts that I have described. Federal scientists should be permitted the same opportunities for collegial collaboration that is the standard for scientists in other settings. This collaboration is particularly productive as new facts become available and we seek consensus in the scientific community on the appropriate interpretation and understanding of these facts.

23. First, there is the risk of chilling candid, informal exchanges and debates among scientists in the community of experts, leading to a less robust scientific process overall. This would adversely affect the agency's ability to produce high quality scientific products. Federal scientists obviously must communicate with one another in developing their agencies' products, and should have confidence that their preliminary views and suggestions will be treated as confidential. They should also feel free to reach out and express their ideas to qualified outside scientists for their feedback. If there is uncertainty as to whether their communications will be kept from public view, federal scientists would likely be less candid about expressing their views and seeking important feedback. They may be concerned, for example, about potential damage to their reputation from a statement being misconstrued or taken out of context or about the risk of harassment. In certain contexts, such as climate research and analysis, the potential for a chilling effect is particularly high because developments in this area typically generate a high

level of interest or controversy. The quality of our scientific products would greatly suffer if our scientists were unable to freely suggest, explore and test their ideas due to such considerations.

24. Similarly, outside scientists should have confidence that input they provide to their peers at federal agencies will be treated as confidential. If an outside scientist believed that their communications with federal scientists may become public, he or she may change the way they engage with federal colleagues in a way that slows the exchange of ideas, or they may choose not to engage in this type of valuable, informal peer review at all. This would narrow the range of perspectives taken into account in generating our scientific products and therefore reduce the overall robustness of the scientific process.

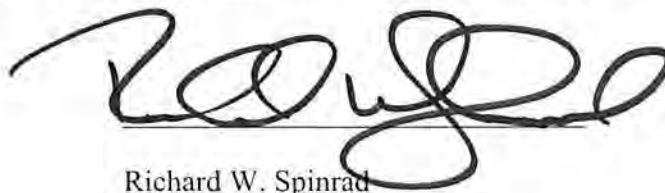
25. Second, there is a risk that the public may become confused by preliminary or incomplete information contained in the communications among scientists, or by information that is misinterpreted or taken out of context. Here also, the climate science context is one in which the risks of misinterpretation or confusion are somewhat elevated, in light of the degree of interest by various groups and the complex nature of the interpretations at issue. For example, because the community of experts is already familiar with the context of their communications and the current state of the science, they tend to use shorthand and informal language in sharing ideas that are actually highly technical and complex. I note, for example, that the use of the term "theory" has a very specific definition in scientific circles, but is interpreted in a vastly different manner by the lay public. While use of informal or short-hand language is useful and appropriate to expedite discussions among peers, more formal explanations and, in many cases, caveats, would be necessary for products that are intended to be shared with a public audience.

26. Third, there is the risk that federal agencies would be unable to attract and retain the best scientists if these scientists were unable to communicate in confidence with peers inside their agencies or with experts in the community outside the federal government. This was demonstrated dramatically as we improved the OSTP guidance on scientific integrity over the last several years; I have had many discussions with academic scientists who indicated that the scientific freedom reflected in the government's policies on scientific integrity have encouraged them to consider applying for and accepting positions in government laboratories. If instead federal scientists believed they must wall themselves off from confidential discussions with each other or with outside scientists, depriving their projects of valuable, informal input and expertise, they may conclude they can perform their work better in another setting.

27. In conclusion, upholding the expectations of confidentiality of scientists – whether employed in the federal government or outside of it – who have participated in candid exchanges and debates in the development of the agency's scientific products is critical to fostering a vigorous scientific process. This, in turn, is critical to ensuring the public receives the highest quality information from federal agencies.

Pursuant to 28 U.S.C. § 1746, I hereby affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 15 day of December, 2016, Washington, D.C.

A handwritten signature in black ink, appearing to read "R. Spinrad", written over a horizontal line.

Richard W. Spinrad

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

[PROPOSED] ORDER

Upon consideration of the U.S. Department of Commerce’s (“the Department’s”) motion for summary judgment, and any response and reply thereto, and the entire record here, and for good cause shown, it is hereby

ORDERED that, for the reasons set forth in the Department’s motion:

- 1. The Department’s motion is hereby **GRANTED**; and
- 2. Summary judgment is hereby **ENTERED** for the Department.

Dated: _____

CHRISTOPHER R. COOPER
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

MOTION FOR SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56, Defendant U.S. Department of Commerce hereby moves for summary judgment on all of Plaintiff's claims. This motion is supported by a statement of material facts as to which there is no genuine issue, a memorandum of points and authorities, the Declarations of Mark Graff and Dr. Richard Spinrad, and a *Vaughn* index. A proposed order is attached.

Dated: December 15, 2016

Respectfully submitted,

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

ELIZABETH J. SHAPIRO
Deputy Director, Federal Programs Branch

/s/ Kevin M. Snell
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Counsel for Defendant

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

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INTRODUCTION

In this Freedom of Information Act (“FOIA”), Plaintiff Judicial Watch requested from the National Oceanographic and Atmospheric Administration (“NOAA”), a component of the Department of Commerce, records relating to different temperature metrics and datasets.¹ The parties conferred and reached an agreement regarding the scope of the request and relevant search parameters. Using those agreed-upon parameters, NOAA conducted a search and ultimately produced responsive, non-exempt material.

Plaintiff now challenges the adequacy of NOAA’s search and all of its redactions and withholdings. But as discussed more fully herein, NOAA conducted a search that was reasonably calculated to locate all non-duplicative records in its possession responsive to Plaintiff’s request. Moreover, all of the challenged information and records that NOAA withheld were properly exempt from production. The Court should therefore grant summary judgment in favor of the Department of Commerce.

FACTUAL BACKGROUND

I. The Hiatus Paper

The FOIA request at issue centers around a June 4, 2015 study authored by NOAA scientists and published in the journal *Science* entitled *Possible Artifacts of Data Biases in the Recent Global Surface Warming Hiatus* (“Hiatus Paper” or “the Paper”). Between September 2013 and November 2014, the Intergovernmental Panel on Climate Change (“IPCC”) released a report in stages that concluded that the upward global surface temperature trend from 1998-2012

¹ The FOIA request also sought communications between NOAA and the House of Representatives Committee on Science, Space, and Technology. The agency made a separate production of these records, which Plaintiff’s counsel indicated in writing that Plaintiff did not intend to challenge. Therefore, this motion for summary judgment and accompanying documents do not address the agency’s response to that aspect of the request.

was lower than that from 1951-2012. Declaration of Mark Graff (“Graff Decl.”) Decl. ¶ 9 (attached herein as Exhibit A). The apparent observed slowing of the global surface temperatures was dubbed the “hiatus.” *Id.* The Hiatus Paper, drafted after that report by a team of NOAA scientists, sought to properly account for the alleged “hiatus.”

NOAA’s National Centers for Environmental Information (“NCEI”) produces and maintains datasets for global ocean areas and global land areas. *Id.* ¶ 6. Scientists throughout the government, including scientists at agencies other than NOAA, and outside of the government, use the sea surface temperature and land surface temperature datasets for a variety of purposes, including for climatic research and climate assessments. *Id.* NCEI scientists continually work to improve the datasets to provide the public the most up-to-date and accurate information. *Id.* There were two significant developments related to the “hiatus” after the IPCC’s report. In particular, 2013 and 2014 were two of the five warmest years on record for the globe. *Id.* ¶ 10. Also, NOAA scientists made significant improvements to its sea surface temperature dataset, one of largest being a correction that accounted for the difference in data collected from ships and buoys. *Id.* Buoys have been increasingly used since the 1970s to measure sea surface temperatures, and scientists developed a method to correct for the difference between these two observing systems and incorporated those corrections into the dataset. *Id.*

NCEI scientists regularly interpret and analyze datasets and release to the public the most up-to-date climate science, often through publication in scientific journals. *Id.* ¶ 7. The Hiatus Paper is an example of analysis and interpretation of the updated underlying data. *Id.* ¶ 8.

Around late October 2014, Tom Karl, then the Director of NCEI, circulated a draft paper to a group of NOAA scientists that developed an idea for properly accounting for the alleged “hiatus” based on the additional two years of global temperature data and the improvements to

NOAA's sea surface temperature dataset. *Id.* ¶ 11. Karl sought feedback on the draft paper, and a team of scientists at NOAA worked to develop a manuscript. *See id.* ¶¶ 11-13. Many drafts and revisions were exchanged among these scientists, along with emails discussing various aspects of the paper or its content, including suggestions on how best to describe the data, opinions on statistical error uncertainty ranges, thoughts on the implications of other researchers' work, and so on. *Id.* ¶ 13. Such collaboration via discussions and drafts is standard practice at NCEI. *Id.* ¶ 13.

In December 2014, the authors submitted the draft paper to the journal *Science*. *Id.* ¶ 14. Once there, the draft paper went through the journal's peer review process, in which five anonymous peer reviewers weighed in on the manuscript. *Id.* ¶ 20. When the authors received feedback, they discussed internally how to respond in writing to the comments they received, and also revised the manuscript to address the questions and concerns raised. *See id.* ¶ 21. After a second round of peer review, NOAA received word that the article would be published, and *Science* published the Paper on its website on June 4, 2015. *Id.* ¶ 23.

II. The FOIA Request and NOAA's Response

Plaintiff's FOIA request, dated October 30, 2015, sought in relevant part:

1. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the methodology and utilization of Night Marine Air Temperatures to adjust ship and buoy temperature data.
2. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the use of other global temperature datasets for both NOAA's in-house dataset improvements and monthly press releases conveying information to the public about global temperatures.
3. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the

utilization and consideration of satellite bulk atmospheric temperature readings for use in global temperature datasets.

Graff Decl. ¶ 24; *see also* Answer, ECF No. 8-1.

Upon review of the request, NOAA officials determined that it did not reasonably describe the records requested. Graff Decl. ¶ 25. Through counsel, NOAA conferred with Plaintiff to negotiate a clear description of the material sought. *Id.* During the course of those discussions, NOAA indicated to Plaintiff that it understood the request to reflect an interest in the Hiatus Paper and accordingly suggested modifying the request to call for a search for all documents and communications referring to the Hiatus Paper from its nine authors. *Id.* ¶ 26. Plaintiff confirmed its interest in that study, but indicated that it sought only records referring to the topics listed in its initial FOIA request. *Id.*

The parties ultimately “reached an agreement regarding the scope of the request and relevant search parameters.” Second Joint Status Report, ECF No. 10 at 2. For Plaintiff’s FOIA request, NOAA agreed to search the records of the nine authors of the Hiatus Paper for records referring to that paper and that contain one of the following search terms: “NMAT,” “Night Marine Air Temperatures,” “ISTI,” “ICOADS,” “sea ice,” “satellite,” “Advanced Very High Resolution Radiometer,” “AVHRR,” “Advanced Microwave Scanning Radiometer,” and “AMSR.” *Id.*; Graff Decl. ¶ 27.

After NOAA directed those custodians to run the agreed-upon searches, it made a production on May 27, 2016 of 102 pages of material in its entirety and 90 partially redacted pages. *See* Graff Decl. ¶ 29; Fourth Joint Status Report, ECF No. 12 at 2. NOAA withheld in their entirety 8,013 pages of records, and informed Plaintiff that because it sought records from nine separate custodians, a significant amount of duplicative material existed in the responsive records. *See* Graff Decl. ¶ 29; Fourth Joint Status Report, ECF No. 12. The parties then

discussed the details of potential challenges to NOAA's production, and NOAA agreed to provide Plaintiff a draft *Vaughn* index in an attempt to narrow the issues in dispute. *See* Fifth & Sixth Joint Status Report, ECF Nos. 13 & 14. Upon further review of the withheld information, on September 16, 2016, NOAA released to Plaintiff an additional 44 pages of material (7 of those pages were partially redacted to exclude Mr. Karl's cell phone number), Graff Decl. ¶ 30, and contemporaneous with this filing on December 15, 2016, NOAA released an additional 62 records, Graff Decl. ¶ 31.

STANDARD OF REVIEW

A court reviews an agency's response to a FOIA request *de novo*. 5 U.S.C. § 552(a)(4)(B). "FOIA cases are typically and appropriately decided on motions for summary judgment." *Moore v. Bush*, 601 F. Supp. 2d 6, 12 (D.D.C. 2009). In deciding at the summary judgment stage whether an agency has fully discharged its obligations under FOIA, "the agency must show, viewing the facts in the light most favorable to the requester, that there is no genuine issue of material fact." *Steinberg v. U.S. Dep't of Justice*, 23 F.3d 548, 551 (D.C. Cir. 1994).

ARGUMENT

I. NOAA's Search Was Reasonable, Adequate, and Satisfies Its Obligation Under the FOIA

A. The Standard for an Adequate Search

The touchstone for determining whether an agency should prevail on a motion for summary judgment in FOIA litigation is whether the agency demonstrates that its "search for documents was adequate." *Larson v. Dep't of State*, 565 F.3d 857, 869 (D.C. Cir. 2009). An agency's search is adequate if "it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." *Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). The adequacy of a FOIA

search is thus gauged “not by the fruits of the search, but by the appropriateness of the methods used to carry out the search.” *Ancient Coin Collectors Guild v. U.S. Dep’t of State*, 641 F.3d 504, 514 (D.C. Cir. 2011) (quoting *Iturralde v. Comptroller of Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003)). In short, “[t]he adequacy of the search . . . is judged by a standard of reasonableness.” *Steinberg*, 23 F.3d at 551; *see also DiBacco v. U.S. Army*, 795 F.3d 178, 194 95 (D.C. Cir. 2015) (“A search need not be perfect, only adequate, and adequacy is measured by the reasonableness of the effort in light of the specific request.” (quoting *Meeropol v. Meese*, 790 F.2d 942, 956 (D.C. Cir. 1986))).

“In demonstrating the adequacy of the search, the agency may rely upon reasonably detailed, nonconclusory affidavits submitted in good faith.” *Id.* (quoting *Weisberg v. Dep’t of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984)). Such affidavits are sufficient if they “set[] forth the search terms and the type of search performed, and aver[] that all files likely to contain responsive materials (if such records exist) were searched.” *Chambers v. U.S. Dep’t of Interior*, 568 F.3d 998, 1003 (D.C. Cir. 2009) (quoting *McCready v. Nicholson*, 465 F.3d 1, 7 (D.C. Cir. 2006)). This standard does not require that “the affidavits of the responding agency set forth with meticulous documentation the details of an epic search for the requested records.” *Perry v. Block*, 684 F.2d 121, 127 (D.C. Cir. 1982). “Rather, in the absence of countervailing evidence or apparent inconsistency of proof, affidavits that explain in reasonable detail the scope and method of the search conducted by the agency will suffice” *Id.* Moreover, “[s]uch agency affidavits attesting to a reasonable search ‘are afforded a presumption of good faith,’ and ‘can be rebutted only with evidence that the agency’s search was not made in good faith.’” *Riccardi v. US Dep’t of Justice*, 32 F. Supp. 3d 59, 63 (D.D.C. 2014) (quoting *Def. of Wildlife v. U.S. Dep’t of Interior*, 314 F. Supp.2d 1, 8 (D.D.C. 2004)).

Finally, courts in this circuit recognize the “well-worn rule . . . that the adequacy of a FOIA search is not to be judged by its results.” *Rosenberg v. United States Dep’t of Immigration & Customs Enf’t*, 13 F. Supp. 3d 92, 104 (D.D.C. 2014). “The question is not ‘whether there might exist any other documents possibly responsive to the request, but rather whether the search for those documents was *adequate*.’” *Steinberg*, 23 F.3d at 551 (quoting *Weisberg v. Dep’t of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984)) (emphases in original). Thus, courts have rejected challenges to the adequacy of a search, even when a “slim yield may be intuitively unlikely” and a “reasonable observer would find th[e] result[s] unexpected.” *Ancient Coin Collectors Guild*, 641 F.3d at 514. Moreover, “mere speculation that as yet uncovered documents might exist[] does not undermine the determination that the agency conducted an adequate search for the requested records.” *Wilbur v. CIA*, 355 F.3d 675, 678 (D.C. Cir. 2004); *see also Sheffield v. Holder*, 951 F. Supp. 2d 98, 101 (D.D.C. 2013) (noting that a requester “cannot rest . . . on mere conjecture or ‘purely speculative claims about the existence and discoverability of other documents’” (quoting *Elec. Privacy Info. Ctr. v. Dep’t of Homeland Sec.*, 384 F. Supp. 2d 100, 107 (D.D.C. 2005))).

B. NOAA Conducted an Adequate Search

As set forth in Mark Graff’s Declaration, NOAA’s search for records responsive to Plaintiff’s FOIA request was more than adequate. *See Perry*, 684 F.2d at 127. Judicial Watch and NOAA reached an agreement as to how the search would be carried out. The agency would search the records of the nine Hiatus Paper authors for any record referring to that study and containing the term “NMAT,” “night marine air temperatures,” “ISTI,” “ICOADS,” “sea ice,” “satellite,” “advanced very high resolution radiometer,” “AVHRR,” “advanced microwave scanning radiometer,” and “AMSR.” Graff Decl. ¶ 27; Second Joint Status Report at 2, ECF No.

10. The timeframe for the search would be October 1, 2014 to June 4, 2015. *Id.* NOAA determined that the records requested resided within one office, NCEI, because all of the agreed-upon custodians work or had worked there during the time frame in which responsive records were created. *Id.* ¶ 33. NOAA then directed those custodians to search their email, electronic, and paper files for records referring to the Karl Study and containing the agreed-upon search terms. *Id.* ¶ 35. Those scientists searched their electronic files (including email) and non-electronic files, collected any potentially responsive material, and forwarded that material for responsiveness and exemption review. *Id.* ¶¶ 36-38.² There were no common areas at NCEI for NOAA to search. *Id.* ¶ 37. Thus, all files determined to be reasonably likely to contain responsive, non-duplicative material were searched. *Id.* ¶ 44.

On this record, NOAA's search should be upheld under FOIA. NOAA has provided "a reasonably detailed [declaration], setting forth the search terms and the type of search performed," and averred that all files likely to contain responsive, non-duplicative materials were searched. *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 326 (D.C. Cir. 1999) (quoting *Oglesby*, 920 F.2d at 68). NOAA has "made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." *Oglesby*, 920 F.2d at 68.

II. NOAA Properly Withheld Information Under Exemption 5

FOIA does not require disclosure of "matters that are . . . inter-agency or intra-agency memorandums or letters [which] would not be available by law to a party other than an agency in

² One custodian had retired from NCEI by the time the search was conducted and so that former employee's archived email was searched by another custodian. *See* Graff Decl. ¶ 36 n.1. No additional records responsive to this request from that author are known to have existed following his retirement. *See id.*

litigation with the agency.” 5 U.S.C. § 552(b)(5). “Exemption 5 . . . exempt[s] those documents, and only those documents, normally privileged in the civil discovery context.” *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975). Exemption 5 thus protects the attorney-client privilege, the attorney work product privilege, and the deliberative process privilege. *Id.*; see also *Rockwell Int’l Corp. v. Dep’t of Justice*, 235 F.3d 598, 601 (D.C. Cir. 2001).

The deliberative process privilege “allows the government to withhold documents and other materials that would reveal advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.” *In re Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997). According to the D.C. Circuit,

There are essentially three policy bases for this privilege. First, it protects creative debate and candid consideration of alternatives within an agency, and, thereby, improves the quality of agency policy decisions. Second, it protects the public from the confusion that would result from premature exposure to discussions occurring before the policies affecting it had actually been settled upon. And third, it protects the integrity of the decision-making process itself by confirming that officials should be judged by what they decided, not for matters they considered before making up their minds.

Russell v. Dep’t of the Air Force, 682 F.2d 1045, 1048 (D.C. Cir. 1982) (quoting *Jordan v. Dep’t of Justice*, 591 F.2d 753, 772-73 (D.C. Cir. 1978)).

The privilege is necessary because “those who expect public dissemination of their remarks may well temper candor with a concern for appearances . . . to the detriment of the decisionmaking process.” *Sears*, 421 U.S. at 150-51. “[E]fficiency of Government would be greatly hampered if, with respect to legal and policy matters, all Government agencies were prematurely forced to ‘operate in a fishbowl.’” *EPA v. Mink*, 410 U.S. 73, 87 (1973), *abrogated on other grounds*, Pub. L. No. 93-502, 88 Stat. 1561 (1974). There are “[t]wo requirements [that] are essential to the deliberative process privilege: the material must be predecisional and it must be deliberative.” *In re Sealed Case*, 121 F.3d at 737.

The agency is best situated “to know what confidentiality is needed ‘to prevent injury to the quality of agency decisions.’” *Chem. Mfrs. Ass’n v. Consumer Prod. Safety Comm’n*, 600 F. Supp. 114, 118 (D.D.C. 1984) (quoting *Sears*, 421 U.S. at 151). NOAA’s justification for asserting Exemption 5 is “sufficient if it appears ‘logical’ or ‘plausible.’” *Wolf v. CIA*, 473 F.3d 370, 374-75 (D.C. Cir. 2007).

Here, NOAA properly withheld information under Exemption 5 that is protected by the deliberative process privilege because the information withheld reflects deliberations in preparation for decisions of how to analyze and present data and theory, as well as decisions about how to respond to peer review comments and deliberations on developing public communications and congressional presentations. *See* Graff Decl. ¶¶ 50-63. Disclosure of such information, which is predecisional and deliberative, and contains selected factual material intertwined with opinion, would inhibit candid internal discussions and the expression of recommendations and judgments. *Id.* ¶ 64. Disclosure of the details of these confidential discussions and drafts could reasonably be expected to chill the open and frank exchange of comments and opinions that NOAA officials engage in, as well as inhibit candid internal discussions and recommendations regarding preferred courses of action for agency personnel. *Id.*

The documents withheld in full or in part under the deliberative process privilege fall generally into three categories: (1) drafts of the Hiatus Paper; (2) internal deliberations, including email exchanges; and (3) peer review materials, both formal and informal. As explained below and in the attached *Vaughn*, each redacted or withheld document contains both predecisional and deliberative information. Accordingly, NOAA properly asserted Exemption 5 based on the deliberative process privilege.

1. Drafts of the Hiatus Paper

NOAA withheld pursuant to Exemption 5 inter- or intra-agency, predecisional, and deliberative draft versions of the Hiatus Paper (including drafts of its accompanying figures and “supplementary materials”) that were produced while NOAA scientists were developing the Paper. Graff Decl. ¶ 51.³ “[D]raft documents by their very nature, are typically predecisional and deliberative, because they reflect only the tentative view of their authors; views that might be altered or rejected upon further deliberation either by their authors or by superiors.” *In re Apollo Grp., Inc. Sec. Litig.*, 251 F.R.D. 12, 31 (D.D.C. 2008) (non-FOIA case) (citation omitted). Accordingly, “drafts are commonly found exempt under the deliberative process exemption.” *People for the Am. Way Found. v. Nat’l Park Serv.*, 503 F. Supp. 2d 284, 303 (D.D.C. 2007). Among other reasons for this, disclosure of “decisions to insert or delete material or to change a draft’s focus or emphasis . . . would stifle the creative thinking and candid exchange of ideas necessary to produce good historical work.” *Dudman Commc’ns Corp. v. Dep’t of Air Force*, 815 F.2d 1565, 1569 (D.C. Cir. 1987). Indeed, drafts are ordinarily exempt regardless of whether or to what extent segments of the draft made their way into the final product: “If the segment appeared in the final version, it is already on the public record and need not be disclosed. If the segment did not appear in the final version, its omission reveals an agency deliberative process: for some reason, the agency decided not to rely on that fact or argument after having been invited to do so.” *Exxon Corp. v. Dep’t of Energy*, 585 F. Supp. 690, 698 (D.D.C. 1983) (quoting *Lead Industries Ass’n v. OSHA.*, 610 F.2d 70, 86 (2d Cir. 1979)); see *ViroPharma Inc. v. HHS*, 839 F. Supp. 2d 184, 193 (D.D.C. 2012) (“The choice of what factual

³ The fact that some draft versions were shared for peer review purposes outside of the federal government does not affect those drafts’ status as inter- or intra-agency. See *infra* at Section II.3.

material . . . to include or remove during the drafting process is itself often part of the deliberative process, and thus is properly exempt under Exemption 5.”); *cf. Marzen v. HHS*, 825 F.2d 1148, 1155 (7th Cir. 1987) (noting that privilege “protects not only the opinions, comments and recommendations in the draft, but also the process itself”).

These drafts are predecisional inasmuch as they were generated to assist the agency in preparing the final version of the Hiatus Paper. *See Quarles v. Dep’t of the Navy*, 893 F.2d 390, 392 (D.C. Cir. 1990) (explaining that materials are predecisional when “prepared in order to assist an agency decisionmaker in arriving at . . . decisions”). And they are deliberative in that they reflect the development of the final paper; these non-final, predecisional drafts contain opinions and recommendations of the NOAA authors; draft language, data, and data interpretation for consideration by other NOAA authors; comments on previous drafts of the paper; and/or responses to other NOAA authors’ or peer reviewers’ comments on earlier drafts of the paper. *See* Graff Decl. ¶ 51; *Vaughn* part 2 Category A. Withholding this material under Exemption 5 was proper, and the release of such drafts would inhibit agency scientists from expressing their views and deter NOAA scientists from participating candidly in the development of scientific products in the future. *See* Graff Decl. ¶ 51.⁴

2. Communications Among NOAA Personnel

Also integral to the drafting of the Hiatus Paper, the authors frequently communicated and exchanged ideas with one another via email during the Paper’s development. Here, NOAA

⁴ Equally appropriate, NOAA’s *Vaughn* also shows that the agency withheld draft documents that aided in or related to the development of the Paper, such as “[d]raft graphs of land and ocean temperature data created by NOAA scientists to be used in the paper,” *Vaughn* part 2 at bates pages 1170-73, “[d]raft graphs and charts of SST data to be used in [the] development of the paper,” *Vaughn* part 2 at bates pages 2071-76, and a “[d]raft powerpoint by [an] author presenting information on global temperature and presenting data analysis done by NOAA scientists for the paper,” *Vaughn* part 2 at bates pages 1876-86.

withheld inter- or intra-agency, predecisional, and deliberative communications. *See* Graff Decl. ¶ 50. In pursuing a research objective, scientists may begin with only a rough idea, and then develop, test, and revise that idea as data is collected and interpreted. Declaration of Richard W. Spinrad (“Spinrad Decl.”) ¶ 14 (attached herein as Exhibit B). Possible interpretations are generated and tested in part through candid debates and exchanges among peers. *Id.* ¶ 15. Indeed, the exchange and debate among peers is the mechanism that allows NOAA to ensure its scientific products are robustly developed and accurately tested. *Id.* ¶ 16. And there is a general and well-established presumption that such discussions are not intended to be, and will not be, shared with a wider audience, as confidentiality is essential to ensuring participants feel free to propose new ideas or explanations without fear of misinterpretation or being taken out of context. *Id.* ¶ 20. It is critical that this type of information be protected so as not to chill candid exchanges and debates, as well as to avoid the risk of confusing the public with preliminary or incomplete information. *See id.* ¶¶ 23-25.

NOAA’s *Vaughn* index reinforces that these types of predecisional and deliberative communications occurred here, were integral to the development of the Hiatus Paper, and were appropriately withheld or redacted. *See Abteu v. U.S. Dep’t of Homeland Sec.*, 808 F.3d 895, 898 (D.C. Cir. 2015) (“[O]fficials should be judged by what they decided, not for matters they considered before making up their minds” (citation and internal quotation mark omitted)). For example, NOAA is redacting or withholding communications between scientists in which authors asked for clarification on data analysis conducted for developing the Paper, *Vaughn* part 1 at bates pages 22-23, shared opinions on the results of a draft data analysis for developing the Paper, *Vaughn* part 1 at bates page 15, offered opinions as to the best approach to take in the Paper, *Vaughn* part 1 at bates pages 300, 335, 362-63, and provided opinions on statistical error

uncertainty ranges for development of the Paper, *Vaughn* part 1 at bates page 245. Moreover, NOAA withheld a document that presented questions and draft graphs to spur discussion among the NOAA scientists. This document was created and circulated for the purpose of author discussions during the development of the Hiatus Paper, and shows NOAA scientists considering what constitutes the best data analysis and presentation for the Paper. *See Vaughn* part 2 Category E; Graff Decl. ¶ 52.⁵

In addition to withholding communications concerning the development of the Hiatus Paper, NOAA also withheld communications and information reflecting the development of a plan by its officials for communications and press release in preparation for publication of the paper, *e.g. Vaughn* part 1 at bates page 289-90, *Vaughn* part 2 at bates page 7446-50, as well as the agency's development of a presentation to Congress, *e.g., Vaughn* part 1 at bates pages 143, 324 (explaining that redacted email reflected "NOAA scientist discussing climate change research and developing the agency's presentation for Congress"). This withheld information, which reflects NOAA's development of how to brief Congress and the public, is predecisional and deliberative and falls squarely within Exemption 5. *E.g., Judicial Watch, Inc. v. U.S. Dep't of the Treasury*, 796 F. Supp. 2d 13, 31 (D.D.C. 2011) (noting email discussing response to press inquiry protected under deliberative process privilege).

All of this material is precisely the sort of information that the deliberative process privilege is designed to protect. *See Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854,

⁵ Similarly, NOAA withheld information reflecting discussions among scientists concerning potential scientific inquiries. *See, e.g., Vaughn* part 1 at bates page 75 (discussing future climate research and asking for opinion on this research and on possible role of NOAA scientists in this research). Again, such material is predecisional and deliberative, and therefore is exempt from disclosure. *E.g., Sears*, 421 U.S. at 151 n.18 (explaining that protection extends to records that are part of decisionmaking process even where process does not produce actual decision by agency).

866 (D.C. Cir. 1980) (document is “predecisional” if it is “generated before the adoption of an agency policy” and “deliberative” if it “reflects the give-and-take of the consultative process”); *Dep’t of Interior v. Klamath Water Users Protective Ass’n*, 532 U.S. 1, 9 (2001) (explaining that deliberative process privilege’s “object is to enhance the quality of agency decisions by protecting open and frank discussion among those who make them within the Government”) (citation omitted); *Russell*, 682 F.2d at 1048 (“[T]he exemption protects not only communications which are themselves deliberative in nature, but all communications which, if revealed, would expose to public view the deliberative process of an agency.”). Moreover, any factual material in the withheld documents reflect the authors’ selection and presentation of factual material, Graff Decl. ¶ 65, and as such it too is covered by the deliberative process privilege. *See, e.g., Ancient Coin Collectors Guild*, 641 F.3d at 513 (explaining that factual material can be withheld where it reflects “an exercise of discretion and judgment calls” and that the “legitimacy of [the] withholding” turns on “whether the selection or organization of facts is part of an agency’s deliberative process”).

Because all of the redacted and withheld information is inter- or intra-agency, predecisional, and deliberative in nature, NOAA properly applied Exemption 5.

3. Peer Review Material

NOAA also withheld inter- or intra-agency material reflecting the different peer review processes its analyses and drafts underwent prior to publication of the Hiatus Paper. *Science* follows a formal peer review process in which subject matter experts evaluate the rigor and merit of the paper, and provide feedback on an array of issues. Graff Decl. ¶ 15. Those anonymous, impartial reviewers share their reviews with the authors, *Science*’s board, and potentially other reviewers (for cross-comment). *Id.* ¶ 17.

Here, *Science* sent the manuscript to five anonymous peer reviewers, and the scientists received two rounds of comments. Upon receiving these reviewers' comments, the NOAA scientists deliberated internally as to how to respond in writing to every comment received. NOAA properly withheld peer reviewer comments, the agency's internal draft responses to these peer reviewer comments, draft cover letters NOAA's scientists wrote to accompany their response, as well as the agency's final responses to peer reviewer comments. See Graff Decl. ¶¶ 53-54; *Vaughn* part 2 Category B, C, D.

The D.C. Circuit has specifically held that comments provided by peer reviewers during the peer review process for publication of scientific articles in scientific journals are covered by Exemption 5 because they are both "pre-decisional because it preceded the agency's decision whether and in what form to publish" the paper and were part of the agency's deliberative process "because the agency secured review commentary in order to make that decision." See *Formaldehyde Inst. v. U.S. Dep't of Health and Human Servs.*, 889 F.2d 1118, 1123-25 (D.C. Cir. 1989). As that Court recognized, agency scientists "must regularly rely on the comments of expert scientists to help them evaluate the readiness of agency work for publication [and i]n that sense they must rely on the opinions and recommendations of temporary consultants." *Id.* at 1125.

The scientists' draft responses to the peer reviewer comments are also covered by Exemption 5 since these materials, including personal opinions and recommendations, draft language, data, and data interpretation for consideration, as well as comments on previous drafts of the responses, reflect predecisional and deliberative discussions. See *Vaughn* part 2 Category C; Graff Decl. ¶ 54. Similarly, the final responses to peer review comments that NOAA submitted to *Science* during the peer review process reflect the agency's response to constructive

criticism and advice, and were part of the process to assist in the authors' deliberation as to whether and in what form to publish the paper. *See Vaughn* part 2 Category D; Graff Decl. ¶ 55. These final responses, then, fit comfortably within Exemption 5. *See Petroleum Info. Corp.*, 976 F.2d at 1434 (agency documents that were "prepared in order to assist an agency decisionmaker in arriving at his decision" are "predecisional" (citation omitted)); *Coastal States Gas Corp.*, 617 F.2d at 866. Finally, the draft cover letters to *Science* accompanying the scientists' responses to the peer review comments contain edits or otherwise do not include the final wording of the letter, reflecting that the scientists' final approach had not been finalized at that point. *Vaughn* part 2 Category B; Graff Decl. ¶ 53. Withholding such draft material was appropriate.

The fact that the peer review comments were sent by *Science*, and the responses to those peer reviewer comments were sent back to *Science*, does not affect their status as "intra-agency" materials that may be protected by Exemption 5. "Recognizing that the purpose of the exemption was to promote the quality of agency policy decisions and that often these policy decisions were best made by incorporating the advice of outside experts, [the D.C. Circuit] developed a 'consultant corollary' whereby communications with temporary consultants would be considered 'intra-agency' for the purposes of Exemption 5." *Judicial Watch v. U.S. Dep't of Transp.*, 950 F. Supp. 2d 213, 216 (D.D.C. 2013) (citing cases). "When communications between an agency and a non-agency aid the agency's decision-making process and the non-agency did not have an outside interest in obtaining a benefit that is at the expense of competitors, the communication must be considered an intra-agency communication for the purposes of FOIA Exemption 5." *Judicial Watch*, 950 F. Supp. 2d at 218-19 (citing *Nat'l Inst. of Military Justice v. U.S. Dep't of Defense*, 512 F.3d 677 680-85 (D.C. Cir. 2008) ("*NIMJ*"); *Lardner v. U.S. Dep't of Justice*, No. 03-0180, 2005 WL 758267, at *1 (D.D.C. Mar. 31, 2015);

see also, e.g., Hooker v. HHS, 887 F. Supp. 2d 40, 55 (D.D.C. 2012) (upholding agency’s withholding of predecisional and deliberative letter from former employee where he “played the same role in the agency’s process of deliberation after his departure that he would have played had he remained”), *aff’d*, No. 13-5280, 2014 WL 3014213 (D.C. Cir. May 13, 2014); *see also Elec. Privacy Info. Ctr. v. DHS*, 892 F. Supp. 2d 28, 46 (D.D.C. 2012) (“In order to be excluded from the exemption, the contractors must assume a position that is ‘necessarily adverse’ to the government.”).⁶

Moreover, maintaining the confidentiality of these communications is important, as disclosure would discourage the sharing of candid thoughts of the reviewers and scientists. Graff Decl. ¶ 55, 64; *see also* Spinrad Decl. ¶¶ 20-21 (explaining importance of confidentiality in developing scientific products). Here, as in *Formaldehyde*, it is “indisputable” that both “reviewers’ comments are expected to be confidential” and “disclosure of reviewers’ comments would seriously harm the deliberative process.” 889 F.2d at 1124 (internal citations and quotations omitted).

Outside of *Science*’s formal peer review process, NOAA scientists welcomed the informal peer review from a limited number of consultants in evaluating the underlying datasets

⁶ *Department of the Interior v. Klamath Water Users Protective Association*, 532 U.S. 1 (2001), holding that Exemption 5 did not protect documents submitted by American Indian Tribes to the Interior Department addressing tribal interests that were then the subject of state and federal water allocation proceedings, does not prevent the application of the consultant corollary here. Rather, the D.C. Circuit “has allowed any communication that aids the agency’s deliberative process to be protected as ‘intra-agency,’” and “*Klamath* only modifies this by requiring that we not protect communications with interested parties seeking a government benefit that is adverse to others seeking that benefit.” *Judicial Watch*, 950 F. Supp. 2d at 218 (footnote omitted).

Also, to fall within the consultant corollary, there is no requirement that an individual must possess a contractual relationship with the agency in question. *See, e.g., NIMJ*, 512 F.3d at 679-87 (deliberative process privilege exempted from disclosure comments received by Department of Defense, in the course of issuing regulations, from non-governmental lawyers who were former high ranking governmental officials or academics or both).

and developing the Hiatus Paper. Graff Decl. ¶ 56; *see also Formaldehyde Inst.*, 889 F.2d at 1125. In the field of climate science, only a small number of scientists have the relevant, specialized expertise, *see* Spinrad ¶ 17, and it is common for scientists to seek input from colleagues both inside and outside the federal government, *id.* ¶ 19. Sometimes experts that are located outside of the federal government have an expertise that can aid the agency. *See id.* ¶ 17. The consultants here, each of whom is highly regarded in his specialized field, Graff Decl. ¶ 58, share the common goal with NOAA of advancing scientific inquiry and developing accurate information on climate science, *see id.* ¶ 56; *see also Formaldehyde*, 889 F.2d at 1122, quoting *Ryan v. Dep't of Defense*, 617 F.2d 781, 789-90 (D.C. Cir. 1980) (“In the course of its day-to-day activities, an agency often needs to rely on the opinions and recommendations of temporary consultants, as well as its own employees. Such consultations are an integral part of its deliberative process; to conduct this process in public view would inhibit frank discussion of policy matters and likely impair the quality of decisions.”).

As the *Vaughn* and Mark Graff’s declaration make clear, withholding this informal peer review was also appropriate, as their input was used by NOAA to ensure that only the highest quality scientific product would be released. Tom Karl, for example, asked a scientist affiliated with the National Center for Atmospheric Research to comment on a draft while the paper was in development, and that scientist provided insights and feedback in response. Graff Decl. ¶ 59; *Vaughn* part 1 bates 66-67 (explaining redacted information contained feedback and review of a data analysis for the paper and raises issue for further discussion). Other climate science experts responded to the authors upon learning from *Science* of the pending publication, as commonly occurs after an author submits a high-profile scientific paper for publication. *See* Graff Decl. ¶ 60. Two other experts provided feedback on the Paper, discussed implications of the Hiatus

Paper's conclusion, or provided and discussed data analyses, Graff Decl. ¶¶ 62-63, *Vaughn* part 1 at bates 292-93, which helped provide important feedback about the agency's product and informed the agency's continuous, ongoing work of updating agency datasets and trend analyses, Graff Decl. ¶¶ 62-63; *see Vaughn* part 1 at bates 295-96 (noting that expert's work may be incorporated into a future NOAA analysis). With respect to these types of communications, a general and well-established presumption exists that these communications will not be shared with a wider audience, which is essential to scientific exchanges and the testing and refinement of ideas that help ensure that the agency's scientific products are well developed and robust. *See Spinrad* Decl. ¶ 20. Disclosing this material could inhibit candid discussions and exchanges and chill the open and frank exchanges upon which NOAA scientists rely. *See Graff* Decl. ¶ 64.

In sum, NOAA's *Vaughn* and declarations make plain that the agency appropriately applied Exemption 5 to redact and withhold information protected by the deliberative process privilege.

III. NOAA Properly Withheld Information Under Exemption 6

Exemption 6 protects the privacy of individuals from unwarranted invasion. Exemption 6 allows the withholding of information about individuals in "personnel and medical files and similar files" when the disclosure of such information would constitute a "clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). Exemption 6 requires the agency to balance the individual's right to privacy against the public's interest in disclosure. *See U.S. Dep't of the Air Force v. Rose*, 425 U.S. 352, 372 (1976); *Reed v. NLRB*, 927 F.2d 1249, 1251 (D.C. Cir. 1991). When weighing the public interest involved in disclosure, the court considers: (1) whether disclosure would serve the "core purpose" for which Congress enacted the FOIA. *i.e.*, to show "what the government is up to," and (2) the public interest in general, not particular interests of

the person or group seeking the information. *U.S. Dep't of Justice v. Reporters Comm. For Freedom of the Press*, 489 U.S. 749, 750, 775 (1989).

Here, Exemption 6 has been applied to protect information in which individuals have a recognized privacy interest, specifically, the phone numbers of NOAA scientists. *See, e.g., Vaughn* part 1 at bates 23. Because this information can be identified as applying to a specific individual, the information withheld under Exemption 6 constitutes “similar files” within the meaning of statute; courts have routinely held that phone numbers meet this threshold test. *See, e.g., Judicial Watch, Inc. v. U.S. Dep't of State*, 875 F. Supp. 2d 37, 47 (D.D.C. 2012); *Smith v. Dep't of Labor*, 798 F. Supp. 2d 274, 283 (D.D.C. 2011); *Lowy v. IRS*, No. C 10-767, 2011 WL 1211479, at *16 (N.D. Cal. Mar. 30, 2011).

This threshold test having been met, the next step is to compare the privacy interest at stake with the benefit disclosure would provide toward the public’s understanding of how government operates. *Dep't of Def. v. Fed. Labor Relations Auth.*, 510 U.S. 487, 495 (1994). Here, there is a substantial privacy interest at stake in preventing the burden of unsolicited phone calls and harassment. *See Moore v. Bush*, 601 F. Supp. 2d 6, 14 (D.D.C. 2009); *United Am. Fin., Inc. v. Potter*, 667 F. Supp. 2d 49, 65-66 (D.D.C. 2009); *cf. Shurtleff v. EPA*, 991 F. Supp. 2d 1, 18 (D.D.C. 2013) (protecting email address). By contrast, an individual’s phone number sheds no light on the operations and activities of the agency. NOAA balances the individual’s strong privacy interests against the fact that release of this information would fail to shed any light on the conduct of governmental business, and reasonably concluded that, with regard to the information withheld pursuant to Exemption 6, the individual privacy interests outweighed any public interest in disclosure. Graff Decl. ¶ 66. *See FLRA*, 510 U.S. at 497 (“We must weigh the privacy interest . . . in nondisclosure . . . against the only relevant public interest in the FOIA

balancing analysis the extent to which disclosure of the information sought would she[d] light on an agency's performance of its statutory duties' or otherwise let citizens know what their government is up to."). Accordingly, Exemption 6 was properly applied.

IV. NOAA Has Produced All Reasonably Segregable Information

The FOIA requires that, if a record contains information that is exempt from disclosure, any "reasonably segregable" information must be disclosed after deletion of the exempt information, 5 U.S.C. § 552(b), unless the non exempt portions are "inextricably intertwined with exempt portions." *Mead Data Ctr. v. U.S. Dep't of Air Force*, 566 F.2d 242, 260 (D.C. Cir. 1977); *Kurdyukov v. U.S. Coast Guard*, 578 F. Supp. 2d 114, 128 (D.D.C. 2008). This provision does not, however, require disclosure of records in which the non exempt information that remains is meaningless. *See Nat'l Sec. Archive Fund v. CIA*, 402 F. Supp. 2d 211, 221 (D.D.C. 2005) (concluding that no reasonably segregable information existed because "the non exempt information would produce only incomplete, fragmented, unintelligible sentences composed of isolated, meaningless words"). Consistent with this obligation, NOAA has reviewed each of the documents redacted or withheld and has concluded that there is no additional non exempt information that may reasonably be segregated and released. *See Graff Decl.* ¶ 67. Accordingly, no further non exempt material is subject to release.

CONCLUSION

NOAA has conducted an adequate search for documents responsive to Plaintiff's request, and properly withheld information exempt from disclosure under Exemptions 5 and 6. Furthermore, all reasonably segregable information has been released to Plaintiff. For these reasons, the Department of Commerce respectfully requests that summary judgment be entered in its favor.

Dated: December 15, 2016

Respectfully submitted,

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Principal Deputy Assistant Attorney General

ELIZABETH J. SHAPIRO
Deputy Director, Federal Programs Branch

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Counsel for Defendant

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

**STATEMENT OF MATERIAL FACTS IN SUPPORT OF UNITED STATES
DEPARTMENT OF COMMERCE’S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local Civil Rule 7(h)(1), the following is a statement of material facts as to which the movant, the United States Department of Commerce (“the Department”), contends there is no genuine issue:

1. Between September 2013 and November 2014, the Intergovernmental Panel on Climate Change released a report in stages that concluded that the upward global surface temperature trend from 1998-2012 was lower than that from 1951-2012. Declaration of Mark Graff (“Graff Decl.”) ¶ 9.
2. The apparent observed slowing of the global surface temperatures was dubbed the “hiatus.” Graff Decl. ¶ 9.
3. The National Centers for Environmental Information (“NCEI”) at NOAA produces and maintains datasets for global ocean areas and global land areas. Graff Decl. ¶ 6.
4. NCEI scientists continually work to improve the datasets to provide the public the most up-to-date and accurate information. Graff Decl. ¶ 5.

5. NCEI scientists regularly interpret and analyze datasets and release to the public the most up-to-date climate science, often through publication in scientific journals. Graff Decl. ¶ 7.
6. On June 4, 2015, a study authored by NOAA scientists was published in *Science* entitled *Possible Artifacts of Data Biases in the Recent Global Surface Warming Hiatus* (“Hiatus Paper” or “the Paper”). Graff Decl. ¶ 23.
7. The Hiatus Paper is an example of analysis and interpretation of the updated underlying data. Graff Decl. ¶ 10.
8. Around late October 2014, Tom Karl, then the Director of NCEI, circulated a draft paper to a group of NOAA scientists that developed an idea for properly accounting for the alleged “hiatus” based on the additional two years of global temperature data and the improvements to NOAA’s sea surface temperature dataset. Graff Decl. ¶ 11.
9. Karl sought feedback on the draft paper, and a team of scientists at NOAA formed to develop a manuscript. *See* Graff Decl. ¶¶ 11-13.
10. Many drafts and revisions were exchanged among these scientists, along with emails discussing various aspects of the paper or its content, including suggestions on how best to describe the data, opinions on statistical error uncertainty ranges, thoughts on implications of other researchers’ work, and so on. Graff Decl. ¶ 13.
11. Such collaboration via discussions and drafts is standard practice at NCEI. Graff Decl. ¶ 13.
12. In December 2014, the authors submitted the draft paper to the journal *Science*. Graff Decl. ¶ 14.

13. Once there, the draft paper went through the journal's peer review process, in which five anonymous peer reviewers weighed in on the manuscript. Graff Decl. ¶ 20.
14. When the authors received feedback, they discussed internally how to respond in writing to the comments they received, and also revised the manuscript to address the questions and concerns raised. *See* Graff Decl. ¶ 21.
15. After a second round of peer review, NOAA received word that the article would be published, and *Science* published the Paper on its website on June 4, 2015. Graff Decl. ¶ 23.
16. Plaintiffs' FOIA request, dated October 30, 2015, sought in relevant part:
 1. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the methodology and utilization of Night Marine Air Temperatures to adjust ship and buoy temperature data.
 2. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the use of other global temperature datasets for both NOAA's in-house dataset improvements and monthly press releases conveying information to the public about global temperatures.
 3. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the utilization and consideration of satellite bulk atmospheric temperature readings for use in global temperature datasets.Graff Decl. ¶ 24; *see also* ECF No. 8-1.
17. Upon review of the request, NOAA officials determined that it did not reasonably describe the records requested. Graff Decl. ¶ 25.
18. Through counsel, NOAA conferred with Plaintiff to negotiate a clear description of the material sought. Graff Decl. ¶ 25.

19. During the course of those discussions, NOAA indicated to Plaintiff that it understood the request to reflect an interest in the Hiatus Paper and accordingly suggested modifying the request to call for a search for all documents and communications referring to the Hiatus Paper from its nine authors. Graff Decl. ¶ 26.
20. Plaintiff confirmed its interest in that study, but indicated that it sought only records referring to the topics listed in its initial FOIA request. Graff Decl. ¶ 26.
21. The parties ultimately “reached an agreement regarding the scope of the request and relevant search parameters.” Second Joint Status Report, ECF No. 10 at 2.
22. For Plaintiff’s FOIA request, NOAA agreed to search the records of the nine authors of the Hiatus Paper for records referring to that paper and that contain one of the following search terms: “NMAT,” “Night Marine Air Temperatures,” “ISTI,” “ICOADS,” “sea ice,” “satellite,” “Advanced Very High Resolution Radiometer,” “AVHRR,” “Advanced Microwave Scanning Radiometer,” and “AMSR.” Second Joint Status Report, ECF No. 10 at 2; Graff Decl. ¶ 27.
23. NOAA determined that the records requested resided within one office, NCEI, because all of the agreed-upon custodians work or had worked there during the time frame in which responsive records were created. Graff Decl. ¶ 33.
24. NOAA then directed those custodians to search their email, electronic, and paper files for records referring to the Karl Study and containing the agreed-upon search terms. Graff Decl. ¶ 35.
25. Those scientists searched their electronic files (including email) and non-electronic files, collected any potentially responsive material, and forwarded that material for responsiveness and exemption review. Graff Decl. ¶¶ 36-38.

26. One custodian had retired from NCEI by the time the search was conducted and so that former employee's archived email was searched by another custodian. No additional records responsive to this request from that author are known to have existed following his retirement. *See* Graff Decl. ¶ 36 n.1.
27. There were no common areas at NCEI for NOAA to search. Graff Decl. ¶ 37.
28. Thus, all files determined to be reasonably likely to contain responsive, non-duplicative material were searched. Graff Decl. ¶ 44.
29. On May 27, 2016, NOAA produced 102 pages of material in its entirety and 90 partially redacted pages. Graff Decl. ¶ 29; Fourth Joint Status Report, ECF No. 12 at 2. NOAA withheld in their entirety 8,013 pages of records. Graff Decl. ¶ 29; Fourth Joint Status Report, ECF No. 12 at 2
30. NOAA informed Plaintiff at that time that because it sought records from nine separate custodians, a significant amount of duplicative material existed in the responsive records. *See* Graff Decl. ¶ 29
31. Upon further review of the withheld information, NOAA made two supplemental productions. *See* Graff Decl. ¶¶ 30-31.
32. On September 16, 2016, NOAA released to Plaintiff an additional 44 pages of material (7 of those pages were partially redacted to exclude Mr. Karl's phone number), Graff Decl. ¶ 30.
33. Contemporaneously with this filing (on December 15), NOAA is releasing an additional 62 records. Graff Decl. ¶ 31.
34. NOAA withheld information pursuant to FOIA Exemption 5 and the deliberative process privilege. *See Vaughn Index.*

35. NOAA withheld information pursuant to FOIA Exemption 6. *See Vaughn* Index.

Dated: December 15, 2016

Respectfully submitted,

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Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2016, I filed the attached electronically with the Clerk of the United States District Court for the District of Columbia through the CM/ECF system, which caused the following counsel of record to be served by electronic means:

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Attorney for Plaintiff

/s/ Kevin M. Snell

From: Andre Sivels NOAA Federal <andre.sivels@noaa.gov>
Sent: Thursday, December 29, 2016 1:59 PM
To: Christopher Plaisted; Mark Graff NOAA Federal
Subject: Email Policy Discussion
Attachments: DOC Capstone Policy Approved120916.pdf; NAO Capstone Approach Dec 29 2016 DRAFT.docx

Chris and Mark

Happy Holidays to you both! (b)(5)
[REDACTED]
[REDACTED]
[REDACTED]. Thanks

The call in number is (b)(6) pass code (b)(6)

Andre Sivels
NOAA Records Officer
U.S. Department of Commerce
1305 East West Highway Rm 7439
Silver Spring, MD 20910
Phone: 301628 0946
Fax: 301 713 1169



UNITED STATES DEPARTMENT OF COMMERCE (DOC)

Records Management Capstone Email Policy

This policy applies to all bureaus, operating units, and commissions of the Department of Commerce, excluding U.S. Patent and Trademark (USPTO).

Purpose: This policy implements the “Capstone” approach for managing Department of Commerce email records (including email messages and attachments, calendar appointments, tasks, and chat transcripts).

Background: This policy directly supports the Presidential Directive *Managing Government Records Directive (M-12-18*¹), which mandates Federal agencies to manage all email records in an electronic format by December 31, 2016.

Scope: Within this policy, the use of the word ‘email’ is inclusive of email messages, attachments associated with email, and records created using common email system functions such as calendars/appointments, and tasks.

Email excludes temporary messaging functions, such as chat or Snapchat, that do not archive the conversation or its associated attachments.

Policy: Users are prohibited from creating or sending official communications using a non-official email account, for example a private account with Gmail or Yahoo, except in exigent circumstances. If a user creates a business email outside of their official email account, then the user must: (1) copy their official email account at the time of origination, or (2) forwards a complete copy of the email with all attachments to their official email account not later than 20 days after the original creation or transmission of the record. This policy also applies to calendar appointments. Failure to comply with this policy may result in disciplinary action against an agency officer or employee for an intentional violation of such prohibition.

¹ Presidential Directive, M-12-18, *Managing Government Records Directive*, Part I, Goal 1, paragraph 1.2 “By 2016, Federal agencies will manage both permanent and temporary email records in an accessible electronic format.” August 24, 2012.

Users are prohibited from creating records using temporary messaging functions, such as chat or Snapchat, that do not archive the conversation or its associated attachments.

For email, the Department will adopt the General Records Schedule for Capstone², as established by the National Archives and Records Administration (NARA). This records schedule will apply to all official email systems of the department, including classified email systems. The Capstone email schedule(s) will be negotiated by the DOC Office of the CIO through the DOC Chief Records Officer.

- a. The Capstone policy applies to emails created or received after December 31, 2016.
- b. Emails sent or received before December 31, 2016, are convenience copies. In accordance with applicable Records Schedules, employees must print and file emails sent or received before this date that are records. Employees may print email records either to paper or PDF, or by otherwise electronically archiving them. This requirement applies to departing employees, who before their departure must print and file any emails sent or received before December 31, 2016 that are records.
- c. It is the responsibility of email system owners³ and email administrators to ensure emails of former employees and current employees are managed under the Capstone schedule.
- d. Capstone applies only to Department of Commerce emails, as defined above. All other records, either paper or electronic, are governed by other records schedules.

The DOC Chief Records Officer may delegate the authority to amend the Capstone schedule or the authority to change the bureau level Capstone Officials to a bureau Records Officer. This delegation can be made to the Records Officer level and not the bureau level, which means a new delegation must be requested if there is a change in Records Officer, with the concurrence of the Senior Agency Official for Records Management.

Authorities

- a. 44 U.S.C. Chapters 21, 29, 31, and 33
- b. 36 CFR Chapter XII, Subpart B – DEPARTMENT OF COMMERCE Records Management Responsibilities
- c. 36 CFR Chapter XII, Subparts B and C – Electronic Records Management

² General Records Schedule (GRS) 6.1, "Email Managed under a Capstone Approach", available at <http://www.archives.gov/records-mgmt/grs/grs06-1.pdf>.

³ System Owner as defined in NIST Special Publication 800-53, Security and Privacy Controls for Federal Information Systems and Organizations, Appendix B

d. OMB M-12-18, Managing Government Records Directive

Effective date: This policy is effective upon the date of the signature.

Contact information: Department of Commerce Chief Records Officer

For Additional Information Contact:

Office of IT Policy and Planning
OITPP@doc.gov

Issued By:



Steven I. Cooper
Chief Information Officer and Senior Agency
Official for Records Management

9 DEC 16

Date

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From: Christopher Plaisted NOAA Federal <christopher.plaisted@noaa.gov>
Sent: Thursday, December 29, 2016 5:53 PM
To: Andre Sivels NOAA Federal
Cc: Mark Graff NOAA Federal
Subject: Re: Email Policy Discussion
Attachments: NAO Capstone Approach Dec 29 2016 DRAFT CJP.docx

Happy holidays to you as well (b)(5)

Chris

On Thu, Dec 29, 2016 at 10:59 AM, Andre Sivels NOAA Federal <andre.sivels@noaa.gov> wrote:
Chris and Mark

Happy Holidays to you both! (b)(5)

Thanks

The call in number is (b)(6) pass code (b)(6)

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From: Mark Graff NOAA Federal <mark.graff@noaa.gov>
Sent: Tuesday, January 3, 2017 11:45 AM
To: Jerome McNamara NOAA Federal
Cc: Robert Swisher NOAA Federal; Sarah Brabson NOAA Federal
Subject: Re: [CIO Council] Files Needed for January 10th
Attachments: DLP Plan Final signed.pdf; DLP Memo(Signed EHerbst and CPurvis (4 15 16).pdf; DLP Plan Implementation Status Update.pptx

Thanks Jerry

For my update, these are the three files I intend to use. The Implementation Status Update is just a brief slideshow of the summary of the 7 steps I sent after the meeting with Byron outlining that SDD and CSD have the ball to give us resource burden estimates and Google DLP Solution technical compliance. Rob/Sarah you guys see any issues with this to present to the CIO Council as an update?

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628 5658 (O)
(b)(6) (C)

Confidentiality Notice: This e mail message is intended only for the named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.

On Tue, Jan 3, 2017 at 10:21 AM, Jerome McNamara NOAA Federal <jerome.mcnamara@noaa.gov> wrote:
I will need your presentation files by COB Friday, January 6th. If you would like the title of your presentation to read differently than how I show it below, please let me know.

Cameron, agenda items 3 thru 6 can be in a single file if you prefer.

Thanks.

Agenda for January 10, 2017

1. Data Loss Prevention Update (I), Mark Graff
2. Web Presence Funding Mechanism, Rob Swisher and Cameron Shelton
3. FY17 DCOI Plans (I), Cameron Shelton
4. IT Shared Services - NOAA Cloud Hosting Service (I), Cameron Shelton
5. Infrastructure Operations Coordination Committee (IOCC) Revitalization (I), Cameron Shelton
6. Data Center Cost Model (I), Cameron Shelton

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NOAA, Office of the Chief Information Officer
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"NOAA's mission is to understand and predict changes in the Earth's environment, from the depths of the ocean to the surface of the sun, and to conserve and manage our coastal and marine resources."

NOAA Data Loss Prevention Plan

**Office of the Chief Information Officer
Governance and Portfolio Division
August 2016**



Background

[01] The protection of sensitive and personal information is more important than ever with electronic communications becoming increasingly prevalent. Safeguarding Personally Identifiable Information (PII) in the possession of the Federal Government and preventing its breach are essential to retaining the trust of the American public¹. This responsibility is shared by officials accountable for administering operational, privacy, and security programs. PII is any information that, by itself or in combination with other information, may be used to uniquely identify an individual. Within NOAA systems, this primarily can consist of Social Security Numbers (SSN), names, addresses, dates and places of birth, bank account numbers, e-mail addresses, telephone numbers, and passport numbers. The Office of Management and Budget (OMB) and the Department of Commerce (Commerce) released several memoranda to address the issue of safeguarding PII².

[02] This plan is intended as a framework for future action that will address user and system specific restrictions, controls, use cases, parameters, and other actions implemented based on the needs of individual systems and mission goals. This plan is intended to satisfy the implementation plan obligations to meet the minimum Privacy DLP Standards within 1 year as outlined in the April 15, 2016 Memorandum entitled “Departmental Privacy Standards for Commerce Data Loss Prevention (DLP) Security Tools”, as well as the corresponding May 3, 2016 data call issued by Commerce.

NOAA Data Overview

[01] NOAA provides the data, science, and information that allow the economy to function effectively and grow sustainably. NOAA helps to ensure a competitive economy by monitoring and predicting changes in the Earth's environment, protecting lives and property, and conserving and managing the nation's coastal and marine resources. NOAA's data portfolio mirrors the diversity and complexity of its mission ... and NOAA is very complex! Our mission and data diversity includes:

- 21,335 Staff (federal, contractor, associate)
- 435 Buildings
- 122 Weather Forecast Offices
- 13 River Forecast Centers
- 1,429 Real-Time Weather Stations
- 17 Satellites
- 8 Buoy Networks: 1042 Stations Deployed
- 13 National Marine Sanctuaries and 1 Marine National Monument
- 286 Data Centers

¹ The definition of PII can be found in the OMB Memorandum M-06-19, July 12, 2006.

² See, e.g., Memorandum from David A. Sampson, RE: Safeguarding Personally Identifiable Information, November 6, 2006.

- 94 Federal Information System Management Act Systems
- 33 Exhibit 300 IT Investments

NOAA DLP Strategy Overview

[01] NOAA uses, and will further deploy, a “Defense in Depth” approach to DLP. NOAA will use existing operational controls and privacy enhancing technologies. These include PII identifying solutions, encryption, firewalls, authorized use system access controls, and system audit logs. To further reduce the risk of compromise of sensitive PII in agency communications, NOAA will implement a Data Loss Prevention (DLP) solution set that monitors network communications and prevents sensitive PII from leaving the network, in addition to other sensitive data, as determined when the scope and capability of the solution is determined. Other sensitive data may include law enforcement sensitive data, business identifiable data, or other data sets for which the DLP solution can feasibly be leveraged. Each of these data sets may have one or more data owners, who will classify the information type, as described in the fourth development step below. In addition to these technical controls, NOAA utilizes administrative policies and procedures, as well as privacy training, to further safeguard information privacy and control access to information systems and information assets.

[02] NOAA conducts Privacy Threshold Analyses, (PTA’s), and, where applicable, Privacy Impact Assessments (PIAs) on all information systems to ensure privacy implications are addressed when planning, developing, implementing, and operating information technology (IT) systems that maintain information on individuals. NOAA utilizes a PIA template and guidance on conducting PIAs. The NOAA Bureau Chief Privacy Officer (BCPO) collaborates with system owners and IT security professionals to assess existing, new, or proposed programs, systems or applications for privacy risks, and recommends methods to protect individual privacy.

[03] The NOAA DLP solution(s) will be designed to monitor and prevent data from being leaked. NOAA’s DLP strategy, however, is to make sure the DLP solution(s) are as efficient and effective as possible. DLP needs to be rationally deployed in order to ensure that false positives do not overwhelm the system and the capacity of NOAA privacy and cyber security managers and staff. DLP tools such as McAfee Security, as powerful as they may be, require careful and organized deployment, otherwise reported incidents may be of little value.

[04] In response to the OMB M-07-16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information, and NIST SP 800-122, at 2.1, the NOAA Governance and Portfolio Division is leading the DLP initiative to promote secure practices in electronic communications (e-mails and Internet access) on the NOAA network to protect Controlled Unclassified Information (CUI) data. Taking a phased approach, the DLP initiative may include plans to implement specific solutions, for example, McAfee’s Data Loss Prevention (DLP) commercial off-the-shelf software solution that is capable of identifying and tracking a number of NOAA’s defined PII datasets. The NOAA DLP solution(s) will be designed to give NOAA an enterprise view into where it's most sensitive data are stored, who has access to the data, and where and by whom the data are sent outside the NOAA network. By using this information, NOAA can spot broken business processes and reduce the overall risk of exposure. The DLP solution(s) will take a data-centric approach to security, in which policies can be developed

around the content that should be protected and then deployed across multiple data states or functionalities, such as identifying, monitoring, and preventing.

DLP Development Steps

[01] A multi-layered approach will be applied to prevent data leakage for all routes and states. Data is classified under one of several schemes like data in motion, data in use, and at rest; or by data in-store, in-use and in-transit.

- Data in motion: Data that needs to be protected when in transit including HTTP/S, S/FTP/S, IM, P2P, SMTP.
- Data in use: Data that resides on end user workstation and needs to be protected from being leaked through removable media devices like USB, DVD, CD's.
- Data at rest: Data that resides on local storage media or server storage.

[02] Each of these layered types of data will be considered during deployment to maximize the prevention of data leakage. A multi-step approach to deployment, shown below, will be used as well. These steps are discussed in detail below.

1. Define policies
2. Identify sensitive data
3. Determine information flows
4. Identify data owners
5. Identify deployment scenarios
6. Plan DLP operations
7. Deploy DLP product(s)

Define Policies

[01] NOAA will build policies to protect the sensitive data. Every policy will consist of some rules, such as to protect credit card numbers, PII, and social security numbers, if such policies are not already in place. If there is a requirement for NOAA to protect sensitive information and a DLP product such as McAfee DLP does not support it out of the box, then NOAA will create rules using regular expressions (regex). It should be noted that DLP policies at this stage will be defined and not applied.

[02] Those policies will reflect the internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our objective: Commerce Directives; and OMB, White House, and National Institute for Standards and Technology (NIST) guidelines. Each of these sources provide a framework for implementing an automatic tool to monitor transfers of PII and for developing, or implementing, a commercial off-the-shelf product. We are evaluating these controls against an enterprise life cycle approach, and by reviewing enterprise life cycle commercial off-the-shelf artifacts and documents supporting the procurement, budget, and expenses for the DLP solution.

[03] Policies will take into consideration existing guidelines and recommendations as well as other factors, such as impact and dependency for other systems, also needed to be considered when implementing a DLP solution. The National Institute for Standards and Technology Special Publication 800-122, Guide to Protecting the Confidentiality of Personally Identifiable Information³[1], recommends that agencies implement automated tools, such as a network data leakage prevention tool, to monitor transfers of PII and to monitor inbound and outbound communications for unauthorized activities. In addition, the Government Accountability Office's Standards for Internal Control in the Federal Government⁴[2] provides that application controls should be designed to help ensure completeness, accuracy, authorization, and validity of all transactions during application processing. Controls should be installed as an application interfaces with other systems to ensure that all inputs are received and are valid and that outputs are correct and properly distributed.

Identify Sensitive Data

[01] NOAA will identify all the confidential, restricted, and highly restricted data across the whole organization and across the three categories, i.e. for data in-transit, in-store and in-use. In identifying the sensitive data, NOAA will define the scope within which the DLP Solution will function. Each data set analyzed will be considered as to whether or not leveraging the DLP product would be an efficient use of resources, whether the data is non-sensitive, or whether the DLP would be an effective tool in further securing the data. DLP products work with signatures to identify any restricted data when it is crossing boundaries. To identify the critical data and develop its signatures, there is a term in DLP products known as fingerprinting. Data is stored in various forms at various locations in an organization and it requires identifying and fingerprinting. Various products come with a discovery engine which crawl all searchable data in a given data store, index it and make it accessible through an intuitive interface which allows quick searching on data to find its sensitivity and ownership details.

Determine Information Flows

[01] It is very important for an organization to identify their information flow. NOAA OCIO will prepare a questionnaire to identify and extract all the useful information. A sample questionnaire would address, at a minimum, the following three issues:

- What is a standard data flow, and what should be the source and destination of the identified data?
- What are all the egress points present in the network?
- What processes are in place to govern the informational flow?

³ National Institute of Standards and Technology, NIST SP 800-122, Guide to Protecting the Confidentiality of Personally Identifiable Information (PII) (April 2010).

⁴ Government Accountability Office (formerly known as the General Accounting Office), GAO/AIMD-00-21.3.1, Internal Control: Standards for Internal Control in the Federal Government (Nov. 1999).

Identify Data Owners

[01] Identification of the NOAA staff and line office owners of data is also an important step in the planning strategy of DLP, so a list will be prepared by OCIO of whom to send the notifications to in case any sensitive data is lost. NOAA OCIO will distribute an assessment to identify the owners of each of the different sensitive data elements across the organization. The data owners also will be responsible for classifying the information types⁵. Many types of data will have multiple owners, governed by separate line and staff office policies for the collection and use of that data, depending on mission needs. The assessment will attempt to identify each offices ownership, collection, storage, and transmission of sensitive data so that when an incident occurs, the incident is properly triaged, escalated where necessary, reported⁶, and the DLP processes and application are modified and tuned as necessary.

Identify Deployment Scenarios

[01] The following questions arise in identifying potential Deployment Scenarios. Each of these must be addressed prior to agency-wide deployment of a mature DLP solution.

1. Will the Initial Deployment be applied to all of the traffic of data in use, or in motion, or at rest?
2. Alternatively, should NOAA deploy the DLP appliance by copying the network traffic and analyzing it at a different port before deploying it directly to the data states of the network traffic?
3. Should the deployment occur in high availability mode or should we configure in bypass mode?
4. How will the setup of endpoints with the DLP manager occur?
5. How do we maintaining integrity between communication ports and firewalls?
6. How do we ensure proper configuration of a crawling agent?

[02] As discussed above, sensitive data falls under three categories, i.e. data in motion, data at rest and data in use. After identifying the sensitive data and defining policies, NOAA will prepare for the deployment of DLP product(s). DLP deployment scenario of all three categories include :

- Data in motion: Data that needs to be protected when in transit, i.e. data on the wire. This includes channels like HTTP/S, S/FTP/S, IM, P2P, SMTP etc. NOAA will install the DLP protector appliance or software so it is not directly inline with the traffic. This is prudent to start with a minimally invasive method by not putting the appliances inline, to prevent a huge number of false positives or a network outage if the inline device fails. The NOAA approach will be to deploy DLP appliances or software in a span port first,

⁵ See, NIST SP 800-60.

⁶ Reporting here is referring to both internal reporting to the Office that owns the information, the Bureau Chief Privacy Officer, and N-CIRT as necessary, as well as external notifications (such as Privacy Incident reporting to DOC) and external reporting to OMB. Organizations report annually on specific privacy and security activities in their annual FISMA reports to OMB. The most recent memorandum is OMB M-10-15, FY 2010 Reporting Instructions for the Federal Information Security Management Act and Agency Privacy Management, available at http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-15.pdf

and then after the DLP strategy is mature, then put into inline mode. In order to mitigate the second risk, NOAA may deploy two options: first, deploy DLP in High Availability mode, and second, configure the inline DLP product in bypass mode, which will enable the traffic to bypass the inline DLP product in case the DLP product is down.

- **Data in Use:** Data that resides on the end user workstation and needs to be protected from being leaked through removable media devices like USB, DVD, CDs, etc. will fall under this category. In Data in Use, an agent may be installed in every NOAA endpoint device like laptop, desktop, etc. which is loaded with policies and is managed by a centralized DLP management server. Agents would be distributed on the endpoints via pushing strategies like SMS, GPO, etc.
- **Data in Store:** Data that resides on file servers and DBs and needs to be monitored from being getting leaked will fall under this category. All NOAA data that resides in storage servers or devices would be crawled using a DLP crawling agent. After crawling, data is fingerprinted to see if any unstructured data is present or not.

Plan DLP Operations

[01] NOAA will need to split the DLP operations into three phases: a triaging phase, a reporting and escalation phase, and a tuning phase. The security operation's team will monitor the alerts fired or triggered by the policies set up in the DLP product. N-CIRT will fine tune the policies as a result of some mis-configurations earlier or due to eventual policy or guidance changes and apply the changes to the DLP product. NOAA will need to identify the staffing, budget, training, and other resource demands that each phase of the DLP Operations will require, and determine the capabilities in effectively carrying out each phase with the available resources.

Deploy DLP Product(s)

[01] Deployment of security components is of no use if they cannot be monitored, and a DLP product is no exception. Below is an overview of what a DLP operation of an organization can be. First of all, the DLP product needs to be created with the right set of policies on the identified data among data at rest, in motion or in transit categories. The DLP operations can be separated into three phases, namely: the triaging phase, the reporting and escalation phase, and the tuning phase. These will need to be modified depending on the nature of the incident identified in the triaging phase for referral to N-CIRT and for DOC notification, as necessary. The triaging phase, incident reporting and escalation, as well as the any parameter modifications and tuning will be carried out in accordance with existing PII/BII Breach Response and Notification Plan.

Conclusion

[01] NOAA will employ a Defense in Depth approach to DLP. NOAA's DLP solution(s) need to minimize deployment and operating costs. As an off-the-shelf product, the McAfee Total Protection, or a similar product solution would potentially be an additional tool within the DID approach to effectively protect PII and BII data wherever it may be.

[02] NOAA has maintained a high awareness of data security, and is vigilant in protecting the sensitive information located within its systems. These Data Loss Prevention measures will

enhance the security of NOAA information systems and maintain the highest level of compliance with all regulatory and guidance documents that govern Data Loss Prevention at the agency⁷.

Definitions

Business Identifiable Information (BII) Information that is defined in the Freedom of Information Act (FOIA) as "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Commercial or financial information is considered confidential if disclosure is likely to cause substantial harm to the competitive position of the person from whom the information was obtained.

Personally Identifiable Information (PII) Information that can be used to distinguish or trace an individual's identity, such as name, Social Security number (SSN), biometric records, etc., alone, or when combined with other personal or identifying information, which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc. [OMB M 07 16].

Sensitive Personally Identifiable Information (Sensitive PII) Sensitive PII is defined as PII which, when disclosed, could result in harm to the individual whose name or identity is linked to the information. Further, in determining what PII is sensitive, the context in which the PII is used must be considered. For example, a list of people subscribing to a government newsletter is not sensitive PII; a list of people receiving treatment for substance abuse is sensitive PII. As well as context, the association of two or more non sensitive PII elements may result in sensitive PII. For instance, the name of an individual would be sensitive when grouped with place and date of birth and/or mother's maiden name, but each of these elements would not be sensitive independent of one another. For the purpose of determining which PII may be electronically transmitted, the following types of PII are considered sensitive when they are associated with an individual. Secure methods must be employed in transmitting this data when associated with an individual:

- Place of birth
- Date of birth
- Mother's maiden name
- Biometric information
- Medical information, except brief references to absences from work
- Personal financial information
- Credit card or purchase card account numbers
- Passport numbers

⁷ NIST SP 800 53A, Recommended Security Controls for Federal Information Systems, establishes common criteria for assessing the effectiveness of security controls in federal information systems. Organizations use the recommended assessment procedures from NIST SP 800 53A to develop their own assessment procedures.



Data Loss Prevention Plan Status Update

Prepared by Mark H. Graff
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The Approved DLP Plan



- The Plan was approved on August 30, 2016
- The Plan outlined 7 steps for implementation in order to be compliant with the April 15, 2016 DOC Memorandum on point:
 1. Define Policies
 2. Identify Sensitive Data
 3. Determine Information Flows
 4. Identify Data Owners
 5. Identify Deployment Scenarios
 6. Plan DLP Operations
 7. Deploy DLP Product(s)



Step 1 Status: Define Policies



- NOAA met with Byron Crenshaw, BCPO for the Census Bureau, including Doug representing the CIO Council.
- The policies for the DLP Solution will be limited to the DOC Policies governing email transmissions leaving the noaa.gov domain.
- These will including existing policies, which will remain unchanged, including the Electronic Transmission of PII Policy, The DOC Privacy Policy, the DOC Breach Response and Notification Plan, and the policies referenced in the April 15, 2016 Memorandum DLP Memorandum from Ellen Herbst.

Step 2 Status: Identify Sensitive Data



- The sensitive data will initially be limited to the sensitive data identified in the Commerce Privacy Data Loss Prevention Working Group Recommendations.
- The CIO Council can determine at a later time if they wish to utilize the DLP Solution beyond this data set



Step 3 Status: Determine Information Flows



- The information flows will initially be limited to emails leaving the noaa.gov domain that contain, or have attachments that contain, the sensitive data identified in the Commerce Privacy Data Loss Prevention Working Group Recommendations.



Step 4 Status: Identify Data Owners



- The data owners will be NOAA users sending emails outside the noaa.gov domain.
- Upon recommendation from the Census Bureau, because emails within the noaa.gov domain will not be filtered by the DLP solution, and a crawling agent will not be initially utilized, it is not necessary to identify data owners for information at rest, or for communications within the noaa.gov domain



Step 5 Status: Deployment Scenarios



- Deployment Scenarios cannot be identified until the anticipated burden on resources is determined by SDD and CSC, and deployment scenarios can be identify that are within available resources.



Step 5 Status: Deployment Scenarios (cont'd)




- SDD and CSC are currently determining the resource burden for implementation, as well as the Google DLP Solution for technical compliance with the DOC requirements.
- After this is completed, Steps 5, 6, and 7 can will continue.




APR 15 2016

MEMORANDUM FOR: Heads of Operating Units and Secretarial Officers

FROM:

Catrina D. Purvis 
Senior Agency Official for Privacy (SAOP) &
Chief Privacy Officer

Ellen Herbst 
Chief Financial Officer &
Assistant Secretary for Administration

SUBJECT: Departmental Privacy Standards for Commerce Data Loss
Prevention (DLP) Security Tools

The purpose of this memorandum is to establish a requirement for all bureaus/operating units (BOUs) to configure their Data Loss Prevention (DLP) security tools to implement privacy control capabilities that meet Departmental privacy DLP standards. This requirement will enhance privacy protections and reduce personally identifiable information (PII) breaches within Commerce.

BACKGROUND

DLP is a term that refers to both the policy and information security tools used to identify, restrict, monitor, and protect sensitive data in use, in motion, and at rest. DLP security tools detect and prevent unauthorized attempts to copy or send sensitive data, intentionally or unintentionally, without authorization. On July 7, 2010, Departmental guidance announcing the implementation of a DLP program was issued in a document titled "Immediate Enablement of a DLP Security Tool."

On December 17, 2014, the Commerce Privacy Council's DLP Working Group (commissioned by the then-General Counsel) produced a *Privacy DLP Working Group Recommendations Report*. In furtherance of the 2010 guidance, the report recommended requiring all BOUs to implement DLP-based privacy control capabilities and provided minimum privacy DLP standards for electronic transmissions of sensitive PII (incoming and outgoing email messages or internet postings). Implementation of these standards results in all unsecured electronic transmission of sensitive PII attempts on any Commerce system to be blocked and redirects senders to use an approved secured

transmission method. Many BOUs have implemented the recommended privacy DLP standards across all of their systems and others have made significant progress toward that end. This memorandum formally requires all BOUs to implement privacy DLP capabilities that satisfy the existing minimum standards set forth in the working group's attached report.

REQUIRED ACTIONS

Accordingly, the following actions are required and must be submitted to the Commerce Senior Agency Official for Privacy at CPO@doc.gov within 120 days from the date of this memorandum:

- BOUs with existing DLP security tool capabilities – Provide a confirmation email that the minimum privacy DLP control standards identified in the DLP Working Group Report have been implemented.
- BOUs with no existing DLP security tool capabilities – Provide an implementation plan to meet the minimum Privacy DLP Standards within one (1) year. (The implementation plan may propose an alternative method/process to achieve the standards).

Please direct any questions regarding this memorandum to Lisa Martin, Deputy Director of Departmental Privacy Operations, who can be reached at (202) 482-2459 and lmartin1@doc.gov.

cc: BOU Chief Privacy Officers
Chief Information Officers
Chief Financial Officers

Attachment:

DOC Privacy DLP Working Group Recommendations

United States Department of Commerce

Privacy Data Loss Prevention (DLP)
Working Group
Recommendations

December 17, 2014



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**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

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**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

SUMMARY

This document contains recommendations from the Department of Commerce (DOC) inter-agency network based Privacy Data Loss Prevention (DLP) Working Group for implementing a DOC wide DLP privacy program. Information in this recommendation will change as we gain greater experience using DLP email scan, new technologies are introduced, and new OMB requirements are implemented. As a result, it is the recommendation of the Privacy DOC Privacy DLP Working Group that these recommendations be reviewed annually and updated as appropriate.

The DOC inter-agency Privacy DLP Working Group was commissioned to research, investigate, and propose recommendations for implementing a department wide DLP privacy program. The group's primary objective was to provide high-level recommendations for a department wide DLP privacy program that will minimize the number of sensitive personally identifiable information (PII) email incidents while considering the level of technical, human, and financial resources needed to implement a DLP privacy program. DLP accomplishes these tasks using automated tools that implement policies and processes to identify where sensitive information is stored throughout the department's network, restrict access to that sensitive information, and monitor transmission of sensitive data in and out of the network boundary.

The Privacy DLP working group consisted of a small group of privacy advocates from the Department of Commerce, the Bureau of Industry and Security (BIS), the Bureau of Economic Analysis (BEA), the U.S. Census Bureau, the National Oceanic and Atmospheric Administration (NOAA), the National Institute of Standards and Technology (NIST), and the U.S. Patent and Trademark Office (USPTO). Byron Crenshaw, Privacy Compliance Chief of the U.S. Census Bureau, chaired this group.

This document describes the following recommendations from the Privacy DLP Working Group:

1. Security/Sensitivity Classification of DLP Personnel
2. Department-wide Privacy DLP Standard Process
3. DLP Minimum Scanning (filtering) Configuration – Incoming & Outgoing Mail
4. Filtering Criteria
5. Internet Postings
6. Handling of False Positives
7. Email Message Alerts to the Email Sender
8. Implementation Plan & Deadline
9. Reporting Requirements

**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

SCOPE

The recommendations of this document are for all unencrypted HTTP entities and messaging traffic (incoming or outgoing email messages or internet postings) that are leaving or entering a DOC network.

RECOMMENDATIONS

1. Security/Sensitivity Classification of DLP Personnel

Standard DLP operating procedures may allow DLP personnel access to confidential and/or sensitive information pertaining to persons, government or private entities. The DOC Privacy DLP Working Group recommends that DLP personnel sign a non-disclosure form prior to working with DLP technologies, acknowledging the requirements and responsibilities for information that is handled and made available. In addition, agencies may consider conducting additional security/suitability clearances for personnel involved with DLP.

2. Department-Wide DLP Standards

It is the recommendation of the DOC Privacy DLP Working Group that the DOC adopt the following practice as standard DLP privacy operating procedures:

- all unencrypted electronic messages (email messages or internet postings) that are leaving or entering a DOC network be filtered through the DLP solution (minimum scanning configuration is described in Section 3);
- suspected sensitive PII detected by the DLP shall be quarantined for a specified number of days as determined by the department or the OU;
- for each day an email is stored in quarantined, the email sender shall be sent an auto-generated email message from the DLP stating that his/her email will be deleted on [specified date] unless action is taken;
- if no action is taken on email messages quarantined by the DLP within the pre-determined number of days, the email message shall be deleted and the sender shall be notified;
- to resolve a suspected false positive, the email sender can either:
 - retransmit the email message with proper encryption,
 - redact the message of all sensitive information and retransmit, or,
 - contact the privacy staff to resolve suspected false positive (described in Section 6 – Handling of False Positives).

3. DLP Minimum Scanning Configuration

A successful department wide DLP privacy program must begin with a standard set of personally identifiable information (PII) items that each operating unit must consistently treat with special handling procedures during electronic transmission. The identification of sensitive PII is often based on the context of how the information is used. Since there are limitations on contextual understanding by DLP software, the list of sensitive PII identified by the DOC inter-agency Privacy DLP Working Group will consist primarily of single (standalone) sensitive PII items, with some basic grouping or combination of other PII or commonly associated text. Examples of these items are listed in Table 1.

**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

A. Egress Scanning

It is the recommendation of the DOC Privacy DLP Working Group that all outgoing email messages sent from a DOC network be subject to DLP filtering for sensitive PII based on the minimum filtering criteria as outlined in this document.

Note on Agencies' Rights: DOC operating units must reserve the right to add additional PII to their DLP filter as necessary. However, minimum DLP items identified by the DOC DLP Team cannot be detracted.

B. Ingress Scanning

Historical research by DOC operating units that are currently using a DLP software has revealed that incoming email messages will sometime contain sensitive PII which can go undetected by the operating unit. It is not until the operating unit attempts to reply or forward the message outside of the DOC network that the sensitive PII in the e-mail message is detected. It was also revealed that sometimes the incoming e-mail message will be copied and filed in an unsecure environment because the sensitive PII within the e-mail message remained undetected.

To address this problem, it is the recommendation of the DOC Privacy DLP Working Group that all e-mail messages coming into DOC networks be subject to the same DLP filtering criteria as outgoing email messages. Incoming e-mail messages containing sensitive PII as identified by the DLP filtering scan shall be blocked by the DLP from entering the DOC network. It is recommended that electronic notification be sent to the sender describing the policy prohibition, with instructions for using DOC approved encryption software (i.e., Accellion). In addition, it is also recommended that the intended recipient of the blocked email message be electronically notified that an incoming e-mail message has been blocked from receipt into the DOC network because of a possible DLP policy prohibition. Recommended suggestions for the wording of these notification messages are included in Appendix A.

4. Filtering Standard

The DOC Privacy DLP Working Group has identified a minimum standard for DLP privacy implementation. This filtering standard includes sensitive PII, and non-sensitive PII combined with other information, such as financial and/or medical information, which when combined, becomes sensitive PII.

DOC operating units must include these items in the standard filters of their DLP filtering items, additional filtering items can be added by DOC operating units as necessary.

If a quarantined message matches for more than one DLP filter item, the DLP scanning rules should terminate examination and trigger countermeasures on the first matching item.

It is the recommendation of the DOC Privacy DLP Working Group that the DLP filtering hierarchy be in this order.

**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

1. Social security number
2. Passport number
3. Driver's license/state identification number
4. Bank account/credit card number
5. Medical/HIPAA Information
6. Date of birth
7. Mother's maiden name

This order means if there is an email message that has content that recognize the SNN and HIPPA Patient Identification Number, the DLP would recognize the SSN as the violation and not continue processing for the HIPAA Patient Identifier.

4.1 U.S. Social Security Number Filters

The U.S. Social Security Number classifier requires a properly formatted number as well as other supporting data, such as a date of birth, name, or the text string "SSN".

U.S. SSN Examples:

- 123-45-6789 (No match because of no supporting information)
- 123-45-6789 July 4 (Match because a partial date is linked to 9-digit string number)
- 123-45-6789 7/4/1980 (Match because a possible date is linked to 9-digit string number)
- 123-45-6789 7/4 (No match)
- 123-45-6789 987-65-4321 (Match because of more than one 9-digit string number increases risk, threat, and harm)
- SSN: 123-45-6789 (Match)
- Joe Smith 123-45-6789 (Match because name linked to 9-digit number)
- 123-45-6789 CA 94066 (Match because state and zip code associated with 9-digit number)

4.2 Passport Number

The Passport Number filter requires inspection for the word "Passport," in English and Spanish, followed by a string of digits.

4.3 Driver's License/State Identification Number

Driver's license or other state identification number must be filtered by the words "Driver's License" or "State Identification," followed by a string of numeric or alphanumeric values.

String of numeric data including punctuation (dashes, periods, etc.).

**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

4.4 Financial Account/Credit Card Number

The words "routing," "accounting," "credit card," or "cc," followed by a string of numbers with or without dashes.

4.5 Medical and Health Insurance Portability and Accountability (HIPAA) Filters

It is the recommendation of the DOC Privacy DLP Working Group that medical and other HIPAA considerations be included in the DLP data dictionary. The Medical/HIPAA DLP scan shall require a match on the medical classifier AND a match on a personal information identifier such as full name, U.S. Social Security Number, U.S. National Provider Identifier, or custom patient identification number, to be considered a Medical/HIPAA DLP violation.

Medical Information Examples:

personal identifier such as, full name, SSN, national provider identifier, or custom patient identification number -

- ADHD
- AIDS
- Arthritis
- Asthma
- Autism
- Cancer
- Chlamydia
- Diabetes
- Epilepsy
- Flu (Influenza)
- Herpes
- Giardiasis
- Gonorrhea
- Heart Disease
- Hepatitis
- HIV
- HPV (Human papillomavirus)
- Influenza
- Meningitis
- MRSA (Methicillin Resistant Staphylococcus aureus)
- Obesity
- Salmonella
- Scabies

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- Sexually Transmitted Diseases
- Stroke
- Trichomonas
- Trichomoniasis
- Tuberculosis (TB)

4.6 Date of Birth

Date of birth filter must include a combination of numeric or alphanumeric dates associated with the words “date of birth”, “DOB”, or “birth date,” and must be linked with a unique personal identifiable such as name or social security number.

5. Internet Postings

Sensitive PII posted for consumption via private or public websites can present a much greater risk of harm than sensitive PII transmitted through email because of the potential for a wider audience and exposure. It is the recommendation of this group that Internet traffic be scanned for DLP filtering items. This includes posts from DOC controlled networks going out to official DOC social media websites and pages, and posts inbound to DOC controlled and monitored websites and pages, i.e., Web forums. Attempted postings containing information prohibited by DLP filter criteria shall be blocked from release on the DOC controlled websites and pages, to the Internet.

6. Handling of False Positives

For the purpose of this recommendation, a “false positive” is defined as an electronic message that was falsely quarantined by the DLP solution.

If a sender suspects that his/her email message has been falsely quarantined by the DLP, it is the recommendation of the DOC Privacy DLP Working Group that the following actions be taken:

- the sender shall notify the privacy staff of the suspected false positive;
- a privacy professional will review the email to determine if the quarantined email message is a DLP false positive;
- upon confirmation by privacy professional that the email message was falsely quarantined by the DLP, the email message will be released by the privacy professional to the addressee(s);
- the sender shall be notified that the message has been reviewed by a privacy staff member and released to the intended recipient(s).

If the privacy professional determines that the email message is not a false positive, i.e., contains PII that is prohibited from unencrypted electronic transmission, it is the recommendation of this group that the following actions be taken:

**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

- the email message will be manually deleted by the privacy staff;
- the sender will be notified that the message has been reviewed by a privacy staff member and found to contain information that is prohibited by policy from unencrypted email transmission.

If no action is taken by the sender for a message that has been quarantined by the DLP after a specified number of days (as defined by either the department or the OU), it is the recommendation of this group that the following actions be taken:

- the email message be automatically deleted by the DLP solution;
- the sender shall receive an auto-generated email message from the DLP solution stating that the email message [email subject and date] has been deleted by the DLP.

7. Email Messages

It is the recommendation of the DOC Privacy DLP Working Group that when an email message is quarantined by the DLP email scan, the sender shall receive an auto-generated email message describing the possible violation, the quarantine of the email message, and the steps to take to release the email message to the intended recipients. If the employee suspects the DLP quarantined the email in error (false positive) and contacts the privacy office for assistance, another email message will be sent stating the results of the privacy review. An example of each of these letters is included under the Email Messages section of the Appendix A.

8. Implementation Plan & Deadline

It is the recommendation of the DOC Privacy DLP Working Group that a department-wide policy be written based on these recommendations. All DOC operating units shall be given one year from date of issue to comply with the policy.

9. Reporting Requirements

Incidents captured by the DLP are not released from a DOC controlled environment. Since they remain within the control of the DOC, the DOC Privacy DLP Working Group recommends that DLP incidents be considered an attempted violation of policy and not an actual breach. Therefore, DLP incidents shall not be required for CIRT reporting.

To monitor the effectiveness of the DLP program, it is the recommendation of the DOC Privacy DLP Working Group that all operating units maintain record of the number of incidents captured by the DLP, the number of false positives, the number of avoid breaches, and the number of attempted self disclosed sensitive information.

**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

**Table 1
Examples of Specific Sensitive Items**

Name		X
Address		X
Telephone (cell/land)		X
Date of Birth		X
Mother's maiden name		X
Social Security Number	X	
Bio-metric (fingerprint, palm print, hand geometry, iris recognition, retina, etc.)		X
Medical information, except brief references to absences from work		X
Passport Number		X
Bank Account/Credit Card Number or Account	X	
Driver's license/state identification number		X
Potentially sensitive employment information, e.g., personnel ratings, disciplinary actions, and results of background investigations		X
Criminal history		X
Any information that may stigmatize or adversely affect an individual		X

This list is not exhaustive, and other data may be sensitive depending on specific circumstances. Social Security Numbers, including truncated SSNs that include only the last four digits, are sensitive regardless of whether they are associated with an individual.

**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

Table 2

DLP Solutions by DOC Operating Unit

	None	RSA	Iron Port	ScanMail	Secure Zip (Google cloud solution)	Trend Micro	Websense	Axways
BEA						X		
Census			X					
NIST	X							
PTO				X				X¹

¹ Used for email messages coming and going to the internet.

**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

Appendix A

Related Laws, Regulations, Policies, and Documents

- Privacy Act of 1974
- U.S. Department of Commerce Office of the Chief Information Officer, Electronic Transmission of Personally Identifiable Information
- U.S. Department of Commerce Office of the Chief Information Officer, IT Privacy Policy
- Office of Management and Budget Memorandum M-07-16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information
- Office of Management and Budget Memorandum M-06-19, Reporting Incidents Involving PII
- Office of Management and Budget Memorandum M-06-16, Protection of Sensitive Agency Information
- Office of Management and Budget Memorandum M-06-15, Safeguarding PII
- Commerce CIO's Memorandum on Safeguarding PII

**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

Appendix B

Email Messages

Employees can potentially receive two of the three DLP email messages:

1. **Message #1 - alerts the user that his/her message, and if appropriate any attachments, have been quarantined by the DLP. This message is to be sent each day until the quarantined email is either released by the privacy office or deleted.**

EXAMPLE

Subject: Email Message Temporarily Quarantined: [original email subject with date]

A scan by the [insert name of agency] Data Loss Prevention (DLP) system has detected that your email with the subject: [subject], dated [date email was sent] may contain sensitive information that by policy is prohibited from email transmission without proper encryption. As a result, your email has been placed in quarantine for [specified] days. Please take one of the following actions to resolve this issue:

1. *Re-transmit your message using approved email encryption; or,*
2. *Contact the privacy staff on (777) 777-7777, if you think your email was quarantined by the DLP email scan in error.*

Sending unencrypted email messages containing sensitive PII, including personal messages sent from a Department of Commerce email systems, is a violation of the Department of Commerce's "Electronic Transmission of Personally Identifiable Information" policy. Additional information regarding acceptable use of government IT systems is contained in the [insert the name of agency's IT Acceptable Use Policy]. A copy of this policy can be found on [insert http address].

In the future, to avoid delays in email transmissions, please ensure that emails containing sensitive personally identifiable information or sensitive financial information are transmitted using approved encryption software, such as Accellion – Secure File Sharing software, or other approved secure transmission [insert link to other encryption software approved by the agency].

Please direct any questions to the [insert privacy office's name and telephone number].

2. **Message #2 – is sent to the email sender who requested review by a privacy professional because a false positive is suspected, and after review, the message is released to the intended recipients.**

**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

EXAMPLE

Subject: Email Message Temporarily Quarantined: [original email subject with date]

YOUR EMAIL MESSAGE HAS BEEN SENT

The below email has been reviewed by the [name of agency's privacy office] and released to the intended receiver(s) on [date original message released].

If you have any questions please contact the [insert privacy office's name and telephone number].

- 3. Message #3 - alerts the user that his/her email message, and any attachments, has been deleted and not sent. This message is to be sent after a quarantined message has not been acted upon after the pre-determined period of time.**

EXAMPLE

Subject: Email Message Temporarily Quarantined: [original email subject with date]

The detention period of your quarantined email message has expired and your message has been deleted. Your message was not sent to the intended recipient.

Sending unencrypted email messages containing sensitive PII, including personal messages sent from a Department of Commerce email systems, is a violation of the Department of Commerce's "Electronic Transmission of Personally Identifiable Information" policy. Additional information regarding acceptable use of government IT systems is contained in the [insert the name of agency's IT Acceptable Use Policy]. A copy of this policy can be found on [insert http address].

In the future, to avoid delays in email transmissions, please ensure that emails containing sensitive personally identifiable information or sensitive financial information are transmitted using approved encryption software, such as Accellion – Secure File Sharing software, or other approved secure transmission [insert link to other encryption software approved by the agency].

Please direct any questions to the [insert privacy office's name and telephone number].

**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

Appendix C

DEFINITIONS

Business Identifiable Information (BI): consists of (a) information that is defined in the Freedom of Information Act (FOIA) as “trade secrets, and commercial or financial information obtained from a person [that is] privileged or confidential.” (5 U.S.C.552(b)(4)). This information is exempt from automatic release under the (b)(4) FOIA exemption. “Commercial” is not confined to records that reveal “basic commercial operations” but includes any records [or information] in which the submitter has a “commercial interest” and can include information submitted by a nonprofit entity. Or (b) commercial or other information that, although it may not be exempt from release under FOIA, is exempt from disclosure by law (e.g., 13 U.S.C. 9).

False Positive: messages quarantined by the DLP that were later determined to not have contained any information that is prohibited from electronic transmission.

Personally Identifiable Information (PII): OMB Memorandum M-07-16 states that PII “refers to information which can be used to distinguish or trace an individual’s identity, such as name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name, etc.”

Sensitive But Unclassified (SBU): is a designation of information in the United States federal government that, though unclassified, often requires strict controls over its distribution. SBU is a broad category of information that includes material covered by such designations as For Official Use Only (FOUO), Law Enforcement Sensitive (LES), Sensitive Homeland Security Information, Security Sensitive Information (SSI), Critical Infrastructure Information (CII), etc. It also includes Internal Revenue Service materials like individual tax records, systems information, and enforcement procedures. Some categories of SBU information have authority in statute or regulation (e.g. SSI, CII) while others, including FOUO, do not.

Sensitive Personally Identifiable Information (SPII): Department of Commerce’s policy on Electronic Transmission of PII states that “sensitive PII is defined as PII which, when disclosed, could result in harm to the individual whose name or identity is linked to the information. Further, in determining what PII is sensitive, the context in which the PII is used must be considered. For example, a list of people subscribing to a government newsletter is not sensitive PII; a list of people receiving treatment for substance abuse is sensitive PII. As well as context, the association of two or more non-sensitive PII elements may result in sensitive PII. For instance, the name of an individual would be sensitive when grouped with place and date of birth and/or mother’s maiden name, but each of these elements would not be sensitive independent of one another.”

**Commerce Interagency
Privacy Data Loss Prevention Working Group
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Sensitive Security Information (SSI): is a category of sensitive but unclassified information under the United States government's information sharing and control rules, often used by TSA and CBP. SSI is information obtained in the conduct of security activities whose public disclosure would, in the judgment of specified government agencies, harm transportation security, be an unwarranted invasion of privacy, or reveal trade secrets or privileged or confidential information.

UNCLASSIFIED/FOUO: is used for documents or products that contain material that is exempt from release under the Freedom of Information Act. It is treated as confidential, which means it cannot be discarded in the open trash, made available to the general public, or posted on an uncontrolled website. It can, however, be shared with individuals with a need to know the content, while still under the control of the individual possessing the document or product.

**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

UNRESOLVED ISSUES

Issue 1: Identify BII DLP requirements.

Resolution: Pending

Issue 2: How to resolve false positives of incoming email messages?

Resolution: Pending

RESOLVED ISSUES

Issue 1: Definition of a DLP breach:

Resolution: The official OMB definition of a breach is *“The loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to situations where persons other than authorized users and for an other than authorized purpose have access or potential access to personally identifiable information, whether physical or electronic.”*

The lost of PII email incidents captured by the DLP shall not be considered breaches since the email containing the PII has never left our control.

Issue 2: Treatment of truncated IDs (SSNs, Passports numbers, credit card numbers, etc.)

Resolution: Page 2 of the Department of Commerce Policy on the Electronic Transmission of Personally Identifiable Information states the following:

“Social Security Numbers (SSNs), including truncated SSNs that include only the last four digits, are sensitive regardless of whether they are associated with an individual. If it is determined that such transmission is required, then secure methods must be employed.”

The treatment of truncated SSNs will be handled in accordance with the official DOC policy until such time when this requirement is rescinded by the department.

Other truncated numbers, i.e., passport numbers, credit card numbers, shall not be considered sensitive unless it is accompanied by other identifying information. (this adds to the DOC policy, since the policy does not address the use of truncated numbers other than SSN.

Issue 3: How to handle DLP incidents flagged after hours.

**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

Resolution: The automated email alert will immediately notify the sender that his/her email message has been quarantined. The message shall provide instructions for the sender to re-transmit the email using approved encryption software or through Accellion to successfully transmit the email. Secure FTP.

Issue 4: Treatment of incoming messages containing sensitive PII.

Resolution: The Privacy DLP Working Group recommends incoming messages be subject to DLP filtering, however, the decision to flag and quarantine incoming email messages containing sensitive PII shall be at the discretion of each operating unit.

Issue 5: Treatment of messages posted on agency's social media site

Resolution: traffic to the internet should be considered.

Issue 6: Shall we consider one DLP solution for all DOC OUs?

Resolution: No. Each operating unit must be able to employ a DLP solution that is compatible with existing technical capabilities and policies.

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Image not available for this document, ID: 0.7.3707.13583 000001

From: Mark Graff NOAA Federal <mark.graff@noaa.gov>
Sent: Tuesday, January 3, 2017 12:56 PM
To: Kimberly Katzenbarger NOAA FEDERAL
Cc: Robert Moller NOAA Federal
Subject: Re: Draft Interim Response Letter
Attachments: FAL on behalf of GC.docx

Yes Here is a template FAL with the info already included if it is convenient.

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628 5658 (O)
(b)(6) (C)

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On Tue, Jan 3, 2017 at 12:36 PM, Kimberly Katzenbarger NOAA FEDERAL
<kimberly.katzenbarger@noaa.gov> wrote:

Mark (b)(5)

Kim

On Tue, Jan 3, 2017 at 11:17 AM, Mark Graff NOAA Federal <mark.graff@noaa.gov> wrote:
Hi Robert

(b)(5)

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628 5658](tel:(301)6285658) (O)
(b)(6) (C)

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On Tue, Jan 3, 2017 at 10:24 AM, Robert Moller NOAA Federal <robert.moller@noaa.gov> wrote:

Hi Mark and Kim:

I've worked up a draft response letter on 0169. Can you take a quick look? Do I need to add any additional details to any of this?

Many thanks,

Rob

Robert Moller
Deputy Director
Office of Legislative and Intergovernmental Affairs
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
1401 Constitution Ave., NW
Washington, DC 20230
Phone: [202 482 3596](tel:2024823596)
Fax: [202 482 4960](tel:2024824960)

Kimberly Katzenbarger, Attorney
National Oceanic and Atmospheric Administration
Office of General Counsel, Natural Resources Section
1315 East West Hwy, Suite 15104
Silver Spring, MD 20910 3282
Desk: [301 713 7448](tel:3017137448)
Cell [\(b\)\(6\)](tel:(b)(6))

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U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of the Chief Information Officer
High Performance Computing and Communications

Via FOIAonline

January 19, 2021

Elizabeth A. Mitchell
Association for Professional Observers
P.O. Box 933
Eugene, OR 97440

Re: FOIA Request DOC NOAA 2016 001765

Dear Ms. Mitchell:

This letter is in response to your Freedom of Information Act (FOIA) request which was received by our office on September 29, 2016, in which you requested, regarding the Environmental Protection Agency's Administrative Law Judge's Initial Decision and Order for NOAA Enforcement Case PI1401544:

A copy of the hearing transcript; A copy of the Respondents' and the Agency's exhibits; and A copy of Respondents' and Agency's post hearing briefs and related reply briefs.

We have located 711 pages of documents responsive to your request. After two failed e mail attempts, 207 of these pages were released to you in their entirety, on November 15, 2016.

An additional 230 pages are being released to you in their entirety, in this final response.

Two videos (Agency Exhibit 7), are available for viewing on YouTube at:

<https://www.youtube.com/watch?v=YfGp1Kdfds>

and

<https://www.youtube.com/watch?v=bkM09bzU08>

We are also releasing 241 pages of documents responsive to your request that are partially redacted under exemptions 5 U.S.C. 552(b)(3); 5 U.S.C. 552(b)(4); 5 U.S.C. 552(b)(5); 5 U.S.C. 552(b)(6); and 5 U.S.C. 552(b)(7)(C), which prohibits from disclosure of records: information that is prohibited from disclosure by another federal statute; trade secrets or commercial or financial information that is confidential or privileged; privileged communications within or

between agencies, including attorney-client privilege; information that, if disclosed, would invade another individual's personal privacy; and information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy, respectively.

33 pages of documents responsive to your request are exempt under 5 U.S.C. 552(b)(3); 5 U.S.C. 552(b)(4); 5 U.S.C. 552(b)(6); and 5 U.S.C. 552(b)(7)(C), which prohibits from disclosure of records: information that is prohibited from disclosure by another federal statute; trade secrets or commercial or financial information that is confidential or privileged; information that, if disclosed, would invade another individual's personal privacy; and information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy, respectively. These pages are being withheld in their entirety.

You have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this release must be received within 90 calendar days of the date of this response letter at the following address:

Assistant General Counsel for Litigation, Employment, and Oversight
U.S. Department of Commerce
Office of General Counsel
Room 5875
14th and Constitution Avenue, N.W.
Washington, D.C. 20230

An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to [202-482-2552](tel:202-482-2552), or by FOIAonline at <https://foiaonline.regulations.gov/foia/action/public/home#>.

For your appeal to be complete, it must include the following items:

- a copy of the original request,
- our response to your request,
- a statement explaining why the withheld records should be made available, and why the denial of the records was in error.
- "Freedom of Information Act Appeal" must appear on your appeal letter. It should also be written on your envelope, e-mail subject line, or your fax cover sheet.

FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

FOIA grants requesters the right to challenge an agency's final action in federal court. Before doing so, an adjudication of an administrative appeal is ordinarily required.

The Office of Government Information Services (OGIS), an office created within the National Archives and Records Administration, offers free mediation services to FOIA requesters. They may be contacted in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001

Email: ogis@nara.gov

Phone: 301-837-1996
Fax: 301-837-0348
Toll-free: 1-877-684-6448

If you have questions regarding this correspondence please contact Susan S. Beresford at Susan.S.Beresford@noaa.gov, or by phone at (301) 427-8285, or the NOAA FOIA Public Liaison Robert Swisher at (301) 628-5755.

Sincerely,

Mark H. Graff
FOIA Officer/Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration



From: Mark Graff NOAA Federal <mark.graff@noaa.gov>
Sent: Tuesday, January 3, 2017 1:40 PM
To: Jeri Dockett NOAA Affiliate; Kimberly Katzenbarger NOAA FEDERAL
Subject: FAL Template
Attachments: FAL on behalf of GC.docx

Hi Guys

Attached is a template for closures that already has the 90 day appeal language, OGIS language, and FOIA Liaison contact info plugged in from the 2016 FOIA Improvement Act in case you didn't already have it.

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628 5658 (O)
(b)(6) (C)

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U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of the Chief Information Officer
High Performance Computing and Communications

Via FOIAonline

January 19, 2021

Elizabeth A. Mitchell
Association for Professional Observers
P.O. Box 933
Eugene, OR 97440

Re: FOIA Request DOC NOAA 2016 001765

Dear Ms. Mitchell:

This letter is in response to your Freedom of Information Act (FOIA) request which was received by our office on September 29, 2016, in which you requested, regarding the Environmental Protection Agency's Administrative Law Judge's Initial Decision and Order for NOAA Enforcement Case PI1401544:

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between agencies, including attorney-client privilege; information that, if disclosed, would invade another individual's personal privacy; and information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy, respectively.

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You have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this release must be received within 90 calendar days of the date of this response letter at the following address:

Assistant General Counsel for Litigation, Employment, and Oversight
U.S. Department of Commerce
Office of General Counsel
Room 5875
14th and Constitution Avenue, N.W.
Washington, D.C. 20230

An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to [202-482-2552](tel:202-482-2552), or by FOIAonline at <https://foiaonline.regulations.gov/foia/action/public/home#>.

For your appeal to be complete, it must include the following items:

- a copy of the original request,
- our response to your request,
- a statement explaining why the withheld records should be made available, and why the denial of the records was in error.
- "Freedom of Information Act Appeal" must appear on your appeal letter. It should also be written on your envelope, e-mail subject line, or your fax cover sheet.

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Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001

Email: ogis@nara.gov

Phone: 301-837-1996
Fax: 301-837-0348
Toll-free: 1-877-684-6448

If you have questions regarding this correspondence please contact Susan S. Beresford at Susan.S.Beresford@noaa.gov, or by phone at (301) 427-8285, or the NOAA FOIA Public Liaison Robert Swisher at (301) 628-5755.

Sincerely,

Mark H. Graff
FOIA Officer/Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration



From: Mark Graff NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, January 4, 2017 2:11 PM
To: Lois Schiffer NOAA Federal; Stephen Lipps NOAA Federal; John Almeida NOAA Federal; Holmes, Colin; Robert Moller NOAA Federal; Scott Smullen NOAA Federal
Cc: Tom Taylor; Kimberly Katzenbarger NOAA FEDERAL; Charles; Dennis Morgan NOAA Federal; Stacey Nathanson NOAA Federal; Robert Swisher NOAA Federal; Steven Goodman NOAA Federal; Samuel Dixon NOAA Affiliate; Lola Stith NOAA Affiliate; Zachary Goldstein NOAA Federal; Douglas Perry NOAA Federal
Subject: Weekly Incoming and High Visibility Requests
Attachments: Weekly FOIA Incoming and High Visibility Requests 12.21 to 1.4.17.xls

Good Afternoon,

Attached is this week's report, which covers a two week period to include the incoming requests received over the Holiday. In particular, please note the request from the Union of Concerned Scientists asking for all correspondence with individuals with an email domain of "@ptt.gov" or "@donaldjtrump.com". (DOC NOAA 2017 000351). This is one of several transition related FOIA's that have been received lately, and the scope of the searches should overlap significantly.

Additionally, another Marine Monument request was received (DOC NOAA 2017 000361) this time from the Conservation Law Foundation seeking similar material to the two Cause of Action requests currently advancing under DOC NOAA 2017 000169 and DOC NOAA 2017 000170 (b)(5)

In litigation (b)(5)

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628 5658 (O)
(b)(6) (C)

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Tracking Number	Type	Requester	Requester Organization	Submitted
DOC-NOAA-2017-000384	Request	Marshall Morales	Riddell Williams	01/03/2017
DOC-NOAA-2017-000374	Request	Tim Bergen	McAllister & Quinn	01/03/2017
DOC-NOAA-2017-000367	Request	Christian Alexander	Back Room Knox	12/27/2016
DOC-NOAA-2017-000365	Request	Peter J. Speicher		12/23/2016
DOC-NOAA-2017-000364	Request	Peter J. Speicher		12/23/2016
DOC-NOAA-2017-000363	Request	Alexis M. Thomas	Animal Rights Hawaii	12/23/2016
DOC-NOAA-2017-000362	Request	Jaclyn Prange		12/22/2016
DOC-NOAA-2017-000361	Request	Peter Shelley	Conservation Law Foundation	12/22/2016
DOC-NOAA-2017-000360	Request	Dwayne Meadows		12/22/2016
DOC-NOAA-2017-000359	Request	David Moser		12/21/2016
DOC-NOAA-2017-000352	Request	Rose Odom		12/20/2016
DOC-NOAA-2017-000351	Request	Yogin Kothari	UCS	12/20/2016

Detail

We request that a copy be provided, in digital format, of the following documents (or documents containing the folk
I am requesting 2 documents with all their attachments under the Freedom of Information Act. I respectfully request
I would like to request documents related to the wildfires in Gatlinburg Tennessee. Apparently the weather service
I am requesting information on the candidates selected on the National Weather Service meteorologist vacancy NV
I am requesting information on the candidates selected on the National Weather Service meteorologist vacancy PF
All wild capture and import permits for cetaceans such as whales and dolphins issued to John Chalmers Sweeney,
See attached request.

Expedited Review is sought pursuant to 15 CFR § 4.6(f) Re: Freedom of Information Act Request Northeast
Any and all NMFS delegations of duties of the NMFS Deputy AA for Operations (or equivalent, depending on time |
For NOAA Fisheries, West Coast Region, California Coastal Office: All correspondence (including emails), reports,
I am looking to have an updated copy of the Marine Mammal Inventory Report (MMIR).
Please find an electronic FOIA request attached. If there are any questions or concerns, or if there is a need to nar

owing definitions and limitations: The "Lower Columbia River" as used herein means the Col
nts and Environmental Hazards application with all attachments. 2. The Museum of Science and Industr
urg Refused. The weather service called Gatlinburg a second time, some time later, and demanded the
at Fairbanks Weather Forecast Office, Alaska. I am requesting: 1) Access to copies of the qualifications
Forecast Office, Hawaii. Three candidates were selected off of the certificate. I am requesting: 1) Acces
nimals is limited to those that are wild caught; as well as a copy of the permits that meet the above criter

s for the Atlantic Ocean. Supporting documents attached
ior Operations to lower operating level(s) (or equivalent, depending on time period). Records may be in p
of Transportation (Caltrans) to replace or modify the Lagunitas Creek Bridge on Highway One (a.k.a. St:

r office starting Thursday, December 22nd, so feel free to reach me on my cell. Have a great holiday.

olumbia River from river mile 0 to river mile 146 i.e., below the Bonneville Dam. The "Willamette Ri
y's 2016: ELG for Community Resilience to Extreme Weather Events and Environmental Hazards applic
release of evacuation orders or the weather service would go over Gatlinburg's head and release the we
and anything in writing or electronic format that shows the qualifications of the selected candidate (i.e.,
ss to copies of the qualifications and anything in writing or electronic format that shows these qualificatio
ia.

possession of staff of NMFS HQ "front office" and NOAA Workforce Management Office (or
ate Route One) in Point Reyes Station, California.

ver" as used herein refers to the Willamette River from river mile 0 to river mile 28 i.e., below Will
cation with all attachments. Please reach out if you require any additional information. Thanks, Tim Berg
ather alert. My request is to get this audio recording and any other documents related to it including em
the selected candidates resume with any PII information "stripped" per 5 U.S.C. & 552(t
ns (i.e., the selected candidates resume with any PII information "stripped" per 5 U.S.C. &arr

the equivalent name for other time periods). Whatever form the record is in. I request all such delegator

amette Falls. This r

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ails, notes or other communication regarding this issue. The start of the Co

o)(6). 2) Access to c

o)(6). 2) Access to c

rs from January 20, 2009 through may 30, 2016 inclusive (specifically EXCLUDING the memo d

From: Robert Moller NOAA Federal <robert.moller@noaa.gov>
Sent: Tuesday, January 3, 2017 5:05 PM
To: Kimberly Katzenbarger NOAA FEDERAL
Cc: Mark Graff NOAA Federal
Subject: Re: Draft Interim Response Letter
Attachments: COA 1stInterim Response Letter Draft RM KK RM.docx

Ok, I think I've incorporated all the changes. Could you give this one last look?

Many thanks,

Rob

On Tue, Jan 3, 2017 at 1:37 PM, Kimberly Katzenbarger NOAA FEDERAL
<kimberly.katzenbarger@noaa.gov> wrote:

Rob (b)(5)

. Thanks, Kim

On Tue, Jan 3, 2017 at 12:55 PM, Mark Graff NOAA Federal <mark.graff@noaa.gov> wrote:
Yes Here is a template FAL with the info already included if it is convenient.

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628 5658](tel:3016285658) (O)
(b)(6) (C)

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On Tue, Jan 3, 2017 at 12:36 PM, Kimberly Katzenbarger NOAA FEDERAL
<kimberly.katzenbarger@noaa.gov> wrote:

Mark (b)(5)

Kim

On Tue, Jan 3, 2017 at 11:17 AM, Mark Graff NOAA Federal <mark.graff@noaa.gov> wrote:
Hi Robert

(b)(5)

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628 5658](tel:3016285658) (O)
(b)(6) (C)

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On Tue, Jan 3, 2017 at 10:24 AM, Robert Moller NOAA Federal <robert.moller@noaa.gov> wrote:
Hi Mark and Kim:

I've worked up a draft response letter on 0169. Can you take a quick look? Do I need to add any additional details to any of this?

Many thanks,

Rob

Robert Moller
Deputy Director
Office of Legislative and Intergovernmental Affairs
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
1401 Constitution Ave., NW
Washington, DC 20230
Phone: [202 482 3596](tel:2024823596)
Fax: [202 482 4960](tel:2024824960)

Kimberly Katzenbarger, Attorney
National Oceanic and Atmospheric Administration
Office of General Counsel, Natural Resources Section
1315 East West Hwy, Suite 15104
Silver Spring, MD 20910 3282
Desk: [301 713 7448](tel:3017137448)

Cel (b)(6)

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Kimberly Katzenbarger, Attorney
National Oceanic and Atmospheric Administration
Office of General Counsel, Natural Resources Section
1315 East West Hwy, Suite 15104
Silver Spring, MD 20910 3282
Desk: [301 713 7448](tel:3017137448)
Cell (b)(6)

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Robert Moller
Deputy Director
Office of Legislative and Intergovernmental Affairs
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
1401 Constitution Ave., NW
Washington, DC 20230
Phone: 202 482 3596
Fax: 202 482 4960

Image not available for this document, ID: 0.7.3707.13588 000001

From: Kimberly Katzenbarger NOAA FEDERAL <kimberly.katzenbarger@noaa.gov>
Sent: Wednesday, January 4, 2017 5:42 PM
To: Stephen Lipps NOAA Federal; Samuel Dixon; Mark Graff
Subject: Re: FW: 170 tasker
Attachments: COA 1stInterim Response Letter Draft RM KK (2).docx

Hi Stephen (b)(5)

. Kim

On Wed, Jan 4, 2017 at 4:15 PM, Stephen Lipps NOAA Federal <stephen.lipps@noaa.gov> wrote:

Kim (b)(5) . sdl

From: Mark Graff - NOAA Federal [mailto:mark.graff@noaa.gov]
Sent: Wednesday, January 04, 2017 4:03 PM
To: Stephen Lipps - NOAA Federal
Cc: Lola Stith - NOAA Affiliate
Subject: Re: 170-tasker

(b)(5)

[Redacted]

[Redacted]

(b)(5)

Mark H. Graff

FOIA Officer/Bureau Chief Privacy Officer (BCPO)

National Oceanic and Atmospheric Administration

[\(301\) 628 5658](tel:3016285658) (O)

(b)(6) (C)

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On Wed, Jan 4, 2017 at 3:46 PM, Stephen Lipps NOAA Federal <stephen.lipps@noaa.gov> wrote:

Mark, can you possibly assist me with creating the tasker you requested on the phone earlier? -Steve

Kimberly Katzenbarger, Attorney
National Oceanic and Atmospheric Administration
Office of General Counsel, Natural Resources Section
1315 East West Hwy, Suite 15104
Silver Spring, MD 20910 3282
Desk: [301 713 7448](tel:3017137448)
Cell (b)(6)

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From: Mark Graff NOAA Federal <mark.graff@noaa.gov>
Sent: Thursday, January 5, 2017 8:30 AM
To: Dennis Morgan NOAA Federal
Cc: Robert Swisher NOAA Federal
Subject: Re: [Action Required; Response Due COB 11/30/16] ISR/Data Call: FY17 CIO Council Priorities Dashboard
Attachments: DLP Plan Final signed.pdf

Hi Dennis

(b)(5)
[REDACTED]. In case you didn't have this at your fingertips, the final signed DLP Plan is attached for my part.

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628 5658 (O)
(b)(6) (C)

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On Thu, Jan 5, 2017 at 8:25 AM, Robert Swisher NOAA Federal <robert.swisher@noaa.gov> wrote:
A Data Call was issued 11/02/2016 by Dennis Morgan, with a response Due: 11/30/2016, for each priority assigned during the FY17 Planning Offsite Meeting held September 8, 2016.

The responsible project managers were tasked to develop a (1) Project Charter, (2) Project Management Plan, and (3) Risk Register, using the templates approved by the CIO Council on 10/12/16.

The following PMs have not completed this Data Call:

1. The Enterprise Directory Service (Lindsey Averill)
2. 1 NOAA Network (Jeff Flick)
3. IOCC Revitalization (Cameron Shelton)
4. CORPSRV Migration (Stefan Leeb)
5. Implement Continuous Diagnostics & Mitigation (CDM) (Gustavo Limon)
6. Primary Mission Essential Functions (PMEF) (Capt. Anne Lynch)

These missing documents (highlighted in the link below) are key to ensuring successful completion of these priorities. Accordingly, please submit the missing documents per the requirements of the Data Call by COB January 12, 2017.

FY17 CIO Council Priorities Dashboard

----- Forwarded message -----

From: **Dennis Morgan - NOAA Federal** <dennis.morgan@noaa.gov>

Date: Wed, Nov 2, 2016 at 5:08 PM

Subject: [Action Required; Response Due COB 11/30/16] ISR/Data Call: FY17 CIO Council Priorities Dashboard

To: Joseph Baczkowski - NOAA Federal <joseph.baczkowski@noaa.gov>, Hugh Johnson <Hugh.Johnson@noaa.gov>, Richard Varn - NOAA Federal <richard.varn@noaa.gov>, Perry Doug <Douglas.A.Perry@noaa.gov>, Warren Jeremy <jeremy.warren@noaa.gov>, "irene.parker@noaa.gov" <irene.parker@noaa.gov>, Larry Tyminski <Larry.Tyminski@noaa.gov>, Goldstein Zach <Zachary.Goldstein@noaa.gov>, Lindsey Averill <lindsey.p.averill@noaa.gov>, Jeff Flick <jeff.flick@noaa.gov>, "tony.lavoi@noaa.gov" <tony.lavoi@noaa.gov>, Sean McIntyre - NOAA Federal <sean.mcintyre@noaa.gov>, Swisher Robert <Robert.Swisher@noaa.gov>, Allison Soussi-Tanani <Allison.Soussi-Tanani@noaa.gov>, Cameron Shelton - NOAA Federal <Cameron.shelton@noaa.gov>, Stefan Leeb <stefan.leeb@noaa.gov>, Robert Hembrook - NOAA Federal <robert.hembrook@noaa.gov>, Jung Lee - NOAA Federal <Jung.Lee@noaa.gov>, Joseph Mangin - NOAA Federal <joseph.mangin@noaa.gov>, Terry Tielking <Terry.Tielking@noaa.gov>, Anne Lynch - NOAA Federal <anne.lynch@noaa.gov>, "Taylor Tom (work)" <tom.taylor@noaa.gov>, Graff Mark <mark.graff@noaa.gov>, Kang Chi <chi.y.kang@noaa.gov>, Robert Sears - NOAA Federal <robert.sears@noaa.gov>, James Mentzer <James.Mentzer@noaa.gov>, Brian Gross <Brian.Gross@noaa.gov>, Mario Lopez - NOAA Federal <mario.lopez@noaa.gov>
Cc: _NOAA Assistant CIOs <assistant.cios@noaa.gov>, _NOAA CIO Council CCs <NOAACIO.CouncilCCs@noaa.gov>, McNamara Jerry <Jerome.McNamara@noaa.gov>, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>, Morgan Dennis <dennis.morgan@noaa.gov>

Response Due = COB, 11/30/16

Project Managers and Executive Sponsors,

Familiarize yourself with the [FY17 CIO Council Priorities Dashboard](#).

For each Project that you were assigned during the FY17 Planning Offsite Meeting held on 9/8/16, develop a (1) Project Charter, (2) Project Management Plan, and (3) Risk Register, using the templates approved by the CIO Council on 10/12/16.

Template links:

- [NOAA Project Charter Template.docx](#)
- [NOAA Project Management Plan Template.docx](#)
- [Risk Register Template.xlsx](#)
- [PPT Briefing Template.pptx](#)

Submit files to Jerry McNamara by COB 11/30/16. He will begin scheduling your project for mandatory monthly briefings before the CIO Council; the first of which will occur in December.

Reference links:

- [FY17 CIO Council Priorities Dashboard](#)

- [FY17 CIO Council Offsite Notes and Priority Table - Finalized Notes and Priority Table - 9.29.16 DPerry email](#)
- [Deliverable - FY17 Offsite Meeting Notes & Actions - FINAL.docx](#)
- [Deliverable - FY17 Priority Table - FINAL.xlsx](#)

--

Rob Swisher
Director, Governance and Portfolio Division
[NOAA OCIO](#)
[301-628-5755](#)
[240-723-5284](#)

NOAA Data Loss Prevention Plan

**Office of the Chief Information Officer
Governance and Portfolio Division
August 2016**



Background

[01] The protection of sensitive and personal information is more important than ever with electronic communications becoming increasingly prevalent. Safeguarding Personally Identifiable Information (PII) in the possession of the Federal Government and preventing its breach are essential to retaining the trust of the American public¹. This responsibility is shared by officials accountable for administering operational, privacy, and security programs. PII is any information that, by itself or in combination with other information, may be used to uniquely identify an individual. Within NOAA systems, this primarily can consist of Social Security Numbers (SSN), names, addresses, dates and places of birth, bank account numbers, e-mail addresses, telephone numbers, and passport numbers. The Office of Management and Budget (OMB) and the Department of Commerce (Commerce) released several memoranda to address the issue of safeguarding PII².

[02] This plan is intended as a framework for future action that will address user and system specific restrictions, controls, use cases, parameters, and other actions implemented based on the needs of individual systems and mission goals. This plan is intended to satisfy the implementation plan obligations to meet the minimum Privacy DLP Standards within 1 year as outlined in the April 15, 2016 Memorandum entitled “Departmental Privacy Standards for Commerce Data Loss Prevention (DLP) Security Tools”, as well as the corresponding May 3, 2016 data call issued by Commerce.

NOAA Data Overview

[01] NOAA provides the data, science, and information that allow the economy to function effectively and grow sustainably. NOAA helps to ensure a competitive economy by monitoring and predicting changes in the Earth's environment, protecting lives and property, and conserving and managing the nation's coastal and marine resources. NOAA's data portfolio mirrors the diversity and complexity of its mission ... and NOAA is very complex! Our mission and data diversity includes:

- 21,335 Staff (federal, contractor, associate)
- 435 Buildings
- 122 Weather Forecast Offices
- 13 River Forecast Centers
- 1,429 Real-Time Weather Stations
- 17 Satellites
- 8 Buoy Networks: 1042 Stations Deployed
- 13 National Marine Sanctuaries and 1 Marine National Monument
- 286 Data Centers

¹ The definition of PII can be found in the OMB Memorandum M-06-19, July 12, 2006.

² See, e.g., Memorandum from David A. Sampson, RE: Safeguarding Personally Identifiable Information, November 6, 2006.

- 94 Federal Information System Management Act Systems
- 33 Exhibit 300 IT Investments

NOAA DLP Strategy Overview

[01] NOAA uses, and will further deploy, a “Defense in Depth” approach to DLP. NOAA will use existing operational controls and privacy enhancing technologies. These include PII identifying solutions, encryption, firewalls, authorized use system access controls, and system audit logs. To further reduce the risk of compromise of sensitive PII in agency communications, NOAA will implement a Data Loss Prevention (DLP) solution set that monitors network communications and prevents sensitive PII from leaving the network, in addition to other sensitive data, as determined when the scope and capability of the solution is determined. Other sensitive data may include law enforcement sensitive data, business identifiable data, or other data sets for which the DLP solution can feasibly be leveraged. Each of these data sets may have one or more data owners, who will classify the information type, as described in the fourth development step below. In addition to these technical controls, NOAA utilizes administrative policies and procedures, as well as privacy training, to further safeguard information privacy and control access to information systems and information assets.

[02] NOAA conducts Privacy Threshold Analyses, (PTA’s), and, where applicable, Privacy Impact Assessments (PIAs) on all information systems to ensure privacy implications are addressed when planning, developing, implementing, and operating information technology (IT) systems that maintain information on individuals. NOAA utilizes a PIA template and guidance on conducting PIAs. The NOAA Bureau Chief Privacy Officer (BCPO) collaborates with system owners and IT security professionals to assess existing, new, or proposed programs, systems or applications for privacy risks, and recommends methods to protect individual privacy.

[03] The NOAA DLP solution(s) will be designed to monitor and prevent data from being leaked. NOAA’s DLP strategy, however, is to make sure the DLP solution(s) are as efficient and effective as possible. DLP needs to be rationally deployed in order to ensure that false positives do not overwhelm the system and the capacity of NOAA privacy and cyber security managers and staff. DLP tools such as McAfee Security, as powerful as they may be, require careful and organized deployment, otherwise reported incidents may be of little value.

[04] In response to the OMB M-07-16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information, and NIST SP 800-122, at 2.1, the NOAA Governance and Portfolio Division is leading the DLP initiative to promote secure practices in electronic communications (e-mails and Internet access) on the NOAA network to protect Controlled Unclassified Information (CUI) data. Taking a phased approach, the DLP initiative may include plans to implement specific solutions, for example, McAfee’s Data Loss Prevention (DLP) commercial off-the-shelf software solution that is capable of identifying and tracking a number of NOAA’s defined PII datasets. The NOAA DLP solution(s) will be designed to give NOAA an enterprise view into where it's most sensitive data are stored, who has access to the data, and where and by whom the data are sent outside the NOAA network. By using this information, NOAA can spot broken business processes and reduce the overall risk of exposure. The DLP solution(s) will take a data-centric approach to security, in which policies can be developed

around the content that should be protected and then deployed across multiple data states or functionalities, such as identifying, monitoring, and preventing.

DLP Development Steps

[01] A multi-layered approach will be applied to prevent data leakage for all routes and states. Data is classified under one of several schemes like data in motion, data in use, and at rest; or by data in-store, in-use and in-transit.

- Data in motion: Data that needs to be protected when in transit including HTTP/S, S/FTP/S, IM, P2P, SMTP.
- Data in use: Data that resides on end user workstation and needs to be protected from being leaked through removable media devices like USB, DVD, CD's.
- Data at rest: Data that resides on local storage media or server storage.

[02] Each of these layered types of data will be considered during deployment to maximize the prevention of data leakage. A multi-step approach to deployment, shown below, will be used as well. These steps are discussed in detail below.

1. Define policies
2. Identify sensitive data
3. Determine information flows
4. Identify data owners
5. Identify deployment scenarios
6. Plan DLP operations
7. Deploy DLP product(s)

Define Policies

[01] NOAA will build policies to protect the sensitive data. Every policy will consist of some rules, such as to protect credit card numbers, PII, and social security numbers, if such policies are not already in place. If there is a requirement for NOAA to protect sensitive information and a DLP product such as McAfee DLP does not support it out of the box, then NOAA will create rules using regular expressions (regex). It should be noted that DLP policies at this stage will be defined and not applied.

[02] Those policies will reflect the internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our objective: Commerce Directives; and OMB, White House, and National Institute for Standards and Technology (NIST) guidelines. Each of these sources provide a framework for implementing an automatic tool to monitor transfers of PII and for developing, or implementing, a commercial off-the-shelf product. We are evaluating these controls against an enterprise life cycle approach, and by reviewing enterprise life cycle commercial off-the-shelf artifacts and documents supporting the procurement, budget, and expenses for the DLP solution.

[03] Policies will take into consideration existing guidelines and recommendations as well as other factors, such as impact and dependency for other systems, also needed to be considered when implementing a DLP solution. The National Institute for Standards and Technology Special Publication 800-122, Guide to Protecting the Confidentiality of Personally Identifiable Information³[1], recommends that agencies implement automated tools, such as a network data leakage prevention tool, to monitor transfers of PII and to monitor inbound and outbound communications for unauthorized activities. In addition, the Government Accountability Office's Standards for Internal Control in the Federal Government⁴[2] provides that application controls should be designed to help ensure completeness, accuracy, authorization, and validity of all transactions during application processing. Controls should be installed as an application interfaces with other systems to ensure that all inputs are received and are valid and that outputs are correct and properly distributed.

Identify Sensitive Data

[01] NOAA will identify all the confidential, restricted, and highly restricted data across the whole organization and across the three categories, i.e. for data in-transit, in-store and in-use. In identifying the sensitive data, NOAA will define the scope within which the DLP Solution will function. Each data set analyzed will be considered as to whether or not leveraging the DLP product would be an efficient use of resources, whether the data is non-sensitive, or whether the DLP would be an effective tool in further securing the data. DLP products work with signatures to identify any restricted data when it is crossing boundaries. To identify the critical data and develop its signatures, there is a term in DLP products known as fingerprinting. Data is stored in various forms at various locations in an organization and it requires identifying and fingerprinting. Various products come with a discovery engine which crawl all searchable data in a given data store, index it and make it accessible through an intuitive interface which allows quick searching on data to find its sensitivity and ownership details.

Determine Information Flows

[01] It is very important for an organization to identify their information flow. NOAA OCIO will prepare a questionnaire to identify and extract all the useful information. A sample questionnaire would address, at a minimum, the following three issues:

- What is a standard data flow, and what should be the source and destination of the identified data?
- What are all the egress points present in the network?
- What processes are in place to govern the informational flow?

³ National Institute of Standards and Technology, NIST SP 800-122, Guide to Protecting the Confidentiality of Personally Identifiable Information (PII) (April 2010).

⁴ Government Accountability Office (formerly known as the General Accounting Office), GAO/AIMD-00-21.3.1, Internal Control: Standards for Internal Control in the Federal Government (Nov. 1999).

Identify Data Owners

[01] Identification of the NOAA staff and line office owners of data is also an important step in the planning strategy of DLP, so a list will be prepared by OCIO of whom to send the notifications to in case any sensitive data is lost. NOAA OCIO will distribute an assessment to identify the owners of each of the different sensitive data elements across the organization. The data owners also will be responsible for classifying the information types⁵. Many types of data will have multiple owners, governed by separate line and staff office policies for the collection and use of that data, depending on mission needs. The assessment will attempt to identify each offices ownership, collection, storage, and transmission of sensitive data so that when an incident occurs, the incident is properly triaged, escalated where necessary, reported⁶, and the DLP processes and application are modified and tuned as necessary.

Identify Deployment Scenarios

[01] The following questions arise in identifying potential Deployment Scenarios. Each of these must be addressed prior to agency-wide deployment of a mature DLP solution.

1. Will the Initial Deployment be applied to all of the traffic of data in use, or in motion, or at rest?
2. Alternatively, should NOAA deploy the DLP appliance by copying the network traffic and analyzing it at a different port before deploying it directly to the data states of the network traffic?
3. Should the deployment occur in high availability mode or should we configure in bypass mode?
4. How will the setup of endpoints with the DLP manager occur?
5. How do we maintaining integrity between communication ports and firewalls?
6. How do we ensure proper configuration of a crawling agent?

[02] As discussed above, sensitive data falls under three categories, i.e. data in motion, data at rest and data in use. After identifying the sensitive data and defining policies, NOAA will prepare for the deployment of DLP product(s). DLP deployment scenario of all three categories include :

- Data in motion: Data that needs to be protected when in transit, i.e. data on the wire. This includes channels like HTTP/S, S/FTP/S, IM, P2P, SMTP etc. NOAA will install the DLP protector appliance or software so it is not directly inline with the traffic. This is prudent to start with a minimally invasive method by not putting the appliances inline, to prevent a huge number of false positives or a network outage if the inline device fails. The NOAA approach will be to deploy DLP appliances or software in a span port first,

⁵ See, NIST SP 800-60.

⁶ Reporting here is referring to both internal reporting to the Office that owns the information, the Bureau Chief Privacy Officer, and N-CIRT as necessary, as well as external notifications (such as Privacy Incident reporting to DOC) and external reporting to OMB. Organizations report annually on specific privacy and security activities in their annual FISMA reports to OMB. The most recent memorandum is OMB M-10-15, FY 2010 Reporting Instructions for the Federal Information Security Management Act and Agency Privacy Management, available at http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-15.pdf

and then after the DLP strategy is mature, then put into inline mode. In order to mitigate the second risk, NOAA may deploy two options: first, deploy DLP in High Availability mode, and second, configure the inline DLP product in bypass mode, which will enable the traffic to bypass the inline DLP product in case the DLP product is down.

- **Data in Use:** Data that resides on the end user workstation and needs to be protected from being leaked through removable media devices like USB, DVD, CDs, etc. will fall under this category. In Data in Use, an agent may be installed in every NOAA endpoint device like laptop, desktop, etc. which is loaded with policies and is managed by a centralized DLP management server. Agents would be distributed on the endpoints via pushing strategies like SMS, GPO, etc.
- **Data in Store:** Data that resides on file servers and DBs and needs to be monitored from being getting leaked will fall under this category. All NOAA data that resides in storage servers or devices would be crawled using a DLP crawling agent. After crawling, data is fingerprinted to see if any unstructured data is present or not.

Plan DLP Operations

[01] NOAA will need to split the DLP operations into three phases: a triaging phase, a reporting and escalation phase, and a tuning phase. The security operation's team will monitor the alerts fired or triggered by the policies set up in the DLP product. N-CIRT will fine tune the policies as a result of some mis-configurations earlier or due to eventual policy or guidance changes and apply the changes to the DLP product. NOAA will need to identify the staffing, budget, training, and other resource demands that each phase of the DLP Operations will require, and determine the capabilities in effectively carrying out each phase with the available resources.

Deploy DLP Product(s)

[01] Deployment of security components is of no use if they cannot be monitored, and a DLP product is no exception. Below is an overview of what a DLP operation of an organization can be. First of all, the DLP product needs to be created with the right set of policies on the identified data among data at rest, in motion or in transit categories. The DLP operations can be separated into three phases, namely: the triaging phase, the reporting and escalation phase, and the tuning phase. These will need to be modified depending on the nature of the incident identified in the triaging phase for referral to N-CIRT and for DOC notification, as necessary. The triaging phase, incident reporting and escalation, as well as the any parameter modifications and tuning will be carried out in accordance with existing PII/BII Breach Response and Notification Plan.

Conclusion

[01] NOAA will employ a Defense in Depth approach to DLP. NOAA's DLP solution(s) need to minimize deployment and operating costs. As an off-the-shelf product, the McAfee Total Protection, or a similar product solution would potentially be an additional tool within the DID approach to effectively protect PII and BII data wherever it may be.

[02] NOAA has maintained a high awareness of data security, and is vigilant in protecting the sensitive information located within its systems. These Data Loss Prevention measures will

enhance the security of NOAA information systems and maintain the highest level of compliance with all regulatory and guidance documents that govern Data Loss Prevention at the agency⁷.

Definitions

Business Identifiable Information (BII) Information that is defined in the Freedom of Information Act (FOIA) as "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Commercial or financial information is considered confidential if disclosure is likely to cause substantial harm to the competitive position of the person from whom the information was obtained.

Personally Identifiable Information (PII) Information that can be used to distinguish or trace an individual's identity, such as name, Social Security number (SSN), biometric records, etc., alone, or when combined with other personal or identifying information, which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc. [OMB M 07 16].

Sensitive Personally Identifiable Information (Sensitive PII) Sensitive PII is defined as PII which, when disclosed, could result in harm to the individual whose name or identity is linked to the information. Further, in determining what PII is sensitive, the context in which the PII is used must be considered. For example, a list of people subscribing to a government newsletter is not sensitive PII; a list of people receiving treatment for substance abuse is sensitive PII. As well as context, the association of two or more non sensitive PII elements may result in sensitive PII. For instance, the name of an individual would be sensitive when grouped with place and date of birth and/or mother's maiden name, but each of these elements would not be sensitive independent of one another. For the purpose of determining which PII may be electronically transmitted, the following types of PII are considered sensitive when they are associated with an individual. Secure methods must be employed in transmitting this data when associated with an individual:

- Place of birth
- Date of birth
- Mother's maiden name
- Biometric information
- Medical information, except brief references to absences from work
- Personal financial information
- Credit card or purchase card account numbers
- Passport numbers

⁷ NIST SP 800 53A, Recommended Security Controls for Federal Information Systems, establishes common criteria for assessing the effectiveness of security controls in federal information systems. Organizations use the recommended assessment procedures from NIST SP 800 53A to develop their own assessment procedures.

- Potentially sensitive employment information, e.g., personnel ratings, disciplinary actions, and result of background investigations
- Criminal history
- Any information that may stigmatize or adversely affect an individual.

This list is not exhaustive, and other data may be sensitive depending on specific circumstances. Social Security Numbers (SSNs), including truncated SSNs that include only the last four digits, are sensitive regardless of whether they are associated with an individual. If it is determined that such transmission is required, then secure methods must be employed. [DOC Electronic Transmission of PII Policy].

Controlled Unclassified Information (CUI) Information that requires safeguarding or dissemination controls pursuant to and consistent with applicable law, regulations, and government wide policies but is not classified under Executive Order 13526 or the Atomic Energy Act, as amended.

Signed this day of , 2016.

GOLDSTEIN.ZACHARY.G.1228698985 Digitally signed by GOLDSTEIN ZACHARY G 1228698985
DN: c US o U S Government ou DoD ou PKI
ou OTHER cn GOLDSTEIN ZACHARY G 1228698985
Date: 2016.08.30 15:28:33 -0400

Zachary Goldstein, NOAA CIO

From: NMFS HQ PR FOIA Requests NOAA Service Account <nmfs.hq.pr.foia@noaa.gov>
Sent: Friday, January 6, 2017 10:45 AM
To: Mark Graff NOAA Federal
Cc: Lola Stith NOAA Affiliate
Subject: Fwd: FW: 16 000959 ... need to speak with you to understand the b4 concerns you had
Attachments: 2015 1257 Final AKR Clearance.pdf; 16 1260 USACE Refer 39 records.pdf; AKR 16 1390 Int1 Clearance for 959.pdf; AKR 16 1390 Int2 Clearance.pdf

Good Morning Mark,

Debbie asked me to speak with you (b)(5)

- [REDACTED]
- [REDACTED]
 - [REDACTED]
- [REDACTED]

- [REDACTED]
- [REDACTED]

thanks
Jerenda
427-8421

Forwarded message

From: Deborah Ben-David - NOAA Federal <deborah.ben_david@noaa.gov>
Date: Thu, Jan 5, 2017 at 10:27 AM
Subject: Fwd: FW: 16 000959
To: NMFS HQ PR FOIA Requests NOAA Service Account <nmfs.hq.pr.foia@noaa.gov>, Peaches Hodge Tonic NOAA Federal <peaches.hodge_tonic@noaa.gov>

Forwarded message

From: Lamar Turner - NOAA Federal <lamar.turner@noaa.gov>
Date: Mon, Jun 13, 2016 at 11:24 AM
Subject: FW: 16 000959
To: Deborah Ben David NOAA Federal <deborah.ben_david@noaa.gov>

Cc: Jolie Harrison - NOAA Federal <jolie.harrison@noaa.gov>

Debbie,

(b)(5)

Filters

By **Folder** any

[any](#) | [none](#) | [open](#) | [close](#)
<Not Assigned>(450)only

▼ Productions(181)only

Interim2, Full Release(181)only

Lamar N. Turner

FOIA Coordinator

Office of Protected Resources

NOAA Fisheries

1315 East West Highway

Bldg. SSMC3, Room 13733

Silver Spring, Maryland 20910

[301-427-8492](tel:301-427-8492)

From: Mark Graff - NOAA Federal [mailto:mark.graff@noaa.gov]

Sent: Monday, June 13, 2016 10:22 AM

To: Lamar Turner - NOAA Federal

Subject: Re: 16-000959

Hey Lamar,

(b)(5)

Mark H. Graff

FOIA Officer/Chief Privacy Officer (BCPO)

National Oceanic and Atmospheric Administration

(301) 628-5658 (O)

(b)(6) (C)

On Mon, Jun 13, 2016 at 10:02 AM, Lamar Turner NOAA Federal <lamar.turner@noaa.gov> wrote:

(b)(5)

, though.

Lamar N. Turner

FOIA Coordinator

Office of Protected Resources

NOAA Fisheries

1315 East West Highway

Bldg. SSMC3, Room 13733

Silver Spring, Maryland 20910

[301 427 8492](tel:3014278492)

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Deborah Ben-David
Attorney-Advisor
National Oceanic and Atmospheric Administration
Office of the General Counsel
301-713-9662

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NOAA / National Marine Fisheries Service
FREEDOM OF INFORMATION OFFICE (FOIA)
Office of Protected Resources
Tawand Tonic, PR FOIA Point of Contact
Phone: 301 - 427 - 8482



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

September 30, 2016

US Army Engineer District, Alaska District
CEPOA-OC (FOIA Officer)
2204 3rd Street, RM 151
JBER, Alaska 99506
(Erica.L.Nutter@usace.army.mil)

Re: FOIA Request No. DOC-NOAA-2016-001260

Dear Ms. Erica L. Nutter:

The National Oceanic and Atmospheric Administration (NOAA) received a Freedom of Information Act request entered into FOIAonline June 7, 2016 from Jennie Frost, Trustees for Alaska on behalf of Chuitna Citizens Coalition and Cook Inletkeeper (Chuitna Citizens) (enclosed). The requester seeks:

- “ 1. All records analyzing, evaluating, reviewing, summarizing, and/or discussing potential impacts of the proposed Chuitna coal strip mine and fish and/or fish habitat; and*
- 2. All records analyzing, evaluating, reviewing, summarizing, and/or discussing the potential impacts of the proposed Chuitna coal strip mine and Cook Inlet beluga whales.”*

On September 19, 2016, NOAA provided 70 records to USACE for FOIA purposes. On September 23, 2016, USACE responded with a recommendation that 31 of the 70 records may be released in their entirety. Under DOC FOIA regulations found at 15 C.F.R. § 4.5(b), we are referring the remaining 39 records (enclosed) to your office for direct response to the FOIA request. An index is provided for your convenience.

We have advised the requester that she will receive a direct response from your office regarding these records in our enclosed final response to the requester. We respectfully seek a copy of USACE response via email to ellen.sebastian@noaa.gov for our FOIA administrative file.

Thank you for your cooperation under FOIA's agency consultation and referral processes. If you have any questions concerning this correspondence, please contact me at (907) 586-7152.

Sincerely,

Ellen Sebastian
FOIA Coordinator, Alaska Region

Enclosures



Alaska Region
FOIA Clearance Sheet

FOIAonline Number: DOC-NOAA-2015-1257

Requester Name & Contact Information:

Michelle Sinnott, Trustees for Alaska

(b)(5)

**Alaska Region
FOIA Clearance Sheet**

Special note:



Final Clearance Signatures:

Date	Office	Signature
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Alaska Region FOIA Clearance Sheet
FOIA 2016-1390
PRD AKR Interim

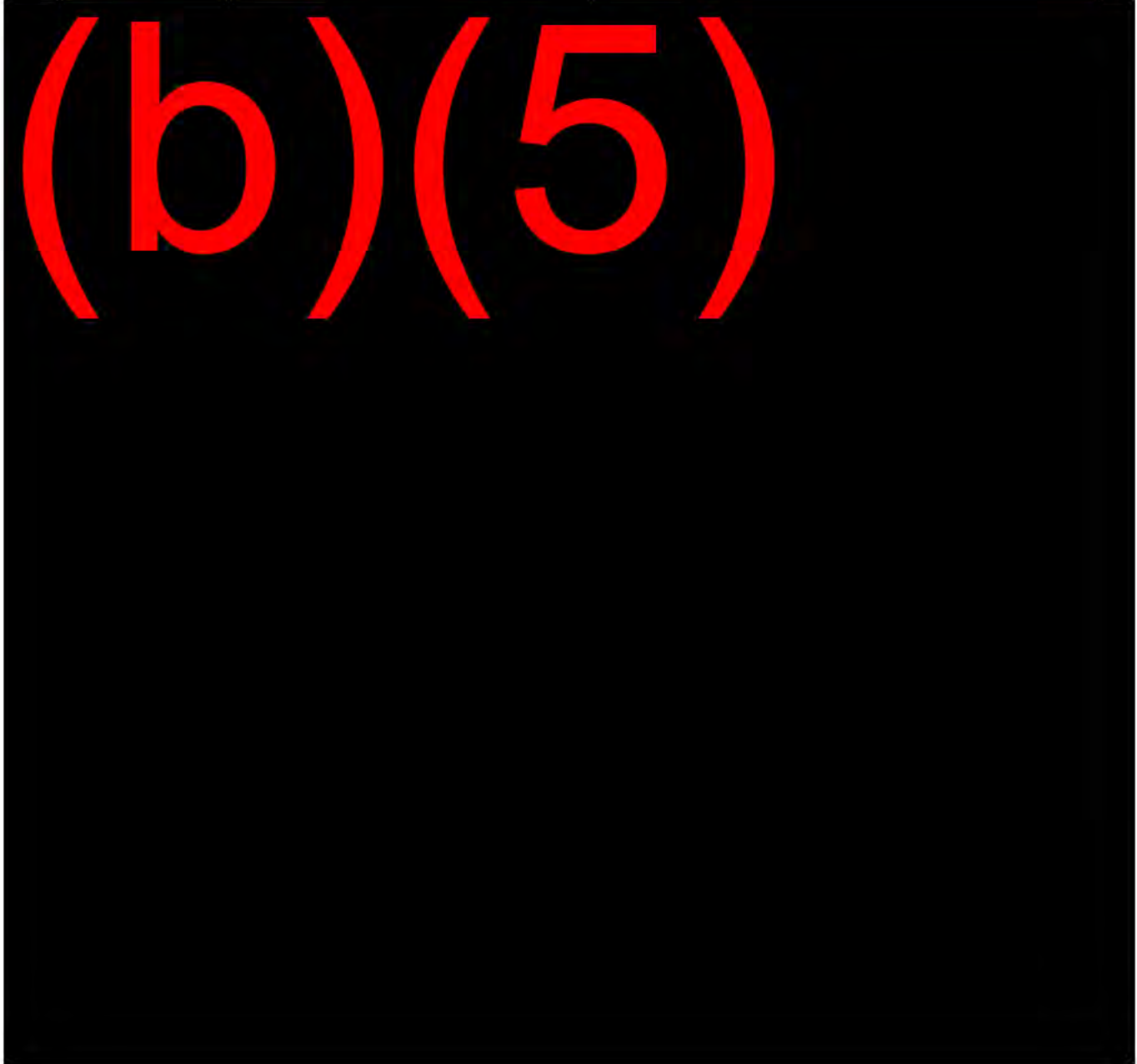
Requester Name: Susan Bostrom, Trustees for Alaska

(b)(5)

Alaska Region FOIA Clearance Sheet
FOIA 2016-1390
PRD AKR Interim

FOIA Clearance Signatures:

Date	Office	Signature
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Alaska Region FOIA Clearance Sheet
FOIA 2016-0959
Interim Response

Requester Name: Susan Bostrom, Trustees for Alaska

(b) (5)

Alaska Region FOIA Clearance Sheet
FOIA 2016-0959
Interim Response

(b) (5)



From: Lola Stith NOAA Affiliate <lola.m.stith@noaa.gov>
Sent: Tuesday, January 10, 2017 1:00 PM
To: Mark Graff NOAA Affiliate
Subject: December FOIA Monthly Report (DRAFT FOR YOUR REVIEW)
Attachments: FOIA Monthly Status Report 12 31 2016.xlsx; FOIA Monthly Status Report 12 31 2016.pdf; Closed 122016.xls; Incoming 122016.xls; Backlog 122016.xls

Hi Mark Please find a draft of the subject report attached for your review/approval. Please let me know if changes are needed.

R/

Lola Stith
Contractor - The Ambit Group, LLC
NOAA Office of the Chief Information Officer (OCIO)
(c (b)(6) [REDACTED])
lola.m.stith@noaa.gov

Tracking Number	Type	Requester	Submitted	Assigned To
DOC-NOAA-2016-001760	Request	Thomas Knudson	09/14/2016	AGO
DOC-NOAA-2016-001241	Request	Shomari B. Wade	05/18/2016	AGO
DOC-NOAA-2015-001484	Request	Richard Knudsen	06/29/2015	AGO
DOC-NOAA-2015-001485	Request	Richard Knudsen	06/29/2015	AGO
DOC-NOAA-2015-001487	Request	Richard Knudsen	06/29/2015	AGO
DOC-NOAA-2017-000101	Referral	John Fox	10/25/2016	NESDIS
DOC-NOAA-2016-000351	Request	Bill Marshall	10/30/2015	NESDIS
DOC-NOAA-2017-000195	Request	Thomas Knudson	11/17/2016	NMFS
DOC-NOAA-2016-001807	Request	Rachel Silverstein	09/23/2016	NMFS
DOC-NOAA-2017-000113	Request	Catherine Kilduff	10/24/2016	NMFS
DOC-NOAA-2016-001824	Request	Lee Zurik	09/28/2016	NMFS
DOC-NOAA-2016-001762	Request	Thomas Knudson	09/14/2016	NMFS
DOC-NOAA-2017-000050	Request	Marie A. Alailima	10/12/2016	NMFS
DOC-NOAA-2016-001833	Request	Margaret Townsend	09/29/2016	NMFS
DOC-NOAA-2016-001751	Request	Thomas Knudson	09/14/2016	NMFS
DOC-NOAA-2016-001763	Request	Thomas Knudson	09/14/2016	NMFS
DOC-NOAA-2016-001701	Request	Margaret Townsend	09/01/2016	NMFS
DOC-NOAA-2016-001390	Request	Jennie Frost	07/05/2016	NMFS
DOC-NOAA-2016-001560	Request	Marjorie F. Ziegler	08/03/2016	NMFS
DOC-NOAA-2016-001479	Request	Christopher Hudak	07/20/2016	NMFS
DOC-NOAA-2016-001537	Request	Emily Yehle	07/28/2016	NMFS
DOC-NOAA-2016-001453	Request	Stephen S. Schwartz	07/14/2016	NMFS
DOC-NOAA-2016-001533	Request	J W August	07/27/2016	NMFS
DOC-NOAA-2016-001270	Request	scott A. doyle	06/08/2016	NMFS
DOC-NOAA-2016-001326	Request	Thomas Knudson	06/21/2016	NMFS
DOC-NOAA-2016-001214	Request	bruce weyhrauch	05/27/2016	NMFS
DOC-NOAA-2016-001215	Request	Cassie Burdyslaw	05/27/2016	NMFS
DOC-NOAA-2016-001299	Request	Thomas Knudson	06/15/2016	NMFS
DOC-NOAA-2016-001080	Request	Jeff Ruch	04/29/2016	NMFS
DOC-NOAA-2016-001053	Request	Thomas Knudson	04/26/2016	NMFS
DOC-NOAA-2016-000959	Request	Office Administrator	04/12/2016	NMFS
DOC-NOAA-2016-000423	Request	Ryan P. Mulvey	12/21/2015	NMFS
DOC-NOAA-2016-000807	Request	Basil Scott	03/16/2016	NMFS
DOC-NOAA-2015-001860	Request	Delcianna Winders	09/04/2015	NMFS
DOC-NOAA-2016-000775	Request	Jason Domark	03/08/2016	NMFS
DOC-NOAA-2016-000603	Request	Margaret Townsend	02/10/2016	NMFS
DOC-NOAA-2015-001898	Request	Emily Posner	09/10/2015	NMFS
DOC-NOAA-2016-000439	Request	Alan Stein	01/10/2016	NMFS
DOC-NOAA-2016-000094	Request	Josh Schopf	10/14/2015	NMFS
DOC-NOAA-2015-000295	Request	Office Administrator	11/21/2014	NMFS
DOC-NOAA-2015-000190	Request	Miyo Sakashita	11/02/2014	NMFS
DOC-NOAA-2016-001775	Request	Ehsan Naranji	09/19/2016	NOAA FOIA
DOC-NOAA-2016-001743	Request	John Greenewald	09/12/2016	NOAA FOIA
DOC-NOAA-2017-000171	Request	Cody Rosenfield	11/08/2016	NOS
DOC-NOAA-2017-000118	Request	Michael L. Brown	10/27/2016	NOS
DOC-NOAA-2017-000111	Request	Lara Kolinchak	10/13/2016	NOS
DOC-NOAA-2016-001795	Request	Michael L. Brown	09/22/2016	NOS
DOC-NOAA-2016-001599	Request	Machelle R. Hall	08/12/2016	NOS
DOC-NOAA-2016-001531	Request	Stacy Hernandez	07/27/2016	NOS
DOC-NOAA-2016-000192	Request	John Ferro	11/03/2015	NOS
DOC-NOAA-2015-000706	Request	Megan R. Wilson	02/18/2015	NOS

DOC-NOAA-2017-000185	Request Elizabeth Nowicki	11/16/2016	NWS
DOC-NOAA-2017-000186	Request Elizabeth Nowicki	11/16/2016	NWS
DOC-NOAA-2016-001403	Request Ivria Fried	07/07/2016	NWS
DOC-NOAA-2017-000058	Request Christopher T. Clack	10/13/2016	OAR
DOC-NOAA-2015-000905	Request Alan David	03/14/2015	OAR
DOC-NOAA-2016-001082	Request Cameron Cole	04/25/2016	OGC
DOC-NOAA-2017-000187	Request Elizabeth Nowicki	11/16/2016	WFMO
DOC-NOAA-2016-001472	Request A. Marques Pitre	07/20/2016	WFMO
DOC-NOAA-2016-001346	Request Tammy Murphy	06/10/2016	WFMO
DOC-NOAA-2016-001094	Request Anthony Arguez	05/02/2016	WFMO
DOC-NOAA-2016-001043	Request Steven McIntosh	04/24/2016	WFMO

Due	Days Backlogged
10/28/2016	44
06/30/2016	127
10/08/2015	309
10/08/2015	309
07/31/2015	357
12/02/2016	21
01/14/2016	244
12/30/2016	1
11/08/2016	21
12/02/2016	21
12/29/2016	25
11/10/2016	35
11/09/2016	36
11/08/2016	37
10/28/2016	44
10/27/2016	45
10/03/2016	54
10/14/2016	64
09/26/2016	66
09/22/2016	69
09/13/2016	76
08/30/2016	85
08/29/2016	86
08/03/2016	104
07/26/2016	110
12/30/2016	113
07/20/2016	114
07/20/2016	114
06/08/2016	124
06/10/2016	139
05/25/2016	145
02/04/2016	146
05/04/2016	154
10/23/2015	158
04/06/2016	162
03/15/2016	196
10/27/2015	202
02/24/2016	205
02/18/2016	230
12/24/2014	500
12/05/2014	513
11/01/2016	42
10/13/2016	55
12/20/2016	7
12/02/2016	11
11/25/2016	26
11/04/2016	39
09/29/2016	40
08/29/2016	67
12/04/2015	271
10/13/2015	451

12/15/2016	12
12/15/2016	12
08/12/2016	97
11/25/2016	1
04/17/2015	430
06/03/2016	145
12/15/2016	12
09/02/2016	82
08/31/2016	84
07/20/2016	114
06/02/2016	146

DOC NOAA 2017 000098	Request Michael Davidson	
DOC NOAA 2017 000175	Request Emily Alvarenga	San Diego State University
DOC NOAA 2017 000136	Request Cadi Fung	
DOC NOAA 2017 000115	Request Nicholas Patton	Delaware Riverkeeper Network
DOC NOAA 2017 000109	Request Tim Hamilton	Twin Harbors Fish & Wildlife Advocacy
DOC NOAA 2017 000110	Request Kristin Ruether	Western Watersheds Project
DOC NOAA 2017 000095	Request Elizabeth A. Mitchell	Association for Professional Observers
DOC NOAA 2017 000087	Request Christopher Hudak	Environmental Advocates
DOC NOAA 2017 000076	Request Richard Condit	Smithsonian Institution
DOC NOAA 2017 000063	Request Giovanni j. Galarza	Evergreen State College
DOC NOAA 2017 000085	Request Margaret Townsend	
DOC NOAA 2016 001764	Request Dwayne Meadows	
DOC NOAA 2016 001759	Request Thomas Knudson	Center for Investigative Reporting
DOC NOAA 2016 001665	Request Eileen L. Morrison	Goodwin Procter LLP
DOC NOAA 2016 001596	Request Lee van der Voo	InvestigateWest
DOC NOAA 2016 001392	Request Thomas Knudson	Center for Investigative Reporting
DOC NOAA 2016 001399	Request Daniel Summers	Alaska Journal of Commerce
DOC NOAA 2016 001245	Request Thomas Knudson	Center for Investigative Reporting
DOC NOAA 2016 001168	Request Thomas Knudson	Center for Investigative Reporting
DOC NOAA 2013 000567	Request Doug Karpa	Turtle Island Restoration Network
DOC NOAA 2017 000338	Request Zeenat Mian	
DOC NOAA 2017 000337	Request Zeenat Mian	
DOC NOAA 2017 000336	Request Zeenat Mian	
DOC NOAA 2017 000196	Request Thomas Knudson	Center for Investigative Reporting
DOC NOAA 2017 000140	Request Michael Ravnitzky	No Association
DOC NOAA 2017 000033	Request Sylvia Costelloe	Arent Fox LLP
DOC NOAA 2016 000869	Request William A. Hurst	GREENBERG TRAURIG, LLP
DOC NOAA 2017 000190	Request Evynn Overton	Beveridge & Diamond PC
DOC NOAA 2016 001675	Request Jeffrey T. Smith	
DOC NOAA 2016 001319	Request Michelle Burt	
DOC NOAA 2017 000075	Request John Greenewald	The Black Vault
DOC NOAA 2016 001186	Request Patricia Weisselberg	Law Office of Patricia Weisselberg
DOC NOAA 2016 000604	Request Margaret Townsend	
DOC NOAA 2015 001774	Request Alan Stein	
DOC NOAA 2017 000018	Request Steven McIntosh	
DOC NOAA 2016 001240	Request David Novak	
DOC NOAA 2016 000444	Request Nelsie A. Ramos	NOAA

10/24/2016	NESDIS	Yes	12/13/2016	12/22/2016	Closed
11/10/2016	NMFS	Yes	12/29/2016	12/05/2016	Closed
11/02/2016	NMFS	Yes	12/20/2016	12/15/2016	Closed
10/27/2016	NMFS	Yes	12/02/2016	12/02/2016	Closed
10/26/2016	NMFS	Yes	12/02/2016	12/15/2016	Closed
10/26/2016	NMFS	Yes	12/23/2016	12/22/2016	Closed
10/23/2016	NMFS	Yes	12/02/2016	12/12/2016	Closed
10/19/2016	NMFS	Yes	12/16/2016	12/13/2016	Closed
10/18/2016	NMFS	Yes	12/01/2016	12/16/2016	Closed
10/13/2016	NMFS	Yes	11/28/2016	12/07/2016	Closed
10/03/2016	NMFS	Yes	12/14/2016	12/19/2016	Closed
09/15/2016	NMFS	Yes	10/27/2016	12/19/2016	Closed
09/14/2016	NMFS	Yes	11/14/2016	12/29/2016	Closed
08/24/2016	NMFS	Yes	10/13/2016	12/09/2016	Closed
08/11/2016	NMFS	Yes	09/29/2016	12/09/2016	Closed
07/05/2016	NMFS	Yes	08/26/2016	12/13/2016	Closed
06/30/2016	NMFS	Yes	08/26/2016	12/13/2016	Closed
06/03/2016	NMFS	Yes	08/02/2016	12/19/2016	Closed
05/17/2016	NMFS	Yes	06/22/2016	12/19/2016	Closed
02/15/2013	NMFS	Yes	04/12/2013	12/21/2016	Closed
12/19/2016	NOAA FOIA	No	TBD	12/22/2016	Closed
12/19/2016	NOAA FOIA	No	TBD	12/22/2016	Closed
12/18/2016	NOAA FOIA	No	TBD	12/22/2016	Closed
11/17/2016	NOAA FOIA	No	TBD	12/01/2016	Closed
11/01/2016	NOAA FOIA	Yes	12/13/2016	12/05/2016	Closed
10/07/2016	NOAA FOIA	Yes	11/09/2016	12/05/2016	Closed
03/16/2016	NOAA FOIA	Yes	04/29/2016	12/14/2016	Closed
11/17/2016	NOS	Yes	12/29/2016	12/20/2016	Closed
08/26/2016	NOS	Yes	10/11/2016	12/20/2016	Closed
06/20/2016	NOS	Yes	07/20/2016	12/20/2016	Closed
10/18/2016	NWS	Yes	12/01/2016	12/08/2016	Closed
05/20/2016	OAR	Yes	08/12/2016	12/02/2016	Closed
02/10/2016	OAR	Yes	03/15/2016	12/20/2016	Closed
08/20/2015	USEC	Yes	09/29/2015	12/19/2016	Closed
10/05/2016	WFMO	Yes	11/09/2016	12/13/2016	Closed
05/19/2016	WFMO	Yes	07/20/2016	12/13/2016	Closed
01/12/2016	WFMO	Yes	02/17/2016	12/13/2016	Closed

Partial grant/partial denial
Request withdrawn
Full grant
Other Publicly available information
Fee related reason
Partial grant/partial denial
Full denial based on exemptions
No records
Partial grant/partial denial
Full grant
Partial grant/partial denial
Full grant
Partial grant/partial denial
Full grant
Partial grant/partial denial
Other Admin close no response from requester
Other Admin close no response from requester
Partial grant/partial denial
Partial grant/partial denial
Partial grant/partial denial
Other Aggregate cases
Other Aggregate cases
Other Aggregate cases
Other Aggregate cases
Duplicate request
Other Publicly available information
Request withdrawn
Request withdrawn
Full grant
Full grant
No records
Partial grant/partial denial
Partial grant/partial denial
Partial grant/partial denial
Request withdrawn
Request withdrawn
Request withdrawn

The Utah Attorney General's office represents the Utah State University Research Foundation ("USURF"). USURF A record of each incident where either a sea lion or seal has been harmed or has harmed a human at a San Diego I am requesting information from the National Marine Mammal Inventory database for all cetaceans held in captivity Please provide any Reports of Impingement (or entrapment) of shortnose sturgeon at the Salem Nuclear Generat The purpose of the FOIA is to allow the Advocacy to review the role of NOAA in the process referred to as North o Diversions in Upper Salmon River and Lemhi River Watersheds. This request concerns the Salmon-Challis Nation I request the comments and documentation of fishery observers in the Hawaii Longline and American Samoa Long 1. Any reports, memoranda, correspondence, or other documents (including electronic mail messages) concerning I would like to get a copy of the reports for the following NOAA research permit for protected species: File Number Marine Mammal Inventory; Detailed records of all deceased Short Fin Pilot Whales, False Killer Whales, Pacific W The Center requests from the National Oceanic and Atmospheric Administration ("NOAA") all records that referenc A May 2015 NMFS OPMB delegation to NMFS Offices or Operating Units from NMFS Deputy AA for Operations a A copy of all affidavits and witness interview transcripts pertaining to a closed 2008 National Marine Fisheries Serv All Records (defined to include data, information, email, reports, and comments) of surveys, studies, or assessmer I would like a copy of the investigative case file and any enforcement proceedings associated with the case in which Copies of the following: 1.) NMFS NOVA #SW0902995 F/V Malesa \$5,000 2010 2.) NMFS Written Warning #NE0 Pursuant to the state open records law Alaska Stat. Secs. 40.25.100 to 40.25.350, I write to request access to and Spoke with requester on the phone. Requester is specifically requesting for the case file including audio, transcript 1.) All email correspondence (including attachments and photos) between John D. Kelly, observer program manag Modified on 3/7/2013 - (1)E-mail correspondence regarding the compliance data that the SER received from OLE All records: emails, minutes of meetings, presentations, documents, NOAA phone text messages and any other pe All records: emails, minutes of meetings, presentations, documents, NOAA phone text messages and any other pe All records: emails, minutes of meetings, presentations, documents, NOAA phone text messages and any other pe A copy of the speech given by William Karp, NMFS Science and Research Director, NE Fisheries Science Center Pursuant to the provisions of the Freedom of Information Act, I hereby request a copy of the following records: Eac All FOIA requests filed with the National Marine Fisheries Service by the Institute for Fisheries Resources, Pacific (Requests access to the following agency records relative to the Hudson River PCBs Superfund Site (NYD9807638 I hereby request any and all correspondence pertaining to NOAA and/or Elliott Bay Trustee Council injury assessm 1. any written comments received by the National Oceanic and Atmospheric Administration pursuant to the notice (I am currently writing my thesis on three National Marine Sanctuaries (Cordell Bank, Stellwagen Bank, and Flower Resubmitted 9/12/16, and stipulated a time frame: I respectfully request a copy of records, electronic or otherwise, Any and all of "Your" internal "documents", and any and all "documents" "You" sent to or received from the "Corps" 1. All records related to: Interagency Cooperation: Endangered Species Act – Incidental Take Statements, Docket 1. All records relating to, or consisting of, communications — in any format1 — generated or received by Jane Lub I applied to NOAA Enforcement Officer announcement NMFS OLE 2016-0001 ZA-1801-2 (MAP). I was given a ter I have an important favor to ask you. If it is possible, could you please email me a list of awards that I received in w [Note description now reflects requester clarifications of Feb 24: 1) last sentence increases interview panel membe

is a defendant in the action GeoMetWatch Corp. v. Alan Hall, et al., currently pending in the Federal District Court in San Francisco, California. I was injured on a beach in 2015. By harmed I mean that either the human or the animal has been physically injured. I was injured while working in US facilities, both currently alive and those who are deceased, and from all sources (wild caught, captive bred, etc.) since January 2015 to present. I am attaching a copy of a letter from the National Marine Fisheries Service (NMFS) dated August 21, 2015 regarding the National Marine Fisheries Service's implementation of the 2012 Biological Opinions ("Biops") from National Marine Fisheries Service's Observer Programs, including observations written in their Documentation notebook or field journal. I am also attaching a copy of any Endangered Species Act ("ESA") section 7 consultations (16 U.S.C. § 1536) that have been initiated since January 2015 (PR1 Permit #0486-1506 scientific research). Brent Stewart at Hubbs SeaWorld was the applicant for the permit. I am also attaching a copy of the assessments required in paragraphs 1D and 1F of the terms and conditions in the August 21, 2015 permit and/or in WFMO files. Unclear if this was an email or paper memo.

I am also attaching a copy of a letter from the Alaska Department of Law Enforcement regarding an investigation of observer harassment on the F/V Alliance in Alaska.

I am also attaching a copy of shortnose and/or Atlantic sturgeon locations or movement within, as well as foraging habits and behavior. I am also attaching a copy of the Alaska Office of Law Enforcement charged a U.S. Seafoods employee with two counts of observer harassment on the F/V Rose Marie 2010 3.) NMFS NOVA #NE0801030 F/V American Dream \$11,000 2010 4.) NMFS copies of the Notices of Violation and Assessment and enforcement action reports for the following fishery, exhibits and affidavits related to AK1102931. 1.) Copies of nine government exhibits introduced into evidence for NOAA/NMFS (john.d.kelly@noaa.org) and representatives of the Western and Central Pacific Fisheries Council and SEFSC, including but not limited to boarding data, and information regarding the deliberations on the proposed permit or means of information exchange pertaining to the email sent by Zeenat Mian titled "URGENCY: Please respond to the proposed permit or means of information exchange where both names Zeenat Mian and John Gelman are mentioned." 2.) Copies of the permit or means of information exchange pertaining to the email sent by Zeenat Mian titled COMPLAINCE at the 8th International Fisheries Observer and Monitoring Conference in San Diego this year, along with a copy of the permit or means of information exchange pertaining to the email sent by Zeenat Mian titled COMPLAINT. 3.) Weekly or monthly FOIA program internal status report for the National Oceanic and Atmospheric Administration, Coastal and Estuarine Science Federation of Fishermen's Associations, Golden Gate Salmon Association, Kennebec Reborn, Frigate Bay, etc. 4.) Technical presentation (See attached letter for detail) Agency correspondence and communication records for the Lower Duwamish Waterway in Seattle, Washington..

I am also attaching a copy of an appeal and request for comments issued by NOAA in the Federal Register on February 21, 2007, 72 FR 10000 regarding the proposed sanctuary system as a whole, and these three requests for comments regarding the risks of geomagnetic storms. Please only include reports and responsive documents, if any, from the following agencies: "CDFW", "SWRB", "YCWA", "DWR", "FWS", "BLM", Congressional offices and/or any other third party. No. NOAA_FRDOC_0001-3430

I am also attaching a copy of a letter from the former Administrator of NOAA, regarding promotion, implementation, management or defense of the sanctuary system. As part of the process, I was required to undergo a medical exam and psychological exam. I am also attaching a copy of a letter from the former Administrator of NOAA, regarding promotion, implementation, management or defense of the sanctuary system as far back as you can? I realize our personnel folders are cleaned out every so often. I need the list of personnel from 4 to 5, adds Knabb. 2) requester is interested ONLY notes on the 4 applicants listed below] The

strict Court of Utah, Case No. 1:14-cv-00060. At issue in the case is certain technology developed in large part by the applicant. I would also like a copy of each incident report along with the figures, and, if possible, I would like to receive a copy of the equipment used (whether native born, imported). The information will be used to calculate estimates of fish resources used to maintain the population of the species (including an example of a Report of Impingement for ease of reference and processing of my FOIA request). I am requesting a copy of my medical and psychological exam results. I am also requesting any and all documentation as mitigation for this next phase of the legal process.

including an example of a Report of Impingement for ease of reference and processing of my FOIA request.

Wildlife (WDFW) and Native American Indian Tribes (Tribes) for tribal and non-tribal commercial and recreational purposes for Diversions located on National Forest Lands in the Upper Salmon River Watershed (NMFS Notices) (and associated photos/video documentation), post-cruise questionnaires, e-mails and legal affidavits submitted or proposed, including Biological Opinions, Biological Assessments, or informal consultations, pertain to the applicant.

including an example of a Report of Impingement for ease of reference and processing of my FOIA request.

Wildlife (WDFW) and Native American Indian Tribes (Tribes) for tribal and non-tribal commercial and recreational purposes for Diversions located on National Forest Lands in the Upper Salmon River Watershed (NMFS Notices) (and associated photos/video documentation), post-cruise questionnaires, e-mails and legal affidavits submitted or proposed, including Biological Opinions, Biological Assessments, or informal consultations, pertain to the applicant.

including an example of a Report of Impingement for ease of reference and processing of my FOIA request.

Wildlife (WDFW) and Native American Indian Tribes (Tribes) for tribal and non-tribal commercial and recreational purposes for Diversions located on National Forest Lands in the Upper Salmon River Watershed (NMFS Notices) (and associated photos/video documentation), post-cruise questionnaires, e-mails and legal affidavits submitted or proposed, including Biological Opinions, Biological Assessments, or informal consultations, pertain to the applicant.

behavior in, the Hudson River Estuary from the Troy Dam to where the main stem river discharges at its mouth. I am requesting a copy of my medical and psychological exam results. I am also requesting any and all documentation as mitigation for this next phase of the legal process.

harassment for conduct on board the F/V Alliance in 2011 and 2012. The company was also charged with violations: AK13050127; F/V Aleutian Sable AK1402606; F/V Sierra Mar AK1502657; F/V Peregrine Falcon AK1502657. I am requesting a copy of my medical and psychological exam results. I am also requesting any and all documentation as mitigation for this next phase of the legal process.

vidence in NOAA Case No. AK1102931 pertaining to F/V Clipper Sunrise. 2.) A copy of the official transcript of the hearing held by the Alaska Department of Fish and Game for the time period January 1, 2011 to present. 2.) All email correspondence (including but not limited to) regarding the failure rate of Turtle Excluder Devices (TEDs) in the Southeast and Gulf shrimp fishery. Date range: 1/1/2011 to present. I am requesting a copy of my medical and psychological exam results. I am also requesting any and all documentation as mitigation for this next phase of the legal process.

GENT: RETALIATION (yet another) from HAWAIIAN MONK SEAL VOLUNTEER. And All records: emails, minutes of meetings, and audio recordings of the speech. I am requesting a copy of my medical and psychological exam results. I am also requesting any and all documentation as mitigation for this next phase of the legal process.

administration during calendar years 2015 and 2016. These may be either separate reports or they may be included in the annual reports of the Alaska Department of Fish and Game, Center for Biological Diversity, Ecology Action Centre, and the Alaska Department of Environmental Conservation. (See attached letter for detail) Funding Agreements Relative to Hudson River PCBs Superfund Site. I am requesting a copy of my medical and psychological exam results. I am also requesting any and all documentation as mitigation for this next phase of the legal process.

Fed. Reg. 7860, relating to the Bureau of Indian Affairs' proposed acquisition of an approximately 5 acre parcel in the State of Alaska. I am requesting a copy of my medical and psychological exam results. I am also requesting any and all documentation as mitigation for this next phase of the legal process.

dated from January 1, 2010 to the date of processing this request. I am requesting a copy of my medical and psychological exam results. I am also requesting any and all documentation as mitigation for this next phase of the legal process.

as "related to" the "Stockdale Memo," including but not limited to how "You" and the Corps should conduct the project. I am requesting a copy of my medical and psychological exam results. I am also requesting any and all documentation as mitigation for this next phase of the legal process.

of a catch share or limited entry program in any area of the U.S. which has a Fisheries Management Plan. I am requesting a copy of my medical and psychological exam results. I am also requesting any and all documentation as mitigation for this next phase of the legal process.

The following records are being requested under the Freedom of Information Act. All the documentation as follows: I am requesting a copy of my medical and psychological exam results. I am also requesting any and all documentation as mitigation for this next phase of the legal process.

ge part under a contract USURF had with NASA, which was designated NASA Contract NAS1-00071 (th
these records in electronic form.
tain captive cetacean populations.

ational salmon fishing seasons in the Straights of Juan de Fuca, Puget Sound and their tributaries in 20
: 2004/01982) and for Diversions located on the Salmon-Challis National Forest in the Lemhi River Wat
pertaining to vessel conditions on board the Hawaii-based and American Samoa-based longline vessel
ing to the following Letters of Map Change (with Product ID Number and Effective Date) issued for prop

DGN") Fishery.1 Paragraphs 1D and 1F are copied here for ease of reference: 1 D. NMFS shall evaluat

nouth into New York City Harbor over the time period from 2006 to the present, including but not limited
with one count of negligent supervision. NOVAs were issued to both the employee and company and the

AK1401323; F/V San Juan AK1304501; F/V Hula Girl AK1101692; F/V Toni Marie AK0902808; F/V Ch
ript of NOAA Case No. AK1102931 To help you locate the records, I am attaching the first three pages o
ing attachments and photos) between Ray Clarke, chair of the IWG Regional Observer Program for NO
July 11, 2011, to present. (2)E-mail correspondence between SER and SEFSC regarding the planning c
s: emails, minutes of meetings, presentations, documents, NOAA phone text messages and any other p

, presentations, documents, NOAA phone text messages and any other paperwork or means of informa

a segment of another, more inclusive, internal administrative report. By the term internal status report, I
Friends of the Earth, Food and Water Watch, The Quinault Indian Nation, or Center for Food Safety see
(See attached letter for detail)

parcel of land in Humboldt County, California, into trust status for the Tribe. 2. any correspondence or c

ct Endangered Species Act section 7 consultation concerning any Corps Dam (located anywhere within

ouncil. Specifically included within the scope of this request, are any communications Ms Lubchenco or
documentation, interviews, or results that were used by the NOAA Office of Law Enforcement to rescin

sociated with the selection process of the NOAA National Hurricane Center Tropical Analysis and Forec

ie "Contract"). The Contract was concerning the development of next generation weather sa

016. All communication, including any attachment that accompanied the communication, and documents
erished (NMFS No: 2005/00061). Pursuant to the FOIA, please send WWP copies of the following recor
s and the fishing crew on board these vessels. I also request associated phone logs maintained by obse
rties in Monterey County, California by the Federal Emergency Management Agency ("FEMA") through

ie the need and/or feasibility of modifying the existing observer coverage targets or implementing additio

to any and all Records received by NMFS related to sturgeon data collection required by the New York
e case was settled for a total of \$57,000.

aos AK1104427; F/V Dream Maid AK1101141; F/V Saint Jude AK0902437; F/V Reagan AK1003466 an
f a 2013 administrative law proceeding pertaining NOAA Case No. AK1102931. The material I am seekir
AA/NMFS (raymond.clarke@noaa.org) and representatives of the Western and Central Pacific Fisheries
of observer coverage and the monitoring of the skimmer trawl fleets. Date range: July 11, 2011, to
paperwork or means of information exchange where both names Zeenat Mian and Don Porter are menti

tion exchange where both names Zeenat Mian and Karen Rohter (HMMA volunteer) are mentioned. Pe

mean any periodic (i.e., weekly or monthly) internal report (or email) on the activities and/or accomplish
eking National Marine Fisheries Service documents regarding AquaBounty Technologies' AquAdvantage

other communications between the National Oceanic and Atmospheric Administration and the California

the United States) in light of the "Stockdale Memo."

members of her office had with the following persons or during which she was present in the following :
d my tentative offer.

asting Branch General Forecaster Vacancies (see attachment) opened during the period of September 2

tellite technology. With respect to the Contract, we are requesting the following types of documents: - All

s that were created, transmitted, received or reviewed by NOAA from January 1, 2015 to present including: 1. All documents regarding implementation and enforcement of those Biops (including their Incident Response program staff, e-mails and other communications with these observers, and with other agencies, re the National Flood Insurance Program ("NFIP") 2. Any reports, memoranda, correspondence, or other c

nal measures in the DGN fishery to produce more reliable estimates of protected species interactions th

State Department of Environmental Conservation permit for the Tappen Zee bridge project (Permit ID 3-

d AK 1101486; F/V Carlynn AK0700698; F/V American Dynasty AK1101557; F/V Ocean Rover AK1200 ng is cited on page 3. I am making this request on behalf of the Center for Investigative Reporting, a non

s Commission for the time period January 1, 2011 to present. present. (3)Correspondence between Michael Barnette, Fishery Biologist, and the SEFSC, OPR, published and/or listed. Period: 28th July 2016 until present. Please do advise if cost exceeds \$100.

riod: 11 July 2016 until present. Please do notify me first if the cost exceeds \$100.

ments of the NOAA FOIA program. I prefer to receive the records in electronic format if practicable. Please; Salmon and/or the National Marine Fisheries Service's involvement in or communications with the

Coastal Commission relating to the same 5-acre parcel from January 1, 2006, to the present.

a. Jim Balsiger b. Arne Fuglvog c. Senators Lisa Murkowski, Mark Begich, John Kerry, or Scott Brown c

21 to October 9, 2015. These documents include, but are not limited to the resumes, cover letters and in

Internal email regarding the Contract which were written from January 1, 2004 to the present. - All inter

ing those transmitted internally within NOAA or between NOAA and a third party. The Advocacy requests
al Take Statements, Terms and Conditions, Reasonable and Prudent Alternatives, and Reasonable and
regarding these observations reported by observers. These observations and documentation may include
documents (including electronic mail messages) concerning any ESA section 7 consultations (16 U.S.C.

that are scientifically defensible. This assessment should focus on the precision and uncertainty of existin

-9903-00043/00014, effective date March 25, 2013), attached hereto, or comparable surveys, studies or

532; F/V Northern Eagle AK1102634B; United States Seafoods LLC and Alaska Alliance LLC
for-profit news media organization in the San Francisco Bay Area.

or governmental entities, that discuss the proposed shrimp skimmer trawl regulation that are not part

ase release all segregable releasable records.

Food and Drug Administration regarding FDA's review of the New Animal Drug Application for AquAdv

d. Monica Medina e. Press Conferences or interviews f. Congressional Hearings or meetings with mem

interview scores/notes of the 5 people that made the panel. Specifically, the records associated with Andr

nal memorandum or correspondence regarding the Contract which were written from January 1, 2004 to

to be provided with any and all documents and communications that are related to: 1. The NOF process (Prudent Measures). This includes, but is not limited to: records regarding inspection or monitoring of discharges, but are not limited to: 1. Drinking water quality (both drinking and washing) 2. Food 3. Toilet and shower water (under § 1536) that have been initiated or proposed, including Biological Opinions, Biological Assessments, or

ing observer coverage targets relative to current protected species interaction rates, and the relative benefit

assessments required by NMFS pursuant to its consultation or authorizations for the Tappen Zee Project

of the public record. Date range: January 2011 to present. (4) E-mails regarding debates and discussions

antage Salmon; and (ii) all documents produced by the National Marine Fisheries Service in response to

ers of Congress g. Meetings with Brian Rothschild h. White House Staff Members or meetings with their

ew Latta, Carl McElroy, Marshall Huffman and Nelsie A. Ramos. The interview process was held during

to the present. - All drafts of any documents regarding the Contract written from January 1, 2004 to present

conditions for 2016 seasons resulting in the agreed upon seasons contained in the attached agreement between diversion structures, their operation, and/or associated stream conditions; authorization of diversions (including diversion facilities 4. Hygiene 5. Bedbug and cockroach infestation 6. Pesticide use 7. Drug use 8. Firearms possession 9. Informal consultations, pertaining to the implementation of the NFIP in Monterey County, California date

benefits and shortcomings of other observer coverage levels. This assessment shall be completed by May

15. These Records should include records related to Condition C of the NYSDEC Permit, requiring a NM

analysis on observer coverage and the analysis of observer data between the OPR and regional PRD staff.

to those requests. This request does not apply to any documents or portions thereof contained in these files

16. All records relating to, or consisting of, communications — in any format — generated or received

the second week of December (7 to 11th) and announcement of the selection was done on December 2

ent. We

veen tribal and state co-managers titled "2016-17 Co- Managers List Of Agreed Fisheries (May 1, 2016-
uding special use permits and easements); records regarding installation of headgates, measuring devic
ssession and use 9. Crew working hours 10. Crew discipline by the captain and other managers 11. Cr
d from January 1, 2000 to December 31, 2008 3. Any reports, memoranda, correspondence, or other dc

1, 2014. SFD will confer with PRO on the results of this assessment and shall initiate im

IFS Biological Opinion and Incidental Take Permit, the location of individual sturgeon and corresp

Date range: January 2011 to present. (5)Correspondence from and to Congress, local elect

les that are Confidential Business Information.

by Jane Lubchenco, the former Administrator of NOAA, regarding the search for a candidat

9, 2015. The interview panel included 5 NHC managers: Hugh Cobb (TAFB Branch Chief), James Fran

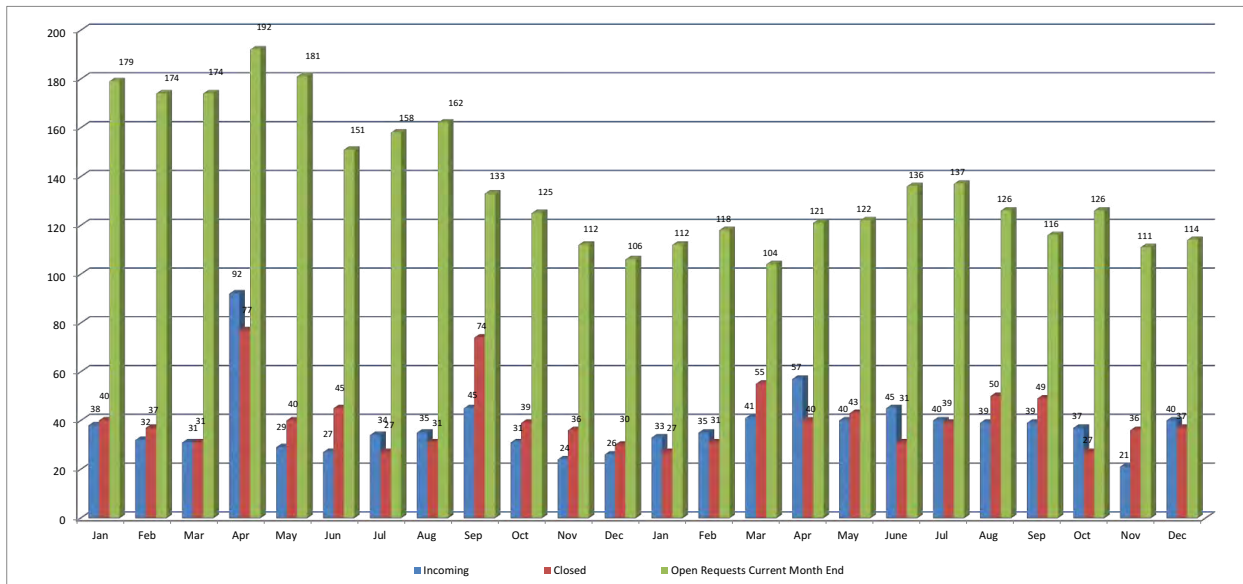
April 30,
es,

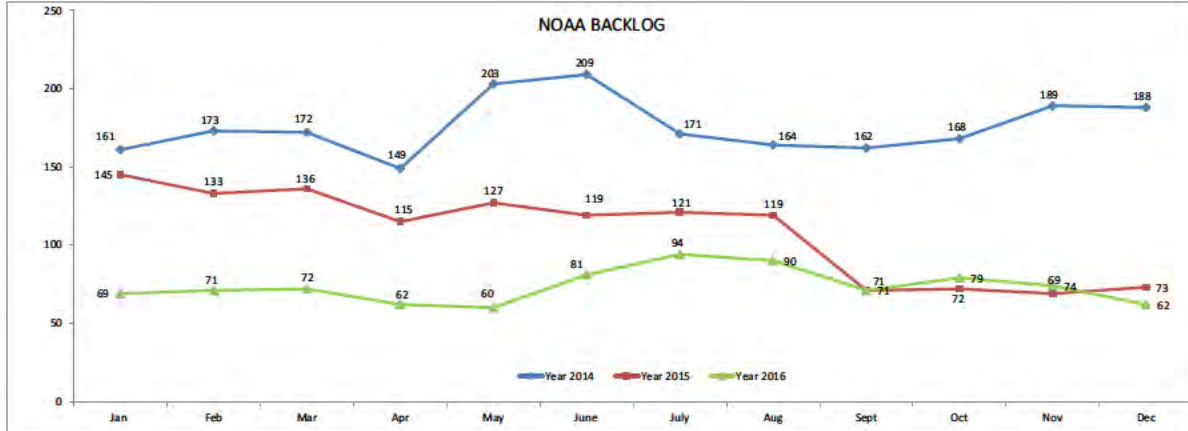
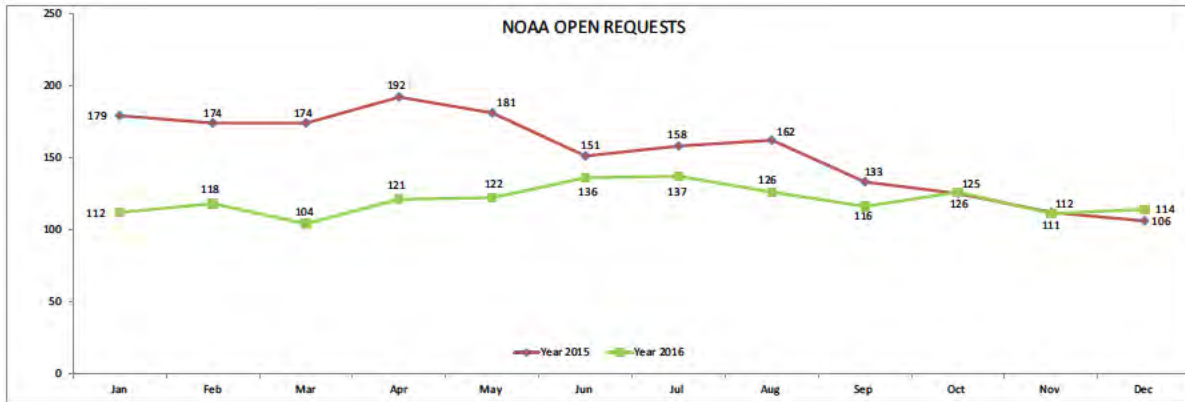
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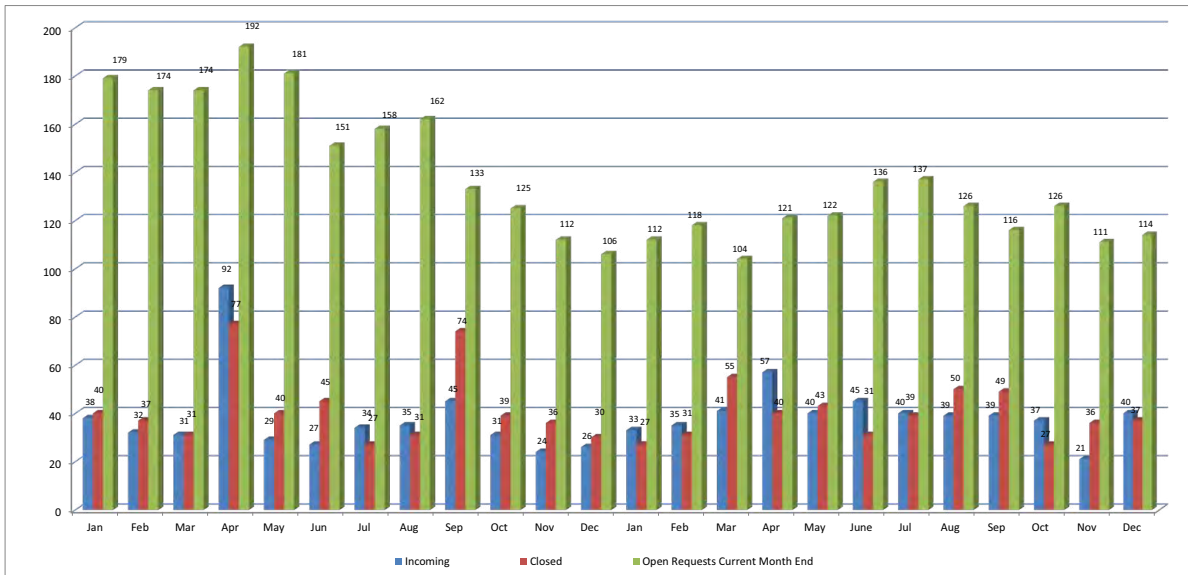
FOIA Monthly Status Report 12 31 2016

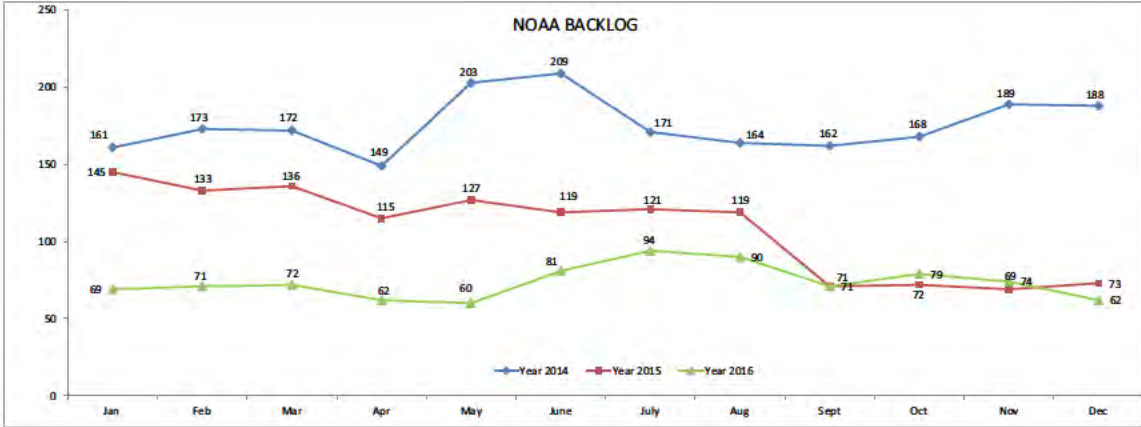
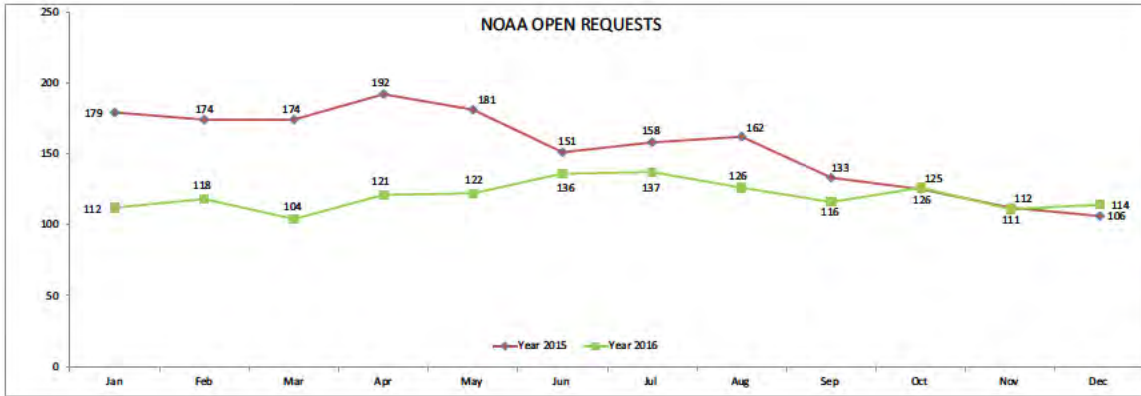
Organization	Open Requests Previous Month End	Incoming Requests	Closed Requests	Open Requests Current Month End	Backlog 21-120 days	Backlog 121-364 days	Backlog 365 or more days	Total Backlog
AGO	2	4	0	6	1	4	0	5
CAO	0	0	0	0	0	0	0	0
CFO	0	0	0	0	0	0	0	0
CIO	1	0	0	1	0	0	0	0
CIO/FOIA	20	14	7	27	2	0	0	2
GC	2	1	0	3	0	1	0	1
IA	0	0	0	0	0	0	0	0
LA	1	1	0	2	0	0	0	0
NESDIS	1	13	1	13	1	1	0	2
NMFS	44	0	19	25	21	11	2	34
NOS	16	6	3	19	6	1	1	8
NWS	11	0	1	10	3	0	0	3
OAR	4	0	2	2	1	0	1	2
OMAO	0	0	0	0	0	0	0	0
OC	0	0	0	0	0	0	0	0
PPI	0	0	0	0	0	0	0	0
USAO	1	0	1	0	0	0	0	0
WFMO	8	1	3	6	4	1	0	5
NOAA Totals	111	40	37	114	39	19	4	62





Organization	Open Requests Previous Month End	Incoming Requests	Closed Requests	Open Requests Current Month End	Backlog 21-120 days	Backlog 121-364 days	Backlog 365 or more days	Total Backlog
AGO	2	4	0	6	1	4	0	5
CAO	0	0	0	0	0	0	0	0
CFO	0	0	0	0	0	0	0	0
CIO	1	0	0	1	0	0	0	0
CIO/FOIA	20	14	7	27	2	0	0	2
GC	2	1	0	3	0	1	0	1
IA	0	0	0	0	0	0	0	0
LA	1	1	0	2	0	0	0	0
NESDIS	1	13	1	13	1	1	0	2
NMFS	44	0	19	25	21	11	2	34
NOS	16	6	3	19	6	1	1	8
NWS	11	0	1	10	3	0	0	3
OAR	4	0	2	2	1	0	1	2
OMAO	0	0	0	0	0	0	0	0
OC	0	0	0	0	0	0	0	0
RPI	0	0	0	0	0	0	0	0
USAO	1	0	1	0	0	0	0	0
WFMO	8	1	3	6	4	1	0	5
NOAA Totals	111	40	37	114	39	19	4	62





Tracking Number	Type	Requester	Requester Organization
DOC-NOAA-2017-000344	Request	Bob Kucharuk	Eagle Strategic Services LLC
DOC-NOAA-2017-000255	Request	Mindy o. Block	Quality Parks
DOC-NOAA-2017-000242	Request	Rose Santos	FOIA GROUP INC
DOC-NOAA-2017-000241	Request	Manuel B. Trujillo	Swain Online Inc dba Swain Techs
DOC-NOAA-2017-000331	Request	Adam J. Rappaport	Citizens for Responsibility and Ethics in Washington
DOC-NOAA-2017-000347	Request	Erin Lundy	
DOC-NOAA-2017-000335	Request	Zeenat Mian	
DOC-NOAA-2017-000333	Request	Thomas Knudson	Center for Investigative Reporting
DOC-NOAA-2017-000332	Request	Thomas Knudson	Center for Investigative Reporting
DOC-NOAA-2017-000307	Request	Larry Geller	Disappeared News
DOC-NOAA-2017-000342	Request	Ryan P. Mulvey	Cause of Action
DOC-NOAA-2017-000295	Request	Ilsa Perse	Stop the Dump Coalition
DOC-NOAA-2017-000271	Request	Sarah B. Brady	Delaware Riverkeeper Network
DOC-NOAA-2017-000257	Request	Christopher Hudak	Environmental Advocates
DOC-NOAA-2017-000244	Request	Jennie Frost	Trustees for Alaska
DOC-NOAA-2017-000296	Request	Teresa Carey	Journalist
DOC-NOAA-2017-000237	Request	John R. Leek	San Diego Council of Divers
DOC-NOAA-2017-000236	Request	Taylor Bailey	
DOC-NOAA-2017-000346	Request	Anthony V. Schick	Oregon Public Broadcasting
DOC-NOAA-2017-000367	Request	Christian Alexander	Back Room Knox
DOC-NOAA-2017-000365	Request	Peter J. Speicher	
DOC-NOAA-2017-000364	Request	Peter J. Speicher	
DOC-NOAA-2017-000363	Request	Alexis M. Thomas	Animal Rights Hawaii
DOC-NOAA-2017-000362	Request	Jaclyn Prange	
DOC-NOAA-2017-000361	Request	Peter Shelley	Conservation Law Foundation
DOC-NOAA-2017-000360	Request	Dwayne Meadows	
DOC-NOAA-2017-000359	Request	David Moser	
DOC-NOAA-2017-000352	Request	Rose Odom	
DOC-NOAA-2017-000351	Request	Yogin Kothari	UCS
DOC-NOAA-2017-000338	Request	Zeenat Mian	
DOC-NOAA-2017-000337	Request	Zeenat Mian	
DOC-NOAA-2017-000336	Request	Zeenat Mian	
DOC-NOAA-2017-000322	Request	Charles J. Gower	
DOC-NOAA-2017-000343	Request	Gary Moses	
DOC-NOAA-2017-000292	Request	Evan D. Johns	Appalachian Mountain Advocates
DOC-NOAA-2017-000320	Request	Lauren Daniel	ARNOLD & PORTER LLP
DOC-NOAA-2017-000321	Request	Lauren Daniel	ARNOLD & PORTER LLP
DOC-NOAA-2017-000263	Request	Richard Hall	SGC Engineering
DOC-NOAA-2017-000334	Request	Thomas Knudson	Center for Investigative Reporting
DOC-NOAA-2017-000330	Request	John P. Burks	Florida Fish and Wildlife Conservation Commission

Submitted	Assigned To	Perfected?	Due	Closed Date	Status
12/19/2016	AGO	Yes	01/24/2017	TBD	Assignment Determination
12/06/2016	AGO	No	TBD	TBD	Assignment Determination
12/01/2016	AGO	No	TBD	TBD	Assignment Determination
12/01/2016	AGO	Yes	01/05/2017	TBD	Assignment Determination
12/16/2016	LA	Yes	01/24/2017	TBD	Assignment Determination
12/19/2016	NMFS	Yes	01/24/2017	TBD	Assignment Determination
12/18/2016	NMFS	Yes	01/24/2017	TBD	Assignment Determination
12/16/2016	NMFS	Yes	02/07/2017	TBD	Assignment Determination
12/16/2016	NMFS	Yes	02/07/2017	TBD	Assignment Determination
12/13/2016	NMFS	Yes	01/17/2017	TBD	Assignment Determination
12/13/2016	NMFS	Yes	02/03/2017	TBD	Assignment Determination
12/13/2016	NMFS	Yes	01/31/2017	TBD	Assignment Determination
12/09/2016	NMFS	Yes	01/11/2017	TBD	Assignment Determination
12/06/2016	NMFS	Yes	02/10/2017	TBD	Assignment Determination
12/02/2016	NMFS	Yes	01/05/2017	TBD	Research Records
12/02/2016	NMFS	Yes	01/13/2017	TBD	Assignment Determination
12/01/2016	NMFS	Yes	01/24/2017	TBD	Assignment Determination
12/01/2016	NMFS	Yes	01/05/2017	TBD	Research Records
12/19/2016	NOAA FOIA	No	TBD	TBD	Initial Evaluation
12/27/2016	NOAA FOIA	No	TBD	TBD	Submitted
12/23/2016	NOAA FOIA	No	TBD	TBD	Assignment Determination
12/23/2016	NOAA FOIA	No	TBD	TBD	Assignment Determination
12/23/2016	NOAA FOIA	No	TBD	TBD	Submitted
12/22/2016	NOAA FOIA	No	TBD	TBD	Submitted
12/22/2016	NOAA FOIA	No	TBD	TBD	Submitted
12/22/2016	NOAA FOIA	No	TBD	TBD	Initial Evaluation
12/21/2016	NOAA FOIA	No	TBD	TBD	Submitted
12/20/2016	NOAA FOIA	No	TBD	TBD	Submitted
12/20/2016	NOAA FOIA	No	TBD	TBD	Initial Evaluation
12/19/2016	NOAA FOIA	No	TBD	12/22/2016	Closed
12/19/2016	NOAA FOIA	No	TBD	12/22/2016	Closed
12/18/2016	NOAA FOIA	No	TBD	12/22/2016	Closed
12/14/2016	NOS	Yes	01/20/2017	TBD	Assignment Determination
12/14/2016	NOS	Yes	01/24/2017	TBD	Assignment Determination
12/13/2016	NOS	Yes	01/17/2017	TBD	Assignment Determination
12/12/2016	NOS	Yes	01/30/2017	TBD	Assignment Determination
12/12/2016	NOS	Yes	01/13/2017	TBD	Final Preparation of Response
12/08/2016	NOS	Yes	01/11/2017	TBD	Assignment Determination
12/16/2016	OGC	Yes	02/07/2017	TBD	Research Records
12/16/2016	WFMO	Yes	01/24/2017	TBD	Assignment Determination

Dispositions

Other - Aggregate cases
Other - Aggregate cases
Other - Aggregate cases

Full grant

Detail

I understand that there is a full or partial incumbent currently performing the services described in RFI Solicitation 1. Request copies of project narrative (not the budget narrative) of the following grants proposals that were submitted 1. Copy of the NOAA contract officer's Justification for Other Than Full and Open Competition ("JFOC"); 2. Copy of Would like to get a copy of the NOAA CLASS CONTRACT # DOCEA133E08CQ0020 for market research Award I CREW requests copies of any questionnaires submitted to NOAA by any representative of President-elect Donald Requesting information on ages, status of, history and origin of captive cetaceans in the United States, especially t CONSOLIDATED REQUEST 12/22: All records: emails, minutes of meetings, presentations, documents, NOAA pr A National Marine Fisheries Service investigation for creation of a hostile work environment for a fisheries observe A copy of all expense account reports, including receipts, for all NOAA/NMFS employees who attended the 8th Int A All inspection reports filed by NOAA Fisheries observers on vessels in the Hawaii longlines fishing fleet from 2009 Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), CoA Institute hereby requests access to Request the following documents regarding the application filed by Riverbend Landfill, application # NWP-2015-32. Any and all requests for technical assistance for projects or initiatives that would impact the Atlantic sturgeon in the EcoRights requests that "You" please provide the following "documents": 1. Any and all "documents" "related to" th On behalf of Chuitna Citizens Coalition and Cook Inletkeeper (Chuitna Citizens), Trustees for Alaska requests cop Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request access to and copies of records MODIFIED REQUEST DESCRIPTION 12/12/16: The document request is any correspondence or filing or email c I am interested in National Marine Mammal Inventory Database records from Marineland of the Pacific (Palos Verc I request copies of any communications from regional staff in Oregon, Washington or Idaho since July 2016 involv I would like to request documents related to the wildfires in Gatlinburg Tennessee. Apparently the weather service I am requesting information on the candidates selected on the National Weather Service meteorologist vacancy N I am requesting information on the candidates selected on the National Weather Service meteorologist vacancy Pt All wild capture and import permits for cetaceans such as whales and dolphins issued to John Chalmers Sweeney, See attached request.

Expedited Review is sought pursuant to 15 CFR § 4.6(f) Re: Freedom of Information Act Request – Northeast Any and all NMFS delegations of duties of the NMFS Deputy AA for Operations (or equivalent, depending on time For NOAA Fisheries, West Coast Region, California Coastal Office: All correspondence (including emails), reports I am looking to have an updated copy of the Marine Mammal Inventory Report (MMIR).

Please find an electronic FOIA request attached. If there are any questions or concerns, or if there is a need to nar All records: emails, minutes of meetings, presentations, documents, NOAA phone text messages and any other pe All records: emails, minutes of meetings, presentations, documents, NOAA phone text messages and any other pe All records: emails, minutes of meetings, presentations, documents, NOAA phone text messages and any other pe I request access to all records created by NOAA personnel documenting the state of the Hess Refinery located on Please provide any satellite images for 44 Brockmeyer Drive Massapequa NY 11758 dated prior to August 20, 197 2016 Sounding / Depth Data in the York River Watershed. Under the Freedom of Information Act, 5 U.S.C. § UPDATED REQUEST DESCRIPTION: A large portion of the records that are anticipated to be located will be dupli UPDATED REQUEST DESCRIPTION: Funding Agreements Relative to Hudson River PCB Superfund Site," have Please provide the following information. The physical bounding area for this request is NW Corner: -69.3271, 43.9 Copies of the following: 1.) NMFS NOVA #SW0902995 Malesa \$5,000 2010 2.) NMFS Written Warning #NE07029 FREEDOM OF INFORMATION ACT REQUEST All documents relating to the suitability determination, background

[REDACTED]
es, any modifications that may have been subsequently issued, and a copy of the winning technical pro
n for Marine Research and Preservation Development and deployment of an Incident Management Tea
contained in the JFOC) BACKGROUND: On or about November 17, 2016, NOAA posted a new solicitat

sident-Elect and the Office of the Vice President-Elect.

at Mian and a TRO/restraining order is mentioned from the period of 15th September 2016 until present.

correspondence, created or received by (1) John Bullard, Regional Administrator for the Greater Atlantic
ate to Corps 404 permit application # NWP-2015-322 (2) Any documents, other than the 404 Applicatio
ict the Atlantic sturgeon in the Delaware River; NMFS/NOAA responses to requests for informal consult
IQ on the impact of the "Stockdale Memo." This request is only for the input on the impact of the "Stock
tration (NOAA) Fisheries spanning June 7, 2016 through December 2, 2016, pursuant to the Freedom o
a.gov/sfa/fisheries_eco/bycatch/docs/national-bycatch-strategy-2-23-16-web.pdf) released by NOAA in F
ntific paper or scientific facts or legal opinion justifying the #sharetheshore program contents. To limit t
ls filed after MMPA may show data on captures before 1970. I am interested in: both cetaceans and pin

urg Refused. The weather service called Gatlinburg a second time, some time later, and demanded the
at Fairbanks Weather Forecast Office, Alaska. I am requesting: 1) Access to copies of the qualifications
Forecast Office, Hawaii. Three candidates were selected off of the certificate. I am requesting: 1) Acce
nimals is limited to those that are wild caught; as well as a copy of the permits that meet the above crite

s for the Atlantic Ocean. Supporting documents attached

for Operations to lower operating level(s) (or equivalent, depending on time period). Records may be in
of Transportation (Caltrans) to replace or modify the Lagunitas Creek Bridge on Highway One (a.k.a. St

/ office starting Thursday, December 22nd, so feel free to reach me on my cell. Have a great holiday.

GENT: RETALIATION (yet another) from HAWAIIAN MONK SEAL VOLUNTEER" . And All record:
tioned and/or listed. Period: 29th June 2016 until present Please notify me if the cost exceeds \$100

INT MONK SEAL VOLUNTEERS ABUSIVE BEHAVIOUR. And All records: emails, minutes of meetings
ed in photographs of the Hess Refinery. There is a single image in the NOAA Photo Library that depicts
nvironmental Conservation. An other issue that comes up is determining elevation at shoreline bulkhead
ita from the York River or Mattaponi River in Virginia, collected after January 1, 2016. I am happy to rece
terior (DOI). As such, in order to avoid duplicity, NOAA will only produce correspondence "by or between

----- ORIGINAL REQUEST DESCRIPTION: All funding agreements (original and any amendr
an Island to Port Clyde Cable 1. Electronic file showing the location of the telephone cable within the ca
'0805007 Princess Laura \$20, 500 2010

sition RADS 19859. I was told the tentative offer was terminated Nov 22nd "Due to unfavorable inf

posal.

im (IMT) through the continued support of the Specially Trained Animal Response Team (START) - NA
tion entitled the "AWIPS Extension" (Solicitation Number: 1DG133W05CQ1067), in which they announce

All records: emails, minutes of meetings, presentations, documents, NOAA phone text messages and

Region ("GARO"), or (2) Michael Pentony, Assistant Regional Administrator for Sustainable Fisheries for
i, that have been submitted to NMFS by the Corps or any other agency or by the applicant that relate to
ation for projects or initiatives that would impact the Atlantic sturgeon in the Delaware River; Any and all
lale Memo" that Chris Yates provided to NOAA HQ and the input on the impact of the "Stockdale Memo"
f Information Act, 5 U.S.C. § 552: 1. All records analyzing, evaluating, reviewing, summarizing, and
February this year. Specifically, I request records including but not limited to correspondence (including e
he scope, if nothing can be found with a quick search in their documentation records then "Not found" w
nippeds, records on all animals at the institution (alive or dead, captive-bred/wild-caught/imported), and I

release of evacuation orders or the weather service would go over Gatlinburg's head and release the w
and anything in writing or electronic format that shows the qualifications of the selected candidate (i.e.,
ss to copies of the qualifications and anything in writing or electronic format that shows these qualificatio
ria.

possession of staff of NMFS HQ "front office" and NOAA Workforce Management Office (or
ate Route One) in Point Reyes Station, California.

s: emails, minutes of meetings, presentations, documents, NOAA phone text messages and any other p

; presentations, documents, NOAA phone text messages and any other paperwork or means of informa
a collapsed oil tank at the Hess Refinery in the aftermath of Hurricane Hugo. The photographer is a Dr.
d. The Army Corps of Engineers claims it is quoting your office and saying according to NOAA elevation
give electronic versions of these records (preferably in .pdf format) by email, cloud storage, or physical n
" the NGO's and listed NOAA employees that do not include DOI employees. In addition, "Agency Corre
ments) by and between USEPA and NOAA related to NOAA's participation in the selection, implementatio
ble way 2. Current owner of the cable 3. - Water depth of cable - Type of seabed and depth of sediment

ormation obtained during the pre-employment process" and I am requesting any document that sh

15NMF4390022 - \$50,000 2) Riverhead Foundation for Marine Research and Preservation Support for F
ed a non-competitive award to the existing AWIPS contractor (Raytheon Technical Services Company L

any other paperwork or means of information exchange pertaining to the email sent by Zeenat Mian title

or GARO. The time period for this request is January 1, 2014 to the present.2 Please restrict your search
Corps 404 permit application # NWP-2015-322 (3) Any ESA-related consultation letters or documents, i
requests for formal consultation for projects or initiatives that would impact the Atlantic sturgeon in the C
' the NMFS West Coast Region staff provided to NOAA HQ and is not a broader request for other docur
/or discussing potential impacts of the proposed Chuitna coal strip mine and fish and/or fish habitat; anc
mails), meeting notes, reports, studies, and schedules. I also request subsequent records, from Februa
ill be the answer. ----- This is to request up d
am specifically interested in date/location of capture and the date of death.

either alert. My request is to get this audio recording and any other documents related to it including err
the selected candidates resume with any PII information "stripped" per 5 U.S.C. & amp; 552(
ns (i.e., the selected candidates resume with any PII information "stripped" per 5 U.S.C. & an

the equivalent name for other time periods). Whatever form the record is in. I request all such delegatio

paperwork or means of information exchange where both names Zeenat Mian and Don Porter are menti

tion exchange where both names Zeenat Mian and Karen Rohter (HMMA volunteer) are mentioned. Pe
Joseph Golden, and it appears that Dr. Golden snapped this photo during a fly-by. I anticipate that Dr. C
is determined by measuring the height of the bulkhead from the Mean Low Water Mark. Please provide
medium such as CD or DVD. I am also amenable to paper copies. However, please provide the docume
spondence and Communications” has been date qualified from 2010 through 2016, and we will exclude
on, modification, amendment or supplementation of the CERCLA remedy for the Hudson River PCBs Su
s - Type of protections (burial or physical protections) and depth of burial - Cable cross section and prop

rows why I was not found suitable for the position. Dates for documents range from July 26th, 2016 to N

Activity Operation to Maintain Response, Treatment and Data Collection of Live and Dead Marine Mammals (LC), for the period May 17, 2017 through February 16, 2018.

and COMPLAINT MONK SEAL VOLUNTEERS ABUSIVE BEHAVIOUR. And All records: emails, minutes

and to communications that contain any of the following terms: "David," "Ellen," "Goethel," "Explore the Ocean" including but not limited to any NLAA letters or any Biological Opinion, that have been issued by NMFS concerning Delaware River; NMFS/NOAA responses to requests for formal consultation for projects or initiatives that are related to the "Stockdale memo." This request is only for "documents" generated on or prior to July 12. All records analyzing, evaluating, reviewing, summarizing, and/or discussing the potential impacts of the strategy from 2016 to present, relating to the continued development of the National Bycatch Reduction Strategy. For information similar to FOIA 2016-001187 which resulted in a spreadsheet of social media postings

emails, notes or other communication regarding this issue. The start of the Communications would have been b) (6). 2) Access to copies of any information in writing or electronic format concerning reasons myself, for 552(b)(6). 2) Access to copies of any information in writing or electronic format concerning reasons

records from January 20, 2009 through May 30, 2016 inclusive (specifically EXCLUDING the memo dated March

requested and/or listed. Period: 28th July 2016 until present. Please do advise if cost exceeds \$100.

Period: 11 July 2016 until present. Please do notify me first if the cost exceeds \$100.

Dr. Golden (or others associated with Dr. Golden) may have taken other photographs that do not appear in the any written guidance you have to determine elevation at shoreline bulkhead.

obtained by the lowest-cost means possible.

(not produce) public documents already posted on the DOI/FWS Hudson River NRDA web site. -----

Superfund Site, including any progress reports issued pursuant thereto or otherwise required thereunder.

properties (in particular cable weight) 4. Existence, location and ownership of any other utilities in the cable

November 22nd, 2016, but the documents related to the suitability determination are most likely going to



als in New York State NA15NMF4390052 - \$100,000 Source: 2015 Funded Prescott Prescott Grant Pro

of meetings, presentations, documents, NOAA phone text messages and any other paperwork or means

ean World,” “Ayotte,” “Shaheen,” “Hassan,” and/or “Cause of Action.” Any search for potentially responsi
n Corps 404 permit application # NWP-2015-322.

: would impact the Atlantic sturgeon in the Delaware River; Biological opinions issued by NMFS/NOAA fo
y 24, 2014. 2. Any documents to or from NMFS staff Chris Kiefer “related to” the “draft Englebright conc
the proposed Chuitna coal strip mine and Cook Inlet beluga whales.

inally, I request all NOAA records, including but not limited to correspondence, meeting notes, reports, e
NMFS referenced as background material for the NMFS West Coast Region’s <https://www.facebook.co>

een Nov. 23, the day of the deadly fires. The area was dry from no rain and extreme wind was reported.
Peter J. Speicher, was not selected for the position. Note that this information this information should be
myself, Peter J. Speicher, was not selected for the position Note that this information this information sh

ay 31, 2016 and provided as a result of a non-responsive FOIA request #DOC-NOAA-2016-001764).

he Photo Library.

----- ORIGINAL REQUEST DESCRIPTION: All corr

way Manana Island to Monhegan Island Cable 1. Current owner of the power cable 2. Electronic file sh
be from Oct 1st, 2016 to November 22nd, 2016. Due to the extreme timeline it took for suitability determ

posals - <http://www.nmfs.noaa.gov/pr/health/prescott/2015funded.html>

s of information exchange where both names Zeenat Mian and Karen Rohter (HMMA volunteer) are me

ve records should include personal e-mail accounts or devices that have been used by Mr. Bullard or M

or projects or initiatives that would impact the Atlantic sturgeon in the Delaware River; All reports receive
urrence letter." 3. Any and all NOAA Fisheries "documents" from January 1, 2000 to the present, in the p

and studies, relating more generally to fisheries bycatch, sea turtle bycatch, and shrimp trawl regulations
m/NOAAFisheriesWestCoast/photos/a.218176738299054.47917.187_396671377061/95724068772598

If you feel this is the improper organization, please call me or email me.
made available to me, as the requesting party, because of the precedent set forth in Core v. USPS, whi
ould be made available to me, as the requesting party, because of the precedent set forth in Core v. US

espondence and communications, including electronically stored information such as e-mails, text mess
owing the location of the power cable within the cable way 3. - Water depth of cable - Type of seabed an
ination and necessity to resolve the issue quickly to reinstate my offer, I am requesting expediting of the

[REDACTED]

mentioned. Period: 11 July 2016 until present. All records: emails, minutes of meetings, presentations, doc

r. Pentony for work-related business.

d by NMFS of Atlantic sturgeon takes, kills, or injuries within the Delaware River system; and Any and al
possession of any NOAA Fisheries Office, Department, and/or Division, including any NOAA law enforce

; from January 2016 to present.

5/?type=3&theater. That program is supposed to be over for 2016. I am requesting the original spre

ch found there is "no substantial invasion of privacy in information identifying successful federal jo
PS, which found there is "no substantial invasion of privacy in information identifying successful fe

pages, and instant messages, by or between NOAA employees (and Hudson River PCBs team member:

id depth of sediments - Type of protections (burial or physical protections) and depth of burial - Cable cr

: request.



uments, NOAA phone text messages and any other paperwork or means of information exchange wher

I NMFS/NOAA comments on environmental assessment
ment division, "related to" whether any entities or individuals may have caused or did cause, or ma

adsheet FOIA DOC-NOAA-2016-001187_Marine Mammal Communications- Social Media Posts Featu

b applicants."
deral job applicants."

s) Lisa Rosman, and/or Jay Field, and/or Tom Brosnan, on the one hand, and any of the following perso
oss section and properties (in particular cable weight) 4. Current owner of t



e both names Zeenat Mian and John Gelman are me

r

ns or

From: Josh Fortenbery - NOAA Federal <joshua.fortenbery@noaa.gov>
Sent: Tuesday, January 10, 2017 4:05 PM
To: Mark Graff - NOAA Federal
Cc: Kimberly Katzenbarger - NOAA FEDERAL
Subject: FOIA Exemption 4 and Settlement Negotiations
Attachments: FOIA Settlement Confidential memo.docx

ATTORNEY WORK PRODUCT

Hey Mark,

My name is Josh Fortenbery, and I'm an Honors Attorney with NOAA (b)(5)

[REDACTED]

[REDACTED]

Best,

Josh

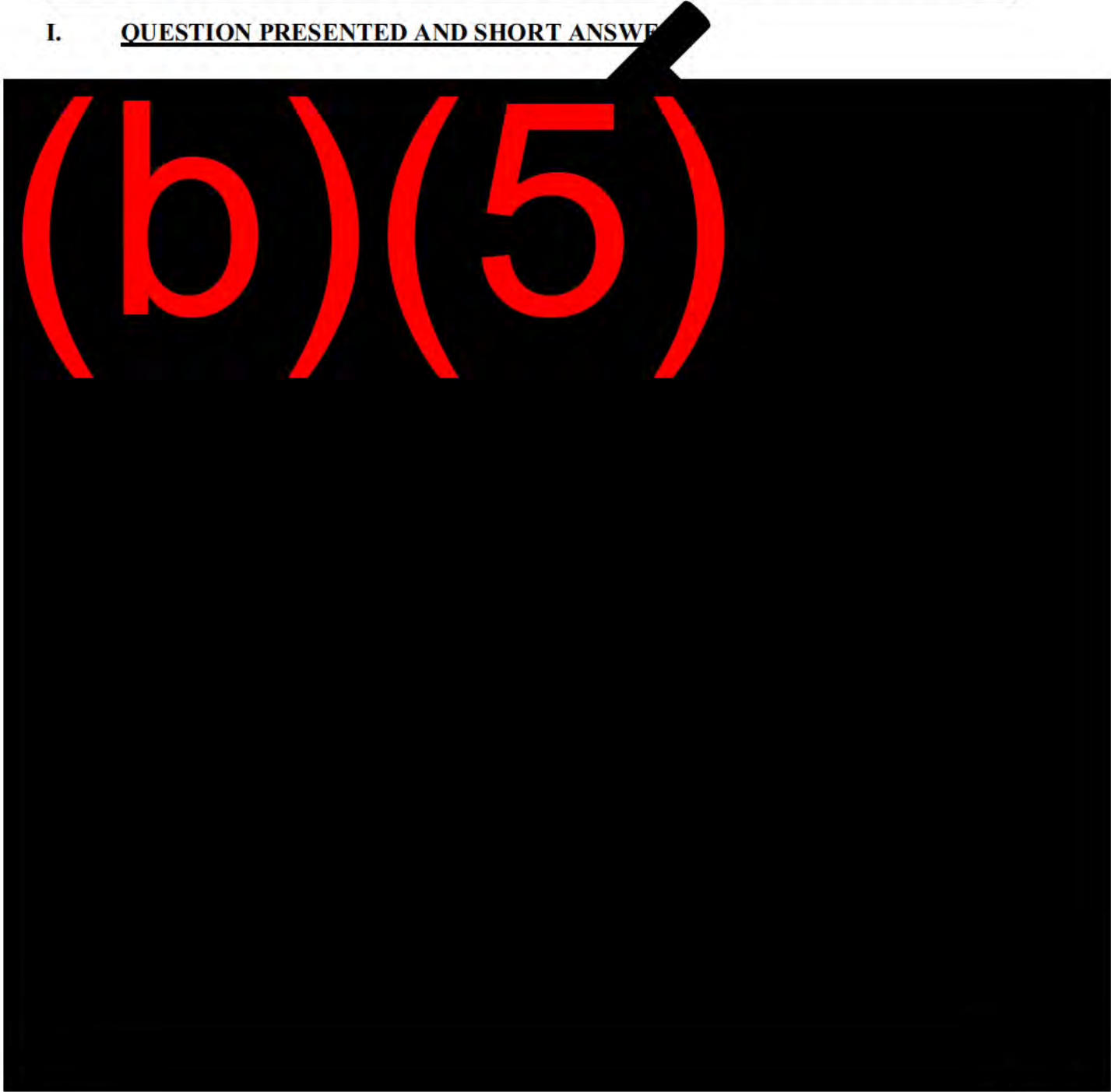
--
Josh Fortenbery
NOAA Office of General Counsel
U.S. Department of Commerce
Phone: 301-713-7447

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MEMORANDUM

TO: Laurie Lee, Deputy Section Chief, NOAA GC Natural Resources Section
FROM: Josh Fortenbery, Attorney-Advisor, NOAA GC Natural Resources Section
DATE: January 10, 2017
RE: Settlement confidential disclosures under FOIA

I. QUESTION PRESENTED AND SHORT ANSWER



(b) (5)

(b) (5)

(b) (5)

(b) (5)

connie.buche@noaa.gov

Cell: (913) 534-4599

On Tue, Jan 10, 2017 at 1:57 PM, John McLemore - NOAA Federal <john.mclemore@noaa.gov> wrote:
I'm open at 10 am.

John

John F. McLemore

NOAA Chief Negotiator

National Oceanic and Atmospheric Administration

Workforce Management Office (WFMO)

1305 East-West Highway, SSMC4, Room 12244

Silver Spring, MD

Phone: (301) 713-6349

Cell: [\(240\)997-3155](tel:2409973155)

john.mclemore@noaa.gov

On Tue, Jan 10, 2017 at 2:55 PM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

Hi John/Connie,

Is there a time tomorrow that might work on your end to have a brief discussion on this? I'm free anytime that works for you both before 2:00pm and will accommodate your schedules. Please just let me know-- thanks!

Mark H. Graff

FOIA Officer/Bureau Chief Privacy Officer (BCPO)

National Oceanic and Atmospheric Administration

[\(301\) 628-5658](tel:3016285658) (O)

(b)(6) (C)

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On Tue, Jan 10, 2017 at 1:17 PM, John McLemore - NOAA Federal <john.mclemore@noaa.gov> wrote:
Hey Mark,

Hope all is well with you. I am no longer the Labor Relations POC. The new Labor Relations Officer is Connie Buche. She can be reached by email at connie.buche@noaa.gov. I have taken the liberty of adding her to this email. If you would like, you can set up a meeting request on the calendar to conference myself and Connie to discuss this matter at your leisure.

Best regards

John

John F. McLemore

NOAA Chief Negotiator

National Oceanic and Atmospheric Administration

Workforce Management Office (WFMO)

1305 East-West Highway, SSMC4, Room 12244

Silver Spring, MD

Phone: (301) 713-6349

Cell: [\(240\)997-3155](tel:2409973155)

john.mclemore@noaa.gov

On Tue, Jan 10, 2017 at 12:31 PM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:
Hello John,

As a follow up to the email below, do you happen to have a minute we could discuss some steps forward under the CBA?

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) (C)

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On Wed, Nov 30, 2016 at 3:49 PM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:
Hello John,

As I'd mentioned at the beginning of the month, GPD set up a meeting with CSD and SDD to discuss the next logistical steps and technical requirements for rolling out a Data Loss Prevention Solution as required by the DOC Memo on point (attached). We still have several steps to take under the DLP Plan, but before we go any further, I wanted to reach out to you and see what, if any, steps were necessary for Union notification under the CBA. I also wanted to find out if this was something that would fall under permissive bargaining, and if so, what our obligations were.

Below are the outlined steps for DLP deployment--but to summarize, NOAA is deploying a software that will quarantine emails that violate existing DOC Privacy Policies. When an email is quarantined, users will have to either sanitize their messages to re-send them, or the email will be deleted from quarantine within a certain timeframe. If the DLP quarantines an email that is a false positive, users can notify CSD of the false positive so the DLP tool can be fine-tuned.

The net impact of any DLP Solution is likely to cause a significant spike in reported privacy incidents, since NOAA will no longer be reliant only on "self-reporting", but will actively identify Privacy Violations with the DLP filter--such as catching social security numbers sent in unencrypted emails. The DOC policy governing the transmission of sensitive PII will remain the same, but the likelihood of a Privacy Incident being reported to N-CIRT will increase substantially. As such, under the existing DOC Breach Response Notification Plan, more users will be reported to their management for having violated existing Privacy Policy, and there will likely be increased adverse actions against NOAA employees based on Privacy Violations.

Thanks in advance for any next-steps you'd suggest as to Union obligations.

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:(301)628-5658) (O)
(b)(6) (C)

----- Forwarded message -----

From: **Mark Graff - NOAA Federal** <mark.graff@noaa.gov>
Date: Wed, Nov 30, 2016 at 3:13 PM
Subject: DLP Meeting Takeaways
To: David Bedell - NOAA Federal <David.Bedell@noaa.gov>, Robert Swisher - NOAA Federal <robert.swisher@noaa.gov>, Robert Hembrook - NOAA Federal <robert.hembrook@noaa.gov>, Jerry McNamara <Jerome.McNamara@noaa.gov>
Cc: Tonya Banks - NOAA Federal <Tonya.B.Banks@noaa.gov>, Stefan Leeb - NOAA Federal <stefan.leeb@noaa.gov>, Sarah Brabson - NOAA Federal <sarah.brabson@noaa.gov>, Douglas Perry - NOAA Federal <Douglas.A.Perry@noaa.gov>, Tom Taylor <tom.taylor@noaa.gov>

Hi Everyone--

As discussed, here are the takeaways from the meeting.

The first four steps of the DLP Plan are satisfied as follows, and an artifact will be separately provided to Jerry to report back to the CIO Council:

Step 1: Pursuant to the discussion with Byron and Doug, and as reported back to the CIO Council by Jerry, the policies for the DLP Solution will be limited to the DOC Policies governing email transmissions leaving the noaa.gov domain. These will including existing policies, which will remain unchanged, including the Electronic Transmission of PII Policy, The DOC Privacy Policy, the DOC Breach Response and Notification Plan, and the policies referenced in the April 15, 2016 Memorandum DLP Memorandum from Ellen Herbst.

Step 2: The sensitive data will initially be limited to the sensitive data identified in the Commerce Privacy Data Loss Prevention Working Group Recommendations. Those recommendations outline the minimum data sensitivity levels required by the Memorandum, including words, phrases, configurations, and filtering necessary to identify the sensitive data. The CIO Council can determine at a later time if they wish to utilize the DLP Solution beyond this data set.

Step 3: The information flows will initially be limited to emails leaving the noaa.gov domain that contain, or have attachments that contain, the sensitive data identified in the Commerce Privacy Data Loss Prevention Working Group Recommendations. The potentially non-compliant email will be quarantined, at which time the burden will be on the user to retrieve the quarantined email, sanitize it, and re-send a policy-compliant email **or** notify the DLP Team that a false positive has been caught by the DLP Solution and that the email was not in violation of the policies in step 1.

Step 4: The data owners will be NOAA users sending emails outside the noaa.gov domain. Because emails within the noaa.gov domain will not be filtered by the DLP solution, and a crawling agent will not be utilized, it is not necessary to identify data owners for information at rest, or for communications within the noaa.gov domain. If it is determined that a Privacy Incident has occurred, data owners may also include the necessary individuals to be notified of the incident under the DOC Breach Response and Notification Plan.

As for Step 5, Deployment scenarios cannot be identified until the anticipated burden on resources is determined by SDD and CSC, and deployment scenarios can be identify that are within available resources.

As such, four action items were identified necessary to continue with Steps 5 (Identifying Deployment Scenarios) and 6 (Planning DLP Operations):

1. David Bedell will identify, in the next 2-3 weeks, the feasibility of the Google DLP Solution as satisfying the minimum technical requirements outlined in the April 15, 2016 DLP Memorandum. Stephan Leeb will also provide an estimated resource burden, in terms of money, time, and FTEs, to implement the DLP Solution within UMS compliant with the minimum standards in the Memorandum.
2. Robert Hembrook will identify, in the next 2-3 weeks, the estimated burden to CSD to (1) staff the DLP group that would triage and/or respond to quarantined emails (2) staff the N-CIRT sufficient to handle an estimated increase in Privacy Incidents that are being identified by the DLP Solution (3) train those staff members to on the proper review and handling of quarantined emails that do

- not constitute Privacy Incidents (false positives) (4) report, track, and take corrective action in the event of a false positive to improve the DLP parameters to avoid more false positives in the future.
3. Mark Graff will immediately contact an ELR Attorney in GC to begin any necessary discussions with the Union, as well as WFMO to involve their staff during the Breach Response and Notification procedures. After the DLP Scenarios are identified, GPD will begin messaging the affected office(s) of the pending deployment of the DLP Solution with actions for staff to take in the event their emails are quarantined.
 4. Jerry McNamara will report back to the CIO Council at three different times. (1) At the next CIO Council the result of the completion of these first four DLP Plan steps. (2) At the time that Deployment Scenarios have been identified after the estimated resource burden is calculated, and (3) After the DLP Operations are planned, with sufficient resources, and messaging and training is complete, before the DLP Solution is Deployed as the final step.

Thanks--and let me know if I've missed anything. Talk to you all soon,

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
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[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) (C)

NOAA Data Loss Prevention Plan

**Office of the Chief Information Officer
Governance and Portfolio Division
August 2016**



Background

[01] The protection of sensitive and personal information is more important than ever with electronic communications becoming increasingly prevalent. Safeguarding Personally Identifiable Information (PII) in the possession of the Federal Government and preventing its breach are essential to retaining the trust of the American public¹. This responsibility is shared by officials accountable for administering operational, privacy, and security programs. PII is any information that, by itself or in combination with other information, may be used to uniquely identify an individual. Within NOAA systems, this primarily can consist of Social Security Numbers (SSN), names, addresses, dates and places of birth, bank account numbers, e-mail addresses, telephone numbers, and passport numbers. The Office of Management and Budget (OMB) and the Department of Commerce (Commerce) released several memoranda to address the issue of safeguarding PII².

[02] This plan is intended as a framework for future action that will address user and system specific restrictions, controls, use cases, parameters, and other actions implemented based on the needs of individual systems and mission goals. This plan is intended to satisfy the implementation plan obligations to meet the minimum Privacy DLP Standards within 1 year as outlined in the April 15, 2016 Memorandum entitled “Departmental Privacy Standards for Commerce Data Loss Prevention (DLP) Security Tools”, as well as the corresponding May 3, 2016 data call issued by Commerce.

NOAA Data Overview

[01] NOAA provides the data, science, and information that allow the economy to function effectively and grow sustainably. NOAA helps to ensure a competitive economy by monitoring and predicting changes in the Earth's environment, protecting lives and property, and conserving and managing the nation's coastal and marine resources. NOAA's data portfolio mirrors the diversity and complexity of its mission ... and NOAA is very complex! Our mission and data diversity includes:

- 21,335 Staff (federal, contractor, associate)
- 435 Buildings
- 122 Weather Forecast Offices
- 13 River Forecast Centers
- 1,429 Real-Time Weather Stations
- 17 Satellites
- 8 Buoy Networks: 1042 Stations Deployed
- 13 National Marine Sanctuaries and 1 Marine National Monument
- 286 Data Centers

¹ The definition of PII can be found in the OMB Memorandum M-06-19, July 12, 2006.

² See, e.g., Memorandum from David A. Sampson, RE: Safeguarding Personally Identifiable Information, November 6, 2006.

- 94 Federal Information System Management Act Systems
- 33 Exhibit 300 IT Investments

NOAA DLP Strategy Overview

[01] NOAA uses, and will further deploy, a “Defense in Depth” approach to DLP. NOAA will use existing operational controls and privacy enhancing technologies. These include PII identifying solutions, encryption, firewalls, authorized use system access controls, and system audit logs. To further reduce the risk of compromise of sensitive PII in agency communications, NOAA will implement a Data Loss Prevention (DLP) solution set that monitors network communications and prevents sensitive PII from leaving the network, in addition to other sensitive data, as determined when the scope and capability of the solution is determined. Other sensitive data may include law enforcement sensitive data, business identifiable data, or other data sets for which the DLP solution can feasibly be leveraged. Each of these data sets may have one or more data owners, who will classify the information type, as described in the fourth development step below. In addition to these technical controls, NOAA utilizes administrative policies and procedures, as well as privacy training, to further safeguard information privacy and control access to information systems and information assets.

[02] NOAA conducts Privacy Threshold Analyses, (PTA’s), and, where applicable, Privacy Impact Assessments (PIAs) on all information systems to ensure privacy implications are addressed when planning, developing, implementing, and operating information technology (IT) systems that maintain information on individuals. NOAA utilizes a PIA template and guidance on conducting PIAs. The NOAA Bureau Chief Privacy Officer (BCPO) collaborates with system owners and IT security professionals to assess existing, new, or proposed programs, systems or applications for privacy risks, and recommends methods to protect individual privacy.

[03] The NOAA DLP solution(s) will be designed to monitor and prevent data from being leaked. NOAA’s DLP strategy, however, is to make sure the DLP solution(s) are as efficient and effective as possible. DLP needs to be rationally deployed in order to ensure that false positives do not overwhelm the system and the capacity of NOAA privacy and cyber security managers and staff. DLP tools such as McAfee Security, as powerful as they may be, require careful and organized deployment, otherwise reported incidents may be of little value.

[04] In response to the OMB M-07-16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information, and NIST SP 800-122, at 2.1, the NOAA Governance and Portfolio Division is leading the DLP initiative to promote secure practices in electronic communications (e-mails and Internet access) on the NOAA network to protect Controlled Unclassified Information (CUI) data. Taking a phased approach, the DLP initiative may include plans to implement specific solutions, for example, McAfee’s Data Loss Prevention (DLP) commercial off-the-shelf software solution that is capable of identifying and tracking a number of NOAA’s defined PII datasets. The NOAA DLP solution(s) will be designed to give NOAA an enterprise view into where it's most sensitive data are stored, who has access to the data, and where and by whom the data are sent outside the NOAA network. By using this information, NOAA can spot broken business processes and reduce the overall risk of exposure. The DLP solution(s) will take a data-centric approach to security, in which policies can be developed

around the content that should be protected and then deployed across multiple data states or functionalities, such as identifying, monitoring, and preventing.

DLP Development Steps

[01] A multi-layered approach will be applied to prevent data leakage for all routes and states. Data is classified under one of several schemes like data in motion, data in use, and at rest; or by data in-store, in-use and in-transit.

- Data in motion: Data that needs to be protected when in transit including HTTP/S, S/FTP/S, IM, P2P, SMTP.
- Data in use: Data that resides on end user workstation and needs to be protected from being leaked through removable media devices like USB, DVD, CD's.
- Data at rest: Data that resides on local storage media or server storage.

[02] Each of these layered types of data will be considered during deployment to maximize the prevention of data leakage. A multi-step approach to deployment, shown below, will be used as well. These steps are discussed in detail below.

1. Define policies
2. Identify sensitive data
3. Determine information flows
4. Identify data owners
5. Identify deployment scenarios
6. Plan DLP operations
7. Deploy DLP product(s)

Define Policies

[01] NOAA will build policies to protect the sensitive data. Every policy will consist of some rules, such as to protect credit card numbers, PII, and social security numbers, if such policies are not already in place. If there is a requirement for NOAA to protect sensitive information and a DLP product such as McAfee DLP does not support it out of the box, then NOAA will create rules using regular expressions (regex). It should be noted that DLP policies at this stage will be defined and not applied.

[02] Those policies will reflect the internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our objective: Commerce Directives; and OMB, White House, and National Institute for Standards and Technology (NIST) guidelines. Each of these sources provide a framework for implementing an automatic tool to monitor transfers of PII and for developing, or implementing, a commercial off-the-shelf product. We are evaluating these controls against an enterprise life cycle approach, and by reviewing enterprise life cycle commercial off-the-shelf artifacts and documents supporting the procurement, budget, and expenses for the DLP solution.

[03] Policies will take into consideration existing guidelines and recommendations as well as other factors, such as impact and dependency for other systems, also needed to be considered when implementing a DLP solution. The National Institute for Standards and Technology Special Publication 800-122, Guide to Protecting the Confidentiality of Personally Identifiable Information³[1], recommends that agencies implement automated tools, such as a network data leakage prevention tool, to monitor transfers of PII and to monitor inbound and outbound communications for unauthorized activities. In addition, the Government Accountability Office's Standards for Internal Control in the Federal Government⁴[2] provides that application controls should be designed to help ensure completeness, accuracy, authorization, and validity of all transactions during application processing. Controls should be installed as an application interfaces with other systems to ensure that all inputs are received and are valid and that outputs are correct and properly distributed.

Identify Sensitive Data

[01] NOAA will identify all the confidential, restricted, and highly restricted data across the whole organization and across the three categories, i.e. for data in-transit, in-store and in-use. In identifying the sensitive data, NOAA will define the scope within which the DLP Solution will function. Each data set analyzed will be considered as to whether or not leveraging the DLP product would be an efficient use of resources, whether the data is non-sensitive, or whether the DLP would be an effective tool in further securing the data. DLP products work with signatures to identify any restricted data when it is crossing boundaries. To identify the critical data and develop its signatures, there is a term in DLP products known as fingerprinting. Data is stored in various forms at various locations in an organization and it requires identifying and fingerprinting. Various products come with a discovery engine which crawl all searchable data in a given data store, index it and make it accessible through an intuitive interface which allows quick searching on data to find its sensitivity and ownership details.

Determine Information Flows

[01] It is very important for an organization to identify their information flow. NOAA OCIO will prepare a questionnaire to identify and extract all the useful information. A sample questionnaire would address, at a minimum, the following three issues:

- What is a standard data flow, and what should be the source and destination of the identified data?
- What are all the egress points present in the network?
- What processes are in place to govern the informational flow?

³ National Institute of Standards and Technology, NIST SP 800-122, Guide to Protecting the Confidentiality of Personally Identifiable Information (PII) (April 2010).

⁴ Government Accountability Office (formerly known as the General Accounting Office), GAO/AIMD-00-21.3.1, Internal Control: Standards for Internal Control in the Federal Government (Nov. 1999).

Identify Data Owners

[01] Identification of the NOAA staff and line office owners of data is also an important step in the planning strategy of DLP, so a list will be prepared by OCIO of whom to send the notifications to in case any sensitive data is lost. NOAA OCIO will distribute an assessment to identify the owners of each of the different sensitive data elements across the organization. The data owners also will be responsible for classifying the information types⁵. Many types of data will have multiple owners, governed by separate line and staff office policies for the collection and use of that data, depending on mission needs. The assessment will attempt to identify each offices ownership, collection, storage, and transmission of sensitive data so that when an incident occurs, the incident is properly triaged, escalated where necessary, reported⁶, and the DLP processes and application are modified and tuned as necessary.

Identify Deployment Scenarios

[01] The following questions arise in identifying potential Deployment Scenarios. Each of these must be addressed prior to agency-wide deployment of a mature DLP solution.

1. Will the Initial Deployment be applied to all of the traffic of data in use, or in motion, or at rest?
2. Alternatively, should NOAA deploy the DLP appliance by copying the network traffic and analyzing it at a different port before deploying it directly to the data states of the network traffic?
3. Should the deployment occur in high availability mode or should we configure in bypass mode?
4. How will the setup of endpoints with the DLP manager occur?
5. How do we maintaining integrity between communication ports and firewalls?
6. How do we ensure proper configuration of a crawling agent?

[02] As discussed above, sensitive data falls under three categories, i.e. data in motion, data at rest and data in use. After identifying the sensitive data and defining policies, NOAA will prepare for the deployment of DLP product(s). DLP deployment scenario of all three categories include :

- Data in motion: Data that needs to be protected when in transit, i.e. data on the wire. This includes channels like HTTP/S, S/FTP/S, IM, P2P, SMTP etc. NOAA will install the DLP protector appliance or software so it is not directly inline with the traffic. This is prudent to start with a minimally invasive method by not putting the appliances inline, to prevent a huge number of false positives or a network outage if the inline device fails. The NOAA approach will be to deploy DLP appliances or software in a span port first,

⁵ See, NIST SP 800-60.

⁶ Reporting here is referring to both internal reporting to the Office that owns the information, the Bureau Chief Privacy Officer, and N-CIRT as necessary, as well as external notifications (such as Privacy Incident reporting to DOC) and external reporting to OMB. Organizations report annually on specific privacy and security activities in their annual FISMA reports to OMB. The most recent memorandum is OMB M-10-15, FY 2010 Reporting Instructions for the Federal Information Security Management Act and Agency Privacy Management, available at http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-15.pdf

and then after the DLP strategy is mature, then put into inline mode. In order to mitigate the second risk, NOAA may deploy two options: first, deploy DLP in High Availability mode, and second, configure the inline DLP product in bypass mode, which will enable the traffic to bypass the inline DLP product in case the DLP product is down.

- **Data in Use:** Data that resides on the end user workstation and needs to be protected from being leaked through removable media devices like USB, DVD, CDs, etc. will fall under this category. In Data in Use, an agent may be installed in every NOAA endpoint device like laptop, desktop, etc. which is loaded with policies and is managed by a centralized DLP management server. Agents would be distributed on the endpoints via pushing strategies like SMS, GPO, etc.
- **Data in Store:** Data that resides on file servers and DBs and needs to be monitored from being getting leaked will fall under this category. All NOAA data that resides in storage servers or devices would be crawled using a DLP crawling agent. After crawling, data is fingerprinted to see if any unstructured data is present or not.

Plan DLP Operations

[01] NOAA will need to split the DLP operations into three phases: a triaging phase, a reporting and escalation phase, and a tuning phase. The security operation's team will monitor the alerts fired or triggered by the policies set up in the DLP product. N-CIRT will fine tune the policies as a result of some mis-configurations earlier or due to eventual policy or guidance changes and apply the changes to the DLP product. NOAA will need to identify the staffing, budget, training, and other resource demands that each phase of the DLP Operations will require, and determine the capabilities in effectively carrying out each phase with the available resources.

Deploy DLP Product(s)

[01] Deployment of security components is of no use if they cannot be monitored, and a DLP product is no exception. Below is an overview of what a DLP operation of an organization can be. First of all, the DLP product needs to be created with the right set of policies on the identified data among data at rest, in motion or in transit categories. The DLP operations can be separated into three phases, namely: the triaging phase, the reporting and escalation phase, and the tuning phase. These will need to be modified depending on the nature of the incident identified in the triaging phase for referral to N-CIRT and for DOC notification, as necessary. The triaging phase, incident reporting and escalation, as well as the any parameter modifications and tuning will be carried out in accordance with existing PII/BII Breach Response and Notification Plan.

Conclusion

[01] NOAA will employ a Defense in Depth approach to DLP. NOAA's DLP solution(s) need to minimize deployment and operating costs. As an off-the-shelf product, the McAfee Total Protection, or a similar product solution would potentially be an additional tool within the DID approach to effectively protect PII and BII data wherever it may be.

[02] NOAA has maintained a high awareness of data security, and is vigilant in protecting the sensitive information located within its systems. These Data Loss Prevention measures will

enhance the security of NOAA information systems and maintain the highest level of compliance with all regulatory and guidance documents that govern Data Loss Prevention at the agency⁷.

Definitions

Business Identifiable Information (BII) Information that is defined in the Freedom of Information Act (FOIA) as "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Commercial or financial information is considered confidential if disclosure is likely to cause substantial harm to the competitive position of the person from whom the information was obtained.

Personally Identifiable Information (PII) Information that can be used to distinguish or trace an individual's identity, such as name, Social Security number (SSN), biometric records, etc., alone, or when combined with other personal or identifying information, which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc. [OMB M-07-16].

Sensitive Personally Identifiable Information (Sensitive PII) Sensitive PII is defined as PII which, when disclosed, could result in harm to the individual whose name or identity is linked to the information. Further, in determining what PII is sensitive, the context in which the PII is used must be considered. For example, a list of people subscribing to a government newsletter is not sensitive PII; a list of people receiving treatment for substance abuse is sensitive PII. As well as context, the association of two or more non-sensitive PII elements may result in sensitive PII. For instance, the name of an individual would be sensitive when grouped with place and date of birth and/or mother's maiden name, but each of these elements would not be sensitive independent of one another. For the purpose of determining which PII may be electronically transmitted, the following types of PII are considered sensitive when they are associated with an individual. Secure methods must be employed in transmitting this data when associated with an individual:

- Place of birth
- Date of birth
- Mother's maiden name
- Biometric information
- Medical information, except brief references to absences from work
- Personal financial information
- Credit card or purchase card account numbers
- Passport numbers

⁷ NIST SP 800-53A, Recommended Security Controls for Federal Information Systems, establishes common criteria for assessing the effectiveness of security controls in federal information systems. Organizations use the recommended assessment procedures from NIST SP 800-53A to develop their own assessment procedures.

- Potentially sensitive employment information, e.g., personnel ratings, disciplinary actions, and result of background investigations
- Criminal history
- Any information that may stigmatize or adversely affect an individual.

This list is not exhaustive, and other data may be sensitive depending on specific circumstances. Social Security Numbers (SSNs), including truncated SSNs that include only the last four digits, are sensitive regardless of whether they are associated with an individual. If it is determined that such transmission is required, then secure methods must be employed. [DOC Electronic Transmission of PII Policy].

Controlled Unclassified Information (CUI) Information that requires safeguarding or dissemination controls pursuant to and consistent with applicable law, regulations, and government-wide policies but is not classified under Executive Order 13526 or the Atomic Energy Act, as amended.

Signed this ____ day of _____, 2016.

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ou OTHER, cn GOLDSTEIN.ZACHARY.G.1228698985
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Zachary Goldstein, NOAA CIO



Data Loss Prevention Plan Status Update

Prepared by Mark H. Graff
NOAA FOIA Officer/Bureau Chief
Privacy Officer
OCIO/GPD

mark.graff@noaa.gov; (301)-628-5658



The Approved DLP Plan



- The Plan was approved on August 30, 2016
- The Plan outlined 7 steps for implementation in order to be compliant with the April 15, 2016 DOC Memorandum on point:
 1. Define Policies
 2. Identify Sensitive Data
 3. Determine Information Flows
 4. Identify Data Owners
 5. Identify Deployment Scenarios
 6. Plan DLP Operations
 7. Deploy DLP Product(s)



Step 1 Status: Define Policies



- NOAA met with Byron Crenshaw, BCPO for the Census Bureau, including Doug representing the CIO Council.
- The policies for the DLP Solution will be limited to the DOC Policies governing email transmissions leaving the noaa.gov domain.
- These will include existing policies, which will remain unchanged, including the Electronic Transmission of PII Policy, The DOC Privacy Policy, the DOC Breach Response and Notification Plan, and the policies referenced in the April 15, 2016 Memorandum DLP Memorandum from Ellen Herbst.

Step 2 Status: Identify Sensitive Data



- The sensitive data will initially be limited to the sensitive data identified in the Commerce Privacy Data Loss Prevention Working Group Recommendations.
- The CIO Council can determine at a later time if they wish to utilize the DLP Solution beyond this data set



Step 3 Status: Determine Information Flows



- The information flows will initially be limited to emails leaving the noaa.gov domain that contain, or have attachments that contain, the sensitive data identified in the Commerce Privacy Data Loss Prevention Working Group Recommendations.



Step 4 Status: Identify Data Owners



- The data owners will be NOAA users sending emails outside the noaa.gov domain.
- Upon recommendation from the Census Bureau, because emails within the noaa.gov domain will not be filtered by the DLP solution, and a crawling agent will not be initially utilized, it is not necessary to identify data owners for information at rest, or for communications within the noaa.gov domain



Step 5 Status: Deployment Scenarios



- Deployment Scenarios cannot be identified until the anticipated burden on resources is determined by SDD and CSC, and deployment scenarios can be identify that are within available resources.



Step 5 Status: Deployment Scenarios (cont'd)




- SDD and CSC are currently determining the resource burden for implementation, as well as the Google DLP Solution for technical compliance with the DOC requirements.
- After this is completed, Steps 5, 6, and 7 can will continue.




APR 15 2016

MEMORANDUM FOR: Heads of Operating Units and Secretarial Officers

FROM:

Catrina D. Purvis 
Senior Agency Official for Privacy (SAOP) &
Chief Privacy Officer

Ellen Herbst 
Chief Financial Officer &
Assistant Secretary for Administration

SUBJECT: Departmental Privacy Standards for Commerce Data Loss
Prevention (DLP) Security Tools

The purpose of this memorandum is to establish a requirement for all bureaus/operating units (BOUs) to configure their Data Loss Prevention (DLP) security tools to implement privacy control capabilities that meet Departmental privacy DLP standards. This requirement will enhance privacy protections and reduce personally identifiable information (PII) breaches within Commerce.

BACKGROUND

DLP is a term that refers to both the policy and information security tools used to identify, restrict, monitor, and protect sensitive data in use, in motion, and at rest. DLP security tools detect and prevent unauthorized attempts to copy or send sensitive data, intentionally or unintentionally, without authorization. On July 7, 2010, Departmental guidance announcing the implementation of a DLP program was issued in a document titled "Immediate Enablement of a DLP Security Tool."

On December 17, 2014, the Commerce Privacy Council's DLP Working Group (commissioned by the then-General Counsel) produced a *Privacy DLP Working Group Recommendations Report*. In furtherance of the 2010 guidance, the report recommended requiring all BOUs to implement DLP-based privacy control capabilities and provided minimum privacy DLP standards for electronic transmissions of sensitive PII (incoming and outgoing email messages or internet postings). Implementation of these standards results in all unsecured electronic transmission of sensitive PII attempts on any Commerce system to be blocked and redirects senders to use an approved secured

transmission method. Many BOUs have implemented the recommended privacy DLP standards across all of their systems and others have made significant progress toward that end. This memorandum formally requires all BOUs to implement privacy DLP capabilities that satisfy the existing minimum standards set forth in the working group's attached report.

REQUIRED ACTIONS

Accordingly, the following actions are required and must be submitted to the Commerce Senior Agency Official for Privacy at CPO@doc.gov within 120 days from the date of this memorandum:

- BOUs with existing DLP security tool capabilities – Provide a confirmation email that the minimum privacy DLP control standards identified in the DLP Working Group Report have been implemented.
- BOUs with no existing DLP security tool capabilities – Provide an implementation plan to meet the minimum Privacy DLP Standards within one (1) year. (The implementation plan may propose an alternative method/process to achieve the standards).

Please direct any questions regarding this memorandum to Lisa Martin, Deputy Director of Departmental Privacy Operations, who can be reached at (202) 482-2459 and lmartin1@doc.gov.

cc: BOU Chief Privacy Officers
Chief Information Officers
Chief Financial Officers

Attachment:

DOC Privacy DLP Working Group Recommendations

United States Department of Commerce

Privacy Data Loss Prevention (DLP)
Working Group
Recommendations

December 17, 2014



Working Group Members

Byron C. ...

Stephen ...

Jun Kim, ...

Ida Mix, ...

Carolyn ...

Solanki ...

Eric Williams

**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

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**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

SUMMARY

This document contains recommendations from the Department of Commerce (DOC) inter-agency network based Privacy Data Loss Prevention (DLP) Working Group for implementing a DOC wide DLP privacy program. Information in this recommendation will change as we gain greater experience using DLP email scan, new technologies are introduced, and new OMB requirements are implemented. As a result, it is the recommendation of the Privacy DOC Privacy DLP Working Group that these recommendations be reviewed annually and updated as appropriate.

The DOC inter-agency Privacy DLP Working Group was commissioned to research, investigate, and propose recommendations for implementing a department wide DLP privacy program. The group's primary objective was to provide high-level recommendations for a department wide DLP privacy program that will minimize the number of sensitive personally identifiable information (PII) email incidents while considering the level of technical, human, and financial resources needed to implement a DLP privacy program. DLP accomplishes these tasks using automated tools that implement policies and processes to identify where sensitive information is stored throughout the department's network, restrict access to that sensitive information, and monitor transmission of sensitive data in and out of the network boundary.

The Privacy DLP working group consisted of a small group of privacy advocates from the Department of Commerce, the Bureau of Industry and Security (BIS), the Bureau of Economic Analysis (BEA), the U.S. Census Bureau, the National Oceanic and Atmospheric Administration (NOAA), the National Institute of Standards and Technology (NIST), and the U.S. Patent and Trademark Office (USPTO). Byron Crenshaw, Privacy Compliance Chief of the U.S. Census Bureau, chaired this group.

This document describes the following recommendations from the Privacy DLP Working Group:

1. Security/Sensitivity Classification of DLP Personnel
2. Department-wide Privacy DLP Standard Process
3. DLP Minimum Scanning (filtering) Configuration – Incoming & Outgoing Mail
4. Filtering Criteria
5. Internet Postings
6. Handling of False Positives
7. Email Message Alerts to the Email Sender
8. Implementation Plan & Deadline
9. Reporting Requirements

**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

SCOPE

The recommendations of this document are for all unencrypted HTTP entities and messaging traffic (incoming or outgoing email messages or internet postings) that are leaving or entering a DOC network.

RECOMMENDATIONS

1. Security/Sensitivity Classification of DLP Personnel

Standard DLP operating procedures may allow DLP personnel access to confidential and/or sensitive information pertaining to persons, government or private entities. The DOC Privacy DLP Working Group recommends that DLP personnel sign a non-disclosure form prior to working with DLP technologies, acknowledging the requirements and responsibilities for information that is handled and made available. In addition, agencies may consider conducting additional security/suitability clearances for personnel involved with DLP.

2. Department-Wide DLP Standards

It is the recommendation of the DOC Privacy DLP Working Group that the DOC adopt the following practice as standard DLP privacy operating procedures:

- all unencrypted electronic messages (email messages or internet postings) that are leaving or entering a DOC network be filtered through the DLP solution (minimum scanning configuration is described in Section 3);
- suspected sensitive PII detected by the DLP shall be quarantined for a specified number of days as determined by the department or the OU;
- for each day an email is stored in quarantined, the email sender shall be sent an auto-generated email message from the DLP stating that his/her email will be deleted on [specified date] unless action is taken;
- if no action is taken on email messages quarantined by the DLP within the pre-determined number of days, the email message shall be deleted and the sender shall be notified;
- to resolve a suspected false positive, the email sender can either:
 - retransmit the email message with proper encryption,
 - redact the message of all sensitive information and retransmit, or,
 - contact the privacy staff to resolve suspected false positive (described in Section 6 – Handling of False Positives).

3. DLP Minimum Scanning Configuration

A successful department wide DLP privacy program must begin with a standard set of personally identifiable information (PII) items that each operating unit must consistently treat with special handling procedures during electronic transmission. The identification of sensitive PII is often based on the context of how the information is used. Since there are limitations on contextual understanding by DLP software, the list of sensitive PII identified by the DOC inter-agency Privacy DLP Working Group will consist primarily of single (standalone) sensitive PII items, with some basic grouping or combination of other PII or commonly associated text. Examples of these items are listed in Table 1.

**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

A. Egress Scanning

It is the recommendation of the DOC Privacy DLP Working Group that all outgoing email messages sent from a DOC network be subject to DLP filtering for sensitive PII based on the minimum filtering criteria as outlined in this document.

Note on Agencies' Rights: DOC operating units must reserve the right to add additional PII to their DLP filter as necessary. However, minimum DLP items identified by the DOC DLP Team cannot be detracted.

B. Ingress Scanning

Historical research by DOC operating units that are currently using a DLP software has revealed that incoming email messages will sometime contain sensitive PII which can go undetected by the operating unit. It is not until the operating unit attempts to reply or forward the message outside of the DOC network that the sensitive PII in the e-mail message is detected. It was also revealed that sometimes the incoming e-mail message will be copied and filed in an unsecure environment because the sensitive PII within the e-mail message remained undetected.

To address this problem, it is the recommendation of the DOC Privacy DLP Working Group that all e-mail messages coming into DOC networks be subject to the same DLP filtering criteria as outgoing email messages. Incoming e-mail messages containing sensitive PII as identified by the DLP filtering scan shall be blocked by the DLP from entering the DOC network. It is recommended that electronic notification be sent to the sender describing the policy prohibition, with instructions for using DOC approved encryption software (i.e., Accellion). In addition, it is also recommended that the intended recipient of the blocked email message be electronically notified that an incoming e-mail message has been blocked from receipt into the DOC network because of a possible DLP policy prohibition. Recommended suggestions for the wording of these notification messages are included in Appendix A.

4. Filtering Standard

The DOC Privacy DLP Working Group has identified a minimum standard for DLP privacy implementation. This filtering standard includes sensitive PII, and non-sensitive PII combined with other information, such as financial and/or medical information, which when combined, becomes sensitive PII.

DOC operating units must include these items in the standard filters of their DLP filtering items, additional filtering items can be added by DOC operating units as necessary.

If a quarantined message matches for more than one DLP filter item, the DLP scanning rules should terminate examination and trigger countermeasures on the first matching item.

It is the recommendation of the DOC Privacy DLP Working Group that the DLP filtering hierarchy be in this order.

**Commerce Interagency
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Recommendations**

1. Social security number
2. Passport number
3. Driver's license/state identification number
4. Bank account/credit card number
5. Medical/HIPAA Information
6. Date of birth
7. Mother's maiden name

This order means if there is an email message that has content that recognize the SNN and HIPPA Patient Identification Number, the DLP would recognize the SSN as the violation and not continue processing for the HIPAA Patient Identifier.

4.1 U.S. Social Security Number Filters

The U.S. Social Security Number classifier requires a properly formatted number as well as other supporting data, such as a date of birth, name, or the text string "SSN".

U.S. SSN Examples:

- 123-45-6789 (No match because of no supporting information)
- 123-45-6789 July 4 (Match because a partial date is linked to 9-digit string number)
- 123-45-6789 7/4/1980 (Match because a possible date is linked to 9-digit string number)
- 123-45-6789 7/4 (No match)
- 123-45-6789 987-65-4321 (Match because of more than one 9-digit string number increases risk, threat, and harm)
- SSN: 123-45-6789 (Match)
- Joe Smith 123-45-6789 (Match because name linked to 9-digit number)
- 123-45-6789 CA 94066 (Match because state and zip code associated with 9-digit number)

4.2 Passport Number

The Passport Number filter requires inspection for the word "Passport," in English and Spanish, followed by a string of digits.

4.3 Driver's License/State Identification Number

Driver's license or other state identification number must be filtered by the words "Driver's License" or "State Identification," followed by a string of numeric or alphanumeric values.

String of numeric data including punctuation (dashes, periods, etc.).

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4.4 Financial Account/Credit Card Number

The words "routing," "accounting," "credit card," or "cc," followed by a string of numbers with or without dashes.

4.5 Medical and Health Insurance Portability and Accountability (HIPAA) Filters

It is the recommendation of the DOC Privacy DLP Working Group that medical and other HIPAA considerations be included in the DLP data dictionary. The Medical/HIPAA DLP scan shall require a match on the medical classifier AND a match on a personal information identifier such as full name, U.S. Social Security Number, U.S. National Provider Identifier, or custom patient identification number, to be considered a Medical/HIPAA DLP violation.

Medical Information Examples:

personal identifier such as, full name, SSN, national provider identifier, or custom patient identification number -

- ADHD
- AIDS
- Arthritis
- Asthma
- Autism
- Cancer
- Chlamydia
- Diabetes
- Epilepsy
- Flu (Influenza)
- Herpes
- Giardiasis
- Gonorrhea
- Heart Disease
- Hepatitis
- HIV
- HPV (Human papillomavirus)
- Influenza
- Meningitis
- MRSA (Methicillin Resistant Staphylococcus aureus)
- Obesity
- Salmonella
- Scabies

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- Sexually Transmitted Diseases
- Stroke
- Trichomonas
- Trichomoniasis
- Tuberculosis (TB)

4.6 Date of Birth

Date of birth filter must include a combination of numeric or alphanumeric dates associated with the words “date of birth”, “DOB”, or “birth date,” and must be linked with a unique personal identifiable such as name or social security number.

5. Internet Postings

Sensitive PII posted for consumption via private or public websites can present a much greater risk of harm than sensitive PII transmitted through email because of the potential for a wider audience and exposure. It is the recommendation of this group that Internet traffic be scanned for DLP filtering items. This includes posts from DOC controlled networks going out to official DOC social media websites and pages, and posts inbound to DOC controlled and monitored websites and pages, i.e., Web forums. Attempted postings containing information prohibited by DLP filter criteria shall be blocked from release on the DOC controlled websites and pages, to the Internet.

6. Handling of False Positives

For the purpose of this recommendation, a “false positive” is defined as an electronic message that was falsely quarantined by the DLP solution.

If a sender suspects that his/her email message has been falsely quarantined by the DLP, it is the recommendation of the DOC Privacy DLP Working Group that the following actions be taken:

- the sender shall notify the privacy staff of the suspected false positive;
- a privacy professional will review the email to determine if the quarantined email message is a DLP false positive;
- upon confirmation by privacy professional that the email message was falsely quarantined by the DLP, the email message will be released by the privacy professional to the addressee(s);
- the sender shall be notified that the message has been reviewed by a privacy staff member and released to the intended recipient(s).

If the privacy professional determines that the email message is not a false positive, i.e., contains PII that is prohibited from unencrypted electronic transmission, it is the recommendation of this group that the following actions be taken:

**Commerce Interagency
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Recommendations**

- the email message will be manually deleted by the privacy staff;
- the sender will be notified that the message has been reviewed by a privacy staff member and found to contain information that is prohibited by policy from unencrypted email transmission.

If no action is taken by the sender for a message that has been quarantined by the DLP after a specified number of days (as defined by either the department or the OU), it is the recommendation of this group that the following actions be taken:

- the email message be automatically deleted by the DLP solution;
- the sender shall receive an auto-generated email message from the DLP solution stating that the email message [email subject and date] has been deleted by the DLP.

7. Email Messages

It is the recommendation of the DOC Privacy DLP Working Group that when an email message is quarantined by the DLP email scan, the sender shall receive an auto-generated email message describing the possible violation, the quarantine of the email message, and the steps to take to release the email message to the intended recipients. If the employee suspects the DLP quarantined the email in error (false positive) and contacts the privacy office for assistance, another email message will be sent stating the results of the privacy review. An example of each of these letters is included under the Email Messages section of the Appendix A.

8. Implementation Plan & Deadline

It is the recommendation of the DOC Privacy DLP Working Group that a department-wide policy be written based on these recommendations. All DOC operating units shall be given one year from date of issue to comply with the policy.

9. Reporting Requirements

Incidents captured by the DLP are not released from a DOC controlled environment. Since they remain within the control of the DOC, the DOC Privacy DLP Working Group recommends that DLP incidents be considered an attempted violation of policy and not an actual breach. Therefore, DLP incidents shall not be required for CIRT reporting.

To monitor the effectiveness of the DLP program, it is the recommendation of the DOC Privacy DLP Working Group that all operating units maintain record of the number of incidents captured by the DLP, the number of false positives, the number of avoid breaches, and the number of attempted self disclosed sensitive information.

**Commerce Interagency
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Recommendations**

**Table 1
Examples of Specific Sensitive Items**

Name		X
Address		X
Telephone (cell/land)		X
Date of Birth		X
Mother's maiden name		X
Social Security Number	X	
Bio-metric (fingerprint, palm print, hand geometry, iris recognition, retina, etc.)		X
Medical information, except brief references to absences from work		X
Passport Number		X
Bank Account/Credit Card Number or Account	X	
Driver's license/state identification number		X
Potentially sensitive employment information, e.g., personnel ratings, disciplinary actions, and results of background investigations		X
Criminal history		X
Any information that may stigmatize or adversely affect an individual		X

This list is not exhaustive, and other data may be sensitive depending on specific circumstances. Social Security Numbers, including truncated SSNs that include only the last four digits, are sensitive regardless of whether they are associated with an individual.

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Table 2

DLP Solutions by DOC Operating Unit

	None	RSA	Iron Port	ScanMail	Secure Zip (Google cloud solution)	Trend Micro	Websense	Axways
BEA						X		
Census			X					
NIST	X							
PTO				X				X¹

¹ Used for email messages coming and going to the internet.

**Commerce Interagency
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Recommendations**

Appendix A

Related Laws, Regulations, Policies, and Documents

- Privacy Act of 1974
- U.S. Department of Commerce Office of the Chief Information Officer, Electronic Transmission of Personally Identifiable Information
- U.S. Department of Commerce Office of the Chief Information Officer, IT Privacy Policy
- Office of Management and Budget Memorandum M-07-16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information
- Office of Management and Budget Memorandum M-06-19, Reporting Incidents Involving PII
- Office of Management and Budget Memorandum M-06-16, Protection of Sensitive Agency Information
- Office of Management and Budget Memorandum M-06-15, Safeguarding PII
- Commerce CIO's Memorandum on Safeguarding PII

**Commerce Interagency
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Recommendations**

Appendix B

Email Messages

Employees can potentially receive two of the three DLP email messages:

1. **Message #1 - alerts the user that his/her message, and if appropriate any attachments, have been quarantined by the DLP. This message is to be sent each day until the quarantined email is either released by the privacy office or deleted.**

EXAMPLE

Subject: Email Message Temporarily Quarantined: [original email subject with date]

A scan by the [insert name of agency] Data Loss Prevention (DLP) system has detected that your email with the subject: [subject], dated [date email was sent] may contain sensitive information that by policy is prohibited from email transmission without proper encryption. As a result, your email has been placed in quarantine for [specified] days. Please take one of the following actions to resolve this issue:

1. *Re-transmit your message using approved email encryption; or,*
2. *Contact the privacy staff on (777) 777-7777, if you think your email was quarantined by the DLP email scan in error.*

Sending unencrypted email messages containing sensitive PII, including personal messages sent from a Department of Commerce email systems, is a violation of the Department of Commerce's "Electronic Transmission of Personally Identifiable Information" policy. Additional information regarding acceptable use of government IT systems is contained in the [insert the name of agency's IT Acceptable Use Policy]. A copy of this policy can be found on [insert http address].

In the future, to avoid delays in email transmissions, please ensure that emails containing sensitive personally identifiable information or sensitive financial information are transmitted using approved encryption software, such as Accellion – Secure File Sharing software, or other approved secure transmission [insert link to other encryption software approved by the agency].

Please direct any questions to the [insert privacy office's name and telephone number].

2. **Message #2 – is sent to the email sender who requested review by a privacy professional because a false positive is suspected, and after review, the message is released to the intended recipients.**

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EXAMPLE

Subject: Email Message Temporarily Quarantined: [original email subject with date]

YOUR EMAIL MESSAGE HAS BEEN SENT

The below email has been reviewed by the [name of agency's privacy office] and released to the intended receiver(s) on [date original message released].

If you have any questions please contact the [insert privacy office's name and telephone number].

- 3. Message #3 - alerts the user that his/her email message, and any attachments, has been deleted and not sent. This message is to be sent after a quarantined message has not been acted upon after the pre-determined period of time.**

EXAMPLE

Subject: Email Message Temporarily Quarantined: [original email subject with date]

The detention period of your quarantined email message has expired and your message has been deleted. Your message was not sent to the intended recipient.

Sending unencrypted email messages containing sensitive PII, including personal messages sent from a Department of Commerce email systems, is a violation of the Department of Commerce's "Electronic Transmission of Personally Identifiable Information" policy. Additional information regarding acceptable use of government IT systems is contained in the [insert the name of agency's IT Acceptable Use Policy]. A copy of this policy can be found on [insert http address].

In the future, to avoid delays in email transmissions, please ensure that emails containing sensitive personally identifiable information or sensitive financial information are transmitted using approved encryption software, such as Accellion – Secure File Sharing software, or other approved secure transmission [insert link to other encryption software approved by the agency].

Please direct any questions to the [insert privacy office's name and telephone number].

**Commerce Interagency
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Appendix C

DEFINITIONS

Business Identifiable Information (BI): consists of (a) information that is defined in the Freedom of Information Act (FOIA) as “trade secrets, and commercial or financial information obtained from a person [that is] privileged or confidential.” (5 U.S.C.552(b)(4)). This information is exempt from automatic release under the (b)(4) FOIA exemption. “Commercial” is not confined to records that reveal “basic commercial operations” but includes any records [or information] in which the submitter has a “commercial interest” and can include information submitted by a nonprofit entity. Or (b) commercial or other information that, although it may not be exempt from release under FOIA, is exempt from disclosure by law (e.g., 13 U.S.C. 9).

False Positive: messages quarantined by the DLP that were later determined to not have contained any information that is prohibited from electronic transmission.

Personally Identifiable Information (PII): OMB Memorandum M-07-16 states that PII “refers to information which can be used to distinguish or trace an individual’s identity, such as name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name, etc.”

Sensitive But Unclassified (SBU): is a designation of information in the United States federal government that, though unclassified, often requires strict controls over its distribution. SBU is a broad category of information that includes material covered by such designations as For Official Use Only (FOUO), Law Enforcement Sensitive (LES), Sensitive Homeland Security Information, Security Sensitive Information (SSI), Critical Infrastructure Information (CII), etc. It also includes Internal Revenue Service materials like individual tax records, systems information, and enforcement procedures. Some categories of SBU information have authority in statute or regulation (e.g. SSI, CII) while others, including FOUO, do not.

Sensitive Personally Identifiable Information (SPII): Department of Commerce’s policy on Electronic Transmission of PII states that “sensitive PII is defined as PII which, when disclosed, could result in harm to the individual whose name or identity is linked to the information. Further, in determining what PII is sensitive, the context in which the PII is used must be considered. For example, a list of people subscribing to a government newsletter is not sensitive PII; a list of people receiving treatment for substance abuse is sensitive PII. As well as context, the association of two or more non-sensitive PII elements may result in sensitive PII. For instance, the name of an individual would be sensitive when grouped with place and date of birth and/or mother’s maiden name, but each of these elements would not be sensitive independent of one another.”

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Sensitive Security Information (SSI): is a category of sensitive but unclassified information under the United States government's information sharing and control rules, often used by TSA and CBP. SSI is information obtained in the conduct of security activities whose public disclosure would, in the judgment of specified government agencies, harm transportation security, be an unwarranted invasion of privacy, or reveal trade secrets or privileged or confidential information.

UNCLASSIFIED/FOUO: is used for documents or products that contain material that is exempt from release under the Freedom of Information Act. It is treated as confidential, which means it cannot be discarded in the open trash, made available to the general public, or posted on an uncontrolled website. It can, however, be shared with individuals with a need to know the content, while still under the control of the individual possessing the document or product.

**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

UNRESOLVED ISSUES

Issue 1: Identify BII DLP requirements.

Resolution: Pending

Issue 2: How to resolve false positives of incoming email messages?

Resolution: Pending

RESOLVED ISSUES

Issue 1: Definition of a DLP breach:

Resolution: The official OMB definition of a breach is *“The loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to situations where persons other than authorized users and for an other than authorized purpose have access or potential access to personally identifiable information, whether physical or electronic.”*

The lost of PII email incidents captured by the DLP shall not be considered breaches since the email containing the PII has never left our control.

Issue 2: Treatment of truncated IDs (SSNs, Passports numbers, credit card numbers, etc.)

Resolution: Page 2 of the Department of Commerce Policy on the Electronic Transmission of Personally Identifiable Information states the following:

“Social Security Numbers (SSNs), including truncated SSNs that include only the last four digits, are sensitive regardless of whether they are associated with an individual. If it is determined that such transmission is required, then secure methods must be employed.”

The treatment of truncated SSNs will be handled in accordance with the official DOC policy until such time when this requirement is rescinded by the department.

Other truncated numbers, i.e., passport numbers, credit card numbers, shall not be considered sensitive unless it is accompanied by other identifying information. (this adds to the DOC policy, since the policy does not address the use of truncated numbers other than SSN.

Issue 3: How to handle DLP incidents flagged after hours.

**Commerce Interagency
Privacy Data Loss Prevention Working Group
Recommendations**

Resolution: The automated email alert will immediately notify the sender that his/her email message has been quarantined. The message shall provide instructions for the sender to re-transmit the email using approved encryption software or through Accellion to successfully transmit the email. Secure FTP.

Issue 4: Treatment of incoming messages containing sensitive PII.

Resolution: The Privacy DLP Working Group recommends incoming messages be subject to DLP filtering, however, the decision to flag and quarantine incoming email messages containing sensitive PII shall be at the discretion of each operating unit.

Issue 5: Treatment of messages posted on agency's social media site

Resolution: traffic to the internet should be considered.

Issue 6: Shall we consider one DLP solution for all DOC OUs?

Resolution: No. Each operating unit must be able to employ a DLP solution that is compatible with existing technical capabilities and policies.

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Tuesday, January 10, 2017 5:10 PM
To: Robert Swisher - NOAA Federal; Lola Stith - NOAA Affiliate; Dennis Morgan - NOAA Federal
Subject: December Monthly FOIA Report
Attachments: 20161208 FOA v. NOAA Complaint.pdf; FOIA Monthly Status Report 12-31-2016.pdf; FOIA Monthly Status Report 12-31-2016.xlsx

Hey Guys

Here's the proposed monthly FOIA Report:

Good Morning,

The December 2016 Monthly FOIA Report is attached.

Several of the highlights from this report include the following:

- NOAA has had made significant progress in backlog reduction again, bringing the backlog back down to 62, which is a decrease of 16% since last month. This is great progress, and reflects both the increased closure efforts by the Staff and Line Offices as well as the results of the November slowdown of incoming FOIA request submissions.
- Year over year, NOAA's receipt of 40 cases in December is unusually high. As such, production levels need to remain equally high to avoid a January spike in the backlog. In particular, CIO and NESDIS received an inordinately large number of requests in December, and have been the subject of multiple voluminous FOIA requests recently.

NOAA also was sued in December in the *Friends of the Animals v. NOAA* FOIA lawsuit. That case is premised on the underlying FOIA request seeking records regarding the Cook Inlet Beluga Whales. (b)(5)

Additionally, in litigation, NOAA filed its Motion for Summary Judgment in the *Judicial Watch v. Department of Commerce* litigation. In that lawsuit the Plaintiff is seeking records regarding the Dr. Tom Karl hiatus paper. Dr. Spinrad and myself were Declarants for that Motion, and the Plaintiff's Memorandum in Opposition to that Motion is due January 20.

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) (C)

Confidentiality Notice: This e mail message is intended only for the named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
District of Colorado

FRIENDS OF ANIMALS, a New York non-profit corporation, and
SEA SHEPHERD LEGAL, a Washington non-profit corporation
Plaintiff(s)
v.

Civil Action No. 16-3007

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, an agency of the United States
Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Bob Troyer
United States Attorney
1225 17th Street
Suit 700
Denver, CO 80202

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Michael Harris
Wildlife Law Program
Friends of Animals
7500 E. Arapahoe Road, Suite 385
Centennial, CO 80112

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 16-3007

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
FRIENDS OF ANIMALS, a New York non-profit corporation, and SEA SHEPHERD LEGAL, a Washington non-profit corporation
(b) County of Residence of First Listed Plaintiff Arapahoe County
(c) Attorneys (Firm Name, Address, and Telephone Number)
Michael Harris
Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Suite 385, Centennial, CO 80112; Tel: (720) 949-7791

DEFENDANTS
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, an agency of the United States
County of Residence of First Listed Defendant District of Columbia
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question
4 Diversity
Indicate Citizenship of Parties in Item III

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)
Table with columns: CONTRACT, REAL PROPERTY, PERSONAL INJURY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
5 U.S.C 552- Failure to respond to request under the Freedom of Information Act
Brief description of cause: AP Docket

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMANDS
CHECK YES only if demanded in complaint.
JURY DEMAND: Yes No

DATE: 12/08/2016
SIGNATURE OF ATTORNEY OF RECORD: /s/ Michael Ray Harris

FOR OFFICE USE ONLY
RECEIPT #
AMOUNT
APPLYING IFP
JUDGE
MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows.

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment noting, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example:

U.S. Civil Statute: 47 USC 553

Brief Description:

Unauthorized reception of cable service

Or:

"AP Docket"

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

FRIENDS OF ANIMALS, and
SEA SHEPHERD LEGAL;

Plaintiffs,

v.

NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION
an agency of the United States,

Defendant.

Civ. No. 16-3007

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF
(FREEDOM OF INFORMATION ACT)**

INTRODUCTION

1. This action is brought to remedy violations of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et. seq.* Specifically, it challenges the failure of the National Oceanic and Atmospheric Administration (“Federal Defendant”) to provide a final determination, including all responsive documents, within the time required by FOIA in regard to Plaintiffs Friends of Animals’ and Sea Shepherd Legal’s (“Plaintiffs”) April 14, 2016 request for information (“Request”).

2. In the Request, Plaintiffs asked for all documents in Federal Defendant’s possession related to pending or final approvals under the Marine Mammal Protection Act, National Environmental Policy Act and the Endangered Species Act for anthropogenic activities affecting the Cook Inlet beluga whale. Plaintiffs also sought all documents related to biological analyses and threats to the Cook Inlet beluga whale. *See* Exhibit A.

3. As of the date on this Complaint, Federal Defendant has not made a final determination regarding the release of documents, nor has Federal Defendant provided a timeline or other plan for compliance with the requirements of FOIA to indicate when or whether the Request will be fully satisfied.

4. Federal Defendant is unlawfully withholding public disclosure of information that Plaintiffs are entitled to receive under FOIA. By failing to make either a timely determination or timely and complete releases after the initial tranche of documents, Federal Defendant failed to comply with the statutory mandates and deadlines imposed by FOIA.

5. Accordingly, Plaintiffs seek declaratory relief establishing that Federal Defendant has violated FOIA. Plaintiffs also seek injunctive relief directing Federal Defendant to make a determination on the Request, provide a timeline for the release of the remaining documents, and promptly provide the requested material free of cost.

6. Plaintiffs bring this lawsuit to obtain timely disclosure of critical information related to authorized takes, and to pending authorizations of requested takes, of hundreds of Cook Inlet beluga whales from multiple and geographically overlapping oil and gas projects in the Cook Inlet. Given the significant potential impact upon the rapidly diminishing population of Cook Inlet beluga whales and the strong public interest in disclosure of information that may directly assist Plaintiffs' ongoing efforts to protect this population, Plaintiffs seek expeditious treatment of their Complaint pursuant to 28 U.S.C. § 1657.

JURISDICTION AND VENUE

7. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA) and 28 U.S.C. § 1331 (federal question). This Court may grant the declaratory relief under 28 U.S.C. §§ 2201, *et seq.* (Declaratory Judgment Act) and injunctive relief under 5 U.S.C. § 552(a)(4)(B) (FOIA). An actual, justiciable controversy exists within the meaning of the Declaratory Judgment Act between Plaintiffs and Federal Defendant. The Court has jurisdiction, upon receipt of a complaint, "to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B).

8. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B), which provides venue for FOIA cases in this district as the district in which a plaintiff resides. Friends of Animals maintains a principle office here in Colorado. Venue is also proper under 28 U.S.C. § 1391(b) because the defendant is subject to personal jurisdiction in this federal district.

PARTIES

9. Friends of Animals is a nonprofit international advocacy organization with nearly 200,000 members, incorporated in the state of New York since 1957. Friends of Animals seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living and domestic animals. Friends of Animals engages in a variety of advocacy programs in support of these goals. Friends of Animals informs its members about animal advocacy issues as well as the organization's progress in addressing these issues through its magazine called *ActionLine*, its website, and other reports. Friends of Animals has published articles and information advocating for the protection of wild species so that they can live unfettered in their natural habitats.

10. In 2013, Friends of Animals created a federal wildlife law program. The program established its principle office in Centennial, Colorado. The office consists of four full-time employees and one part-time employee. Through this office, Friends of Animals submitted the Request at issue in this action.

11. Sea Shepherd Legal is a nonprofit public interest law organization dedicated to its mission to end the destruction of habitat and slaughter of wildlife in the world's oceans in order to conserve and protect ecosystems and species. In furtherance of that mission, Sea Shepherd Legal has been involved in protecting marine life throughout the world. Sea Shepherd Legal uses public outreach and education to advocate for and motivate the creation of greater protections for cetaceans and other marine life.

12. The interests of Plaintiffs and their members are harmed by Federal Defendant's failure to release the requested documents in a timely manner, which prevents Plaintiffs

from obtaining, analyzing, disseminating and using the requested information to advance Plaintiffs' missions of ensuring the protection of marine wildlife and, in particular here, the Cook Inlet beluga whale.

13. Federal Defendant is an agency within the meaning of 5 U.S.C. § 552(f)(1). Federal Defendant is responsible for fulfilling Plaintiffs' Request and complying with all federal laws.

STATUTORY BACKGROUND

14. Congress enacted FOIA to ensure public access to U.S. government records. FOIA carries a presumption of disclosure. *Dep't of State v Ray*, 502 U.S. 164 (1991). Upon receipt of a written request that "reasonably describes" the records sought and complies with "published rules . . . and procedures to be followed," agencies of the United States government are required to "promptly" disclose their records, unless they can be lawfully withheld from disclosure under one of nine specific exemptions in FOIA. 5 U.S.C. § 552(a)(3)(A). The burden is on the government—not the requestor or public—to justify why particular information may be withheld. *Ray*, 502 U.S. at 164.

15. FOIA requires agencies to "determine within 20 days . . . after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefore, and of the right of such person to appeal to the head of the agency any adverse determination." *Id.* at § 552(a)(6)(A)(i).

16. On determination by an agency to comply with the request, the records shall be made "promptly available." *Id.* at § 552(a)(6)(C).

17. In "unusual circumstances," an agency may extend the time limits for up to 10 working days by providing written notice to the requester setting forth the unusual circumstance(s) and the date on which the determination is expected to be dispatched. *Id.* at § 552(a)(6)(B).

18. In some limited circumstances, FOIA allows an agency to seek an extension potentially beyond 10 days. Specifically, FOIA requires an agency to provide written notification to the requester: (1) offering an opportunity to limit the scope of the request so that it may be processed within the 20 work-day limit, or (2) offering an opportunity to arrange with the agency an “alternative time frame” for processing the request. *Id.* at § 552(a)(6)(B)(ii). If the agency elects this option, it must make its FOIA Public Liaison available to the requester to assist in any disputes with the agency. *Id.*

19. If the agency fails to make a determination on a document request within 20 work-days, or within the limited additional time permitted upon proper notification of “unusual circumstances,” the requester is deemed to have constructively exhausted administrative remedies and may seek judicial review. *Id.* at § 552(a)(6)(C). *Oglesby v. Dep’t of Army*, 920 F.2d 57(D.C. Cir 1990), *Nurse v. Sec’y of the Air Force*, 231 F. Supp. 2d 323, 328 (D.D.C. 2002) (“The FOIA is considered a unique statute because it recognizes a constructive exhaustion doctrine for purposes of judicial review upon the expiration of certain relevant FOIA deadlines.”)

20. FOIA requires that the agency “shall make the records promptly available to any person” and may not defer release of responsive documents indefinitely. *Id.* at § 552(a)(3)(A). Failure to issue a determination and to complete the release of documents in a timely fashion is a violation of FOIA even if the initial response and releases may have been prompt. *Munger, Tolles, Olsen v. Dept. of Army*, 58 F. Supp. 3d 1050 (C.D. Cal 2014). *See also Fiduccia v. U.S. Dep’t of Justice*, 185 F.3d 1035, 1041 (9th Cir. 1999)(“Congress gave agencies 20 days, not years, to decide whether to comply with requests and notify the requesters”); *Long v. IRS*, 693 F.2d 907, 910 (9th Cir. 1982) (“[U]nreasonable delays in disclosing non-exempt documents violate the intent and purpose of the FOIA, and the courts have a duty to prevent these abuses.”).

FACTUAL BACKGROUND

21. On April 12, 2016, Plaintiffs submitted the Request under FOIA to Federal Defendant reasonably describing all documents of which Plaintiffs sought disclosure.

22. On April 21, 2016, Federal Defendant provided written notification confirming receipt of the Request and disclosing that the Request had been assigned for processing on April 14, 2016.

23. In the confirmation, Federal Defendant did not request any additional information needed to clarify the Request. Federal Defendant did request a Scope Conference with Friends of Animals.

24. On April 29, 2016, Federal Defendant and Friends of Animals conducted the Scope Conference. During this conference, Federal Defendant did not request any additional information needed to clarify the Request but asked Plaintiffs to prioritize the individual document categories identified in the Request. Friends of Animals instructed Federal Defendant to proceed with the original FOIA request, but agreed to send a letter outlining the priorities of the original FOIA request.

25. On May 10, 2016, Friends of Animals submitted a letter to Federal Defendant outlining the top priorities of the original FOIA request. In that letter, Friends of Animals stated as follows: "As discussed on the April 29, 2016 conference call, Friends of Animals has not changed or altered the original request, nor are we waiving under [sic] rights under FOIA. We provide the following priorities merely to assist the agency in processing our request."

26. On May 16, 2016, Federal Defendant confirmed receipt of Friends of Animals' May 10 letter outlining the top priorities of the original FOIA request and indicated the need for a 10-day extension due to "unusual circumstances." Federal Defendant further stated that the first interim release of records could be anticipated on May 25, 2016.

27. The 20 work-day time limit for providing a determination on the Request commenced on April 14 and, thus, expired on May 12, 2016.

28. Federal Defendant made two interim releases of documents. The first release was dated June 9, 2016. The second was dated July 26, 2016 (but not received until August 29, 2016).

29. Since August 29, 2016, no further documents have been released.

30. Since August 29, 2016, Federal Defendant has not provided any timeline for the release of any remaining documents.

31. As of the date of this complaint, Plaintiffs have not received a final determination on their Request.

32. Plaintiffs believe and allege that Federal Defendant is unlawfully withholding public disclosure of information sought by Plaintiffs, information to which they are entitled to receive promptly, and for which Federal Defendant has not provided a valid disclosure exemption.

33. Federal Defendant has offered no reasonable explanation for its delay, and it has failed to estimate when it will finally be able to comply with its obligations under FOIA.

34. Since Federal Defendant has neither produced responsive documents nor provided an appealable final determination, Plaintiffs have constructively exhausted their administrative remedies with respect to the requested documents.

CLAIM FOR RELIEF
Violation of Freedom of Information Act
Failure to Respond with a Determination

35. Plaintiffs herein incorporate all allegations contained in the proceeding paragraphs.

36. FOIA provides that any person may obtain those agency records that are not subject to the FOIA disclosure exemptions promptly. 5 U.S.C. § 552 (a)(3)(A).

37. Plaintiffs properly requested records within the control of Federal Defendant.

38. Federal Defendant failed to provide Plaintiffs with a final determination as to whether Federal Defendant has any non-exempt records responsive to the Request and whether it intended to release such records within the required timeframe. *Id.* § 552(a)(6)(A)(i) and § 552(a)(6)(B).

39. Federal Defendant failed to properly invoke and comply with FOIA's provision allowing a 10 working day extension for "unusual circumstances." *Id.* at § 552(a)(6)(B)(i).

40. Federal Defendant failed to properly invoke and comply with FOIA's provision permitting an extension of potentially greater than 10 working days by offering Plaintiffs an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. *Id.* at § 552(a)(6)(B)(ii).

41. Federal Defendant has failed to promptly make available responsive documents without unreasonable delay.

42. Federal Defendant's failures to comply with FOIA are subject to judicial review under 5 U.S.C. § 552 (a)(4)(B). Federal Defendant's failure to issue a determination within the statutory deadlines violates 5 U.S.C. § 552 (a)(3)(A).

43. Accordingly, Plaintiffs are entitled to injunctive and declaratory relief with respect to a determination on the Request.

PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court enter judgment providing the following relief:

1. Declare that Federal Defendant violated FOIA by failing to (1) make a determination on Plaintiffs' Request and (2) make records responsive to Plaintiffs' Request available within the statutory deadlines.
2. Order Federal Defendant to (1) provide Plaintiffs with a final determination and (2) process and release all records responsive to the Request at no cost to Plaintiffs within 10 days from the date of such order;

3. Retain jurisdiction of this action to ensure the processing of the Request, and to ensure that no agency records are wrongfully withheld;
4. Award Plaintiffs costs, including reasonable attorney fees and litigation costs in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
5. Grant Plaintiffs any other relief that the Court deems just and proper.

Dated: December 08, 2016

Respectfully Submitted,

/s/ Michael Harris
Michael Ray Harris
Director, Wildlife Law Program
Friends of Animals
7500 E. Arapahoe Road, Suite 385
Centennial, CO 80112
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Attorney for Plaintiff Friends of Animals

/s/ Brett Sommermeyer
Brett Sommermeyer (admission pending)
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Seattle, WA 98102
brett@seashepherdlegal.org

Attorney for Plaintiff Sea Shepherd Legal

EXHIBIT A

~~EXPLOITERS~~
FRIENDS
of ANIMALS

April 12, 2016

Submitted Via U.S Certified Mail and FOIAonline

National Oceanic and Atmospheric Administration
Public Reference Facility (SOU1000)
1315 East-West Highway (SSMC3)
Room 9719
Silver Spring, Maryland 20910

Re: FOIA Request for Records Relating to Incidental Harassment Authorizations
Issued for Activities Impacting Cook Inlet Beluga Whales in Federal Waters
Administered by the National Oceanic and Atmospheric Administration

Dear FOIA Officer:

I am writing on behalf of Friends of Animals, Sea Shepherd Legal, and the Turtle Island Restoration Network (collectively, the "Requesters"). Pursuant to 43 C.F.R. Part 2, and the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, Requesters seek the disclosure of all documents¹ in the categories listed below regarding the harassment of the distinct population segment of Cook Inlet beluga whales in waters managed by the National Oceanic and Atmospheric Administration ("NOAA"). Unless otherwise specified, Requesters seek all documents for the time period starting January 26th, 2007 and ending April 11, 2016. Requesters also request a full waiver of all search and duplication fees.

¹ The terms "document(s)" and "records" are used in the broadest sense contemplated by Federal Rule of Civil Procedure 34. It means all written, transcribed, recorded or graphic matters, however produced or reproduced. This definition includes, but is not limited to, any and all original copies or drafts of any and all of the following: records; notes; nonconforming copies that contain deletions, insertions, corrections, handwritten notes or comment summaries; memoranda; schedules; contracts; binders; work papers; logs; diaries; work sheets; files; letters; correspondence; summaries of memoranda; reports or memoranda of telephone conversations or records of personal conversations or interviews; handwritten notes; telephone logs; facsimiles; summaries; invoices; promissory notes; contracts; loan agreements; vouchers; billing statements; tape recordings or transcripts of tape recordings; photographs; videotapes; computerized output or data bases; electronic files; computer disks; computer CDs; electronic mail transmittals; data and all other writings; calculations; and figures or symbols of any kind which, in any manner mentioned, relate to the subjects of the specific requests contained below. This request includes all documents that have ever been within your custody or control, including all inter and intra agency documents, whether they exist in agency working, investigative, retired, electronic mail, or other files currently or at any other time.

A. FOIA Request.

Over the course of several years, NOAA has issued multiple Letters of Authorization (“LoA”) and Incidental Harassment Authorizations (“IHA”) for Level B takes of Cook Inlet beluga whales under the Marine Mammal Protection Act (“MMPA”) incidental to anthropogenic activities in Cook Inlet. Under the MMPA, Level B takes have “the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, feeding, or sheltering.” 16 U.S.C. § 1362(18).

Please provide the following documents in your possession, whether received, created, and/or distributed by NOAA:

- (1) All documents regarding the status of any pending anthropogenic activities in the Cook Inlet area for which IHAs or LoAs have been requested for takes of Cook Inlet belugas;
- (2) All documents regarding the final IHAs or LoAs issued for anthropogenic activities in Cook Inlet, including all documents supporting a “negligible” impact finding pursuant to the MMPA;
- (3) All documents, including research or commentary, not currently available to the public concerning the specific effects of anthropogenic noise or cumulative effects of Level B takes on the Cook Inlet beluga population;
- (4) All documents regarding the cumulative or synergistic effects of Level B takes of Cook Inlet beluga whales resulting from anthropogenic development activities over the past ten years (2007-2016);
- (5) All documents regarding Level A² takes of Cook Inlet belugas resulting from anthropogenic activities;
- (6) All documents regarding the status of NOAA’s preparation of the programmatic EA and EIS analyzing takes of marine mammals of Cook Inlet incidental to anthropogenic activities and all records of anticipated new agency actions or research pertaining to Cook Inlet belugas;
- (7) All documents regarding the preparation of the final recovery plan for Cook Inlet belugas under the federal Endangered Species Act (“ESA”);
- (8) All documents regarding any limiting factors analysis completed or in progress for Cook Inlet belugas;
- (9) All documents regarding any prioritization of threats to Cook Inlet belugas;
- (10) All documents of any accounting(s) of anthropogenic activities in the Cook Inlet that may result in the taking of a beluga whale;

² As defined as having “the potential to injure a marine mammal or marine mammal stock in the wild.” 16 U.S.C. § 1362(18)(A)(i).

- (11) All documents regarding any population monitoring for Cook Inlet belugas planned or in progress for 2016;
- (12) All documents regarding any population monitoring for Cook Inlet belugas conducted within the last three years, including any population surveys (or similar activities) in proposed project areas conducted by the applicant(s) for an IHA or LoA;
- (13) All documents regarding any formal or informal consultations involving Cook Inlet belugas under Section 7 of the ESA.

The items specifically requested are not meant to be exclusive of any other documents that, although not specially requested, have a reasonable relationship to the subject matter of this request.

For purposes of this request, "anthropogenic activities" are defined to encompass any activity wholly or substantially relating to vessel or aircraft noise (if vessel or aircraft movements are products of an anthropogenic project), ship traffic, including strikes, dredging, pile driving, explosions, demolition, sonar use, oil and gas exploration (including seismic operations, drilling, platform noise, airguns, multibeam echosounders, and sub-bottom profilers), shore construction, military testing activities (i.e. explosions, sonar), pipe and cable laying, water pollution and any other activities reasonably affiliated with anthropogenic projects.

The Supreme Court has stated that FOIA establishes a "strong presumption in favor of disclosure" of requested information, and that the burden is on the government to substantiate why information may not be released under the act's various exemptions. *Department of State v. Ray*, 502 U.S. 164, 173 (1991). Congress affirmed these tenets of FOIA in the Open Government Act of 2007, finding that "the Government [should] remain open and accessible to the American people" and always be based "not upon the need to know but upon the fundamental right to know." Public Law 110-175, 121 Stat. 2524, 2525 (Dec. 31, 2007) (internal citations omitted). President Obama has also directed that "[t]he presumption of disclosure should be applied to all decisions involving FOIA." 74 Fed. Reg. 4683 (Jan. 26, 2009). Please consider the foregoing before withholding any documents that are responsive to this request.

The Requesters anticipate that you will make the requested materials available within the statutorily prescribed period. We also request that you waive any applicable fees since disclosure meets the statutory standard for a fee waiver in that it is clearly "in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii).

B. Fee Waiver Request.

FOIA provides that "documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). The legislative history of FOIA, as well as the case law interpreting the Act, indicates that the statute's fee waiver provision is to be liberally construed favoring the public interest. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 Cong. Rec. S14298 (Sept. 30, 1986) (Sen. Leahy)).

This request for information qualifies for a fee waiver under this standard and, accordingly, we request that all fees be waived. This request satisfies both statutory and regulatory requirements for granting a fee waiver. Below we explain how the request and the Requesters meet each of requirements for a fee waiver delineated in NOAA's FOIA regulations (under its parent agency, the Department of Commerce) 15 CFR § 4.11(k).

1. Disclosure of the Information Requested is in the Public Interest.

(i) *"The subject of the request: whether the subject of the requested records concerns the operations or activities of the Government."*

The requested records concern the operations and activities of NOAA, a federal agency. Specifically, they concern the operation of this federal agency, its management of federally protected Cook Inlet beluga whales, and its permitting decision-making process.

(ii) *"The informative value of the information to be disclosed: whether the disclosure is 'likely to contribute' to an understanding of Government operations or activities."*

(a) How the contents of the records are meaningfully informative;

The requested documents would have substantive, meaningfully informative value and would be likely to contribute to a better understanding of NOAA and its actions. The documents will illuminate in a clear and direct way the operations and activities of the federal government and the activities that it undertakes in regards to management of Cook Inlet beluga whales and the anthropogenic projects that affect them. Although Cook Inlet beluga whales have been in the public spotlight in recent years due to their dwindling numbers and Endangered Species Act listing in 2008, not much is definitively known about the Level B take, cumulative, and noise pollution impacts on Cook Inlet beluga whales from anthropogenic activities. The information requested concerns the operations of the agency responsible for approving activities that have the potential to seriously injure or even kill Cook Inlet

beluga whales and the details of NOAA's past and current permitting decisions and decision-making process in regards to these whales.

- (b) The logical connection between the content of the records and the operations or activities;

The release of the requested documents will significantly contribute to public understanding and oversight of the federal government's operations. For example, the records will help the public understand the status of current Cook Inlet projects, how often and to which activities the federal government authorizes Level B takes, how the government evaluates the significance of cumulative and noise impacts, and the process by which the government makes decisions that affect Cook Inlet beluga whales.

- (iii) *"The contribution to an understanding of the subject by the public likely to result from disclosure: whether disclosure of the requested information will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester."*

Friends of Animals:

Friends of Animals is a nonprofit, international animal advocacy organization incorporated in the state of New York since 1957. Friends of Animals seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living, and domestic animals. The public impact of this disclosed information would be magnified through Friends of Animals' public engagement mechanisms. Friends of Animals has a proven track record of contributing to public understanding of issues surrounding animal advocacy and human-wildlife interactions.

Friends of Animals informs its members about animal advocacy issues, as well as the organization's progress in addressing such issues, through its quarterly magazine called *ActionLine*, its website, and other reports. Friends of Animals has published articles and information advocating for the protection of animals so that they can live unfettered in their natural habitat. In particular, Friends of Animals has a long-standing commitment to protecting animals imperiled due to human-caused activities. Friends of Animals regularly publicizes information about wildlife. Friends of Animals employs several experts who are able to quickly digest and circulate the information obtained from this request, including attorneys and media correspondents.

Friends of Animals plans to disseminate the requested information to Friends of Animals' members, members of other conservation organizations, and other interested members of the public through its website, its quarterly magazine,

and through outreach to other media outlets. By disseminating and distributing this information, Friends of Animals will significantly contribute to the public's understanding of how the government manages harassment of Cook Inlet beluga whales. Friends of Animals also informs its members about animal advocacy issues—including government management of birds, wild horses, and other wildlife—through lawsuits.

Friends of Animals staff has the ability to review, consolidate, and disseminate this information to the public. By consolidating and releasing the information, Friends of Animals will significantly enhance the public's understanding of how the government is currently operating. Additionally, the requested information will constitute a significant contribution to public understanding because it will allow Friends of Animals and the public to determine how the federal government's actions are impacting Cook Inlet beluga whales and whether the federal government has met its obligations under the National Environmental Policy Act, the Marine Mammal Protection Act, and Endangered Species Act.

Sea Shepherd Legal

Sea Shepherd Legal is an international, nonprofit, public interest environmental law firm with a mission to save marine wildlife and habitats by enforcing, strengthening, and developing protective laws, treaties, policies, and practices worldwide. Sea Shepherd Legal works on a range of matters from ensuring proper governmental agency action to developing innovative policy approaches, in order to encourage greater protections for marine wildlife and ecosystems. Public outreach is a key aspect of Sea Shepherd Legal's work.

Sea Shepherd Legal engages in public outreach in order to raise awareness about marine conservation facts, law, resources and tools. Through outreach and education, Sea Shepherd Legal promotes public understanding regarding the importance of biodiversity conservation and how members of the public can play an essential role in protecting marine wildlife and habitats.

Sea Shepherd Legal's general public outreach work involves the bi-weekly publication of a blog, disseminating information regarding marine wildlife protection through social media, and initiating calls to action through online campaign petitions. Related Sea Shepherd entities selectively disseminate these materials to more than one million followers.

The public has a right to know which wildlife species and habitats are at risk, the nature of such risk – including anthropogenic impacts, the role the government is required to play in assessing and mitigating risks, and the government's official response thereto. Through its extensive public outreach endeavors, Sea Shepherd

Legal will ensure that the public acquires this knowledge.

Turtle Island Restoration Network

Turtle Island Restoration Network (“TIRN”) is an international public interest non-profit with a strong track record of disseminating information from FOIA requests to its own membership, decision-makers, the media and the general public. TIRN is a non-profit organization that informs, educates, and counsels the public regarding environmental issues, policies, and laws relating to imperiled species, including marine species. TIRN has been substantially involved in the management activities of numerous government agencies for years, and has consistently displayed its ability to disseminate information granted to it through FOIA requests. As a long established advocacy organization, our informational publications supply information not only to our membership, but also to the memberships of most other conservation organizations, locally as well as nationally. Our informational publications continue to contribute information to public media outlets, as well. TIRN routinely disseminates such information through e-mail alerts and newsletters, which are sent to over 200,000 members and activists. In addition, we disseminate information through our websites, which receives over 100,000 page views per month. Furthermore, we bring such information to our partner organizations and to the media for dissemination to the membership of other organizations and the public at large. Information and our analyses of NMFS’s compliance with the MSA, the MMPA and the ESA will likely be disseminated through all of these means.

TIRN will publicize the results of any analysis of the data to inform the public about the policy choices and information regarding the management of anthropogenic impacts to the Cook Inlet Beluga Whale. This is certain to result in a significant increase in public understanding of government agency activity, especially NOAA’s approach to the conservation of marine species. In addition to informing the public about information relevant to policy and management, TIRN has a proven track record of enforcing environmental laws and publicizing agency compliance with the provisions of various environmental laws through information gained from FOIA requests like this one. TIRN intends to use the documents requested in this request in a similar manner, as appropriate.

- (iv) *“The significance of the contribution to public understanding: whether the disclosure is likely to contribute ‘significantly’ to public understanding of Government operations or activities.”*

Requesters seek the requested documents to increase their understanding, and subsequently contribute to public understanding, of how the federal government is managing activities that affect Cook Inlet beluga whales in Alaska. Many anthropogenic projects are approved by NOAA each year, many of them

granted Level B takes of marine mammals, and the government claims that these actions have a negligible effect on marine mammals. However, the public does not have access to all of the documents available to NOAA and thus cannot understand exactly how NOAA makes its non-negligible impact determinations during agency review of project applications. Additionally, the public cannot understand the justifications used by NOAA staff, its decision-making process, or how risks associated with permitting are assessed without more information about the operations of NOAA.

If the information is not disclosed to the Requesters, the public will remain uninformed about what activities the federal government conducts and authorizes. Disclosure, however, will permit the Requesters to disseminate information to the public, and it will increase transparency surrounding the federal government's activities. This is particularly important because NEPA grants the public a right to this information and a right to participate in federal decisions, such as commenting on proposed anthropogenic activities in Cook Inlet.

The information requested is not, to our knowledge, publicly available. The government may omit sending us requested records that are available in publicly accessible forums (e.g. Internet) or in published materials that are routinely available at public or university libraries. If the government chooses to omit such information, please provide the Requesters with adequate references and/or website links so that we may obtain these materials on our own. We would request that the government provide us with an index of such omitted documents, so that we may have reasonable certainty that we have access to the complete record regarding the management and protection of the Cook Inlet Beluga whales. However, we suspect that the majority of requested materials will not be available unless we receive them from the government in satisfaction of this FOIA request.

2. Disclosure of the Information is Not Primarily in the Commercial Interest of the Requester

When considering whether a request for a fee waiver meets the second prong of the fee waiver requirement, the agency is directed to consider: (1) "whether or not the requester has a commercial interest that would be furthered by the requested disclosure," and (2) "the primary interest in disclosure," i.e. whether the interest of the requester is primarily commercial or public.

None of the Requesters have a commercial, trade, or profit interest in the requested records. In fact, the Requesters do not have any commercial, trade, or profit interests.

Friends of Animals is a non-profit, international animal advocacy organization, incorporated in the state of New York since 1957. It serves the public interest by increasing the general public's awareness of animal advocacy issues and

by teaching how to end animal cruelty and exploitation around the world. Friends of Animals seeks to promote a respectful view of nonhuman, free-living and domestic animals. The Internal Revenue Service recognizes Friends of Animals as a 501(c)(3) tax-exempt organization (IRS Employer Identification#: 13-6018549). Friends of Animals' successful and well-orchestrated public education programs on animal advocacy issues and government operations merit granting a fee waiver for the requested records.

Sea Shepherd Legal was established in 2014 for the purpose of saving marine wildlife and habitats by enforcing, strengthening, and developing protective laws, treaties, policies, and practices worldwide. Sea Shepherd Legal works on a range of matters to ensure greater protections for marine wildlife and ecosystems, via the use of tools including litigation, policy development and public outreach. The IRS recognizes Sea Shepherd Legal as a public interest environmental law firm. Sea Shepherd Legal's EIN number is 47-2272507.

Turtle Island Restoration Network is a 501(c)(3) that has been working to protect marine wildlife, especially sea turtles, but also marine mammals and other endangered species, since the early 1980s. TIRN works through a combination of legal and advocacy strategies and grassroots organizing and education to strengthen protections worldwide. TIRN's EIN is 91-1818080.

CONCLUSION

Please produce the records regarding this FOIA request by electronic mail to wlp_admin@friendsofanimals.org or to the physical address listed below:

Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112

Please produce the records on a rolling basis to the extent possible; at no point should the search for—or the deliberation concerning—certain records delay the production of others that the federal government has already retrieved and elected to produce.

Thank you for your attention to this request. If you have any questions about the requested documents or the requested fee waiver, please do not hesitate to contact me at 720-949-7791 or at wlp_admin@friendsofanimals.org.

Sincerely,



Kaylee Dolen, Administrative Assistant

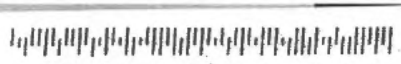
Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112
720-949-7791
wlp_admin@friendsofanimals.org

RECEIVED

2016 DEC 12 PM 1:48

U.S. DISTRICT COURT
DISTRICT OF COLORADO
DENVER

harris
Law P
Animal
Arapahoe Rd. Suite 385
A, CO 80112



MAIL



7016 0910 0001 0622 7255

CPU U.S. POSTAGE
PB 1P 000
3658536
FCMF

\$ 7.36⁰

MAILED DEC 09 2016
80112



6072399

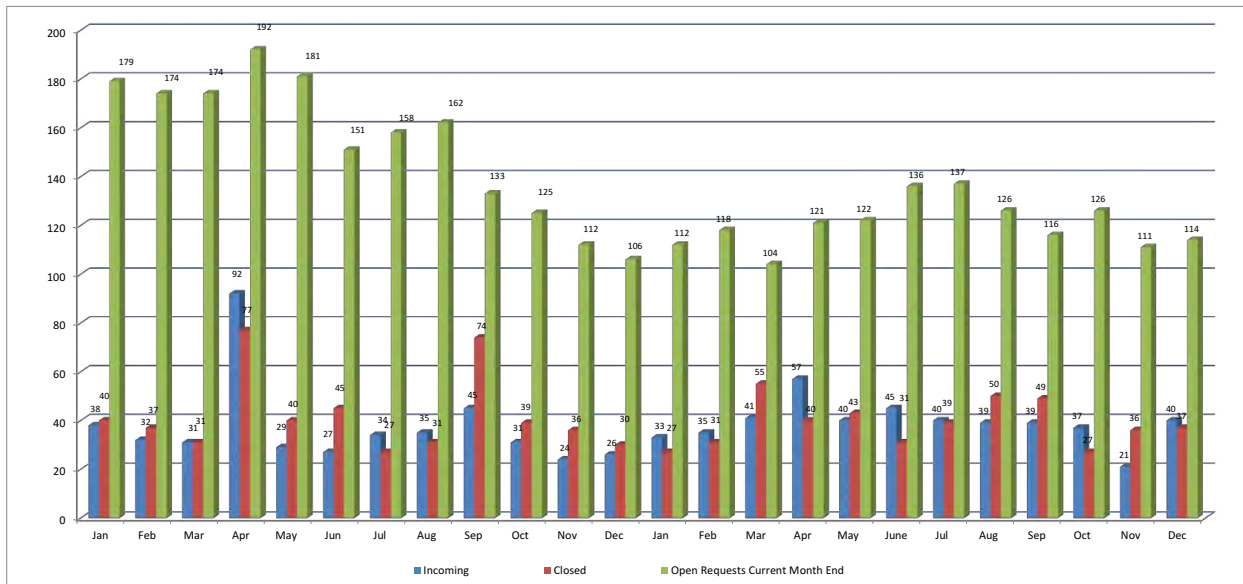
RETURN RECEIPT
REQUESTED

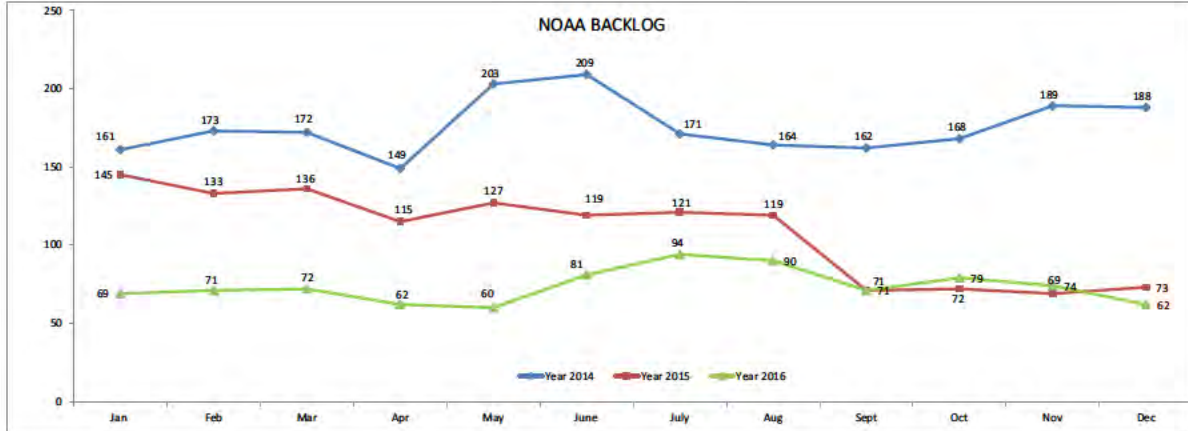
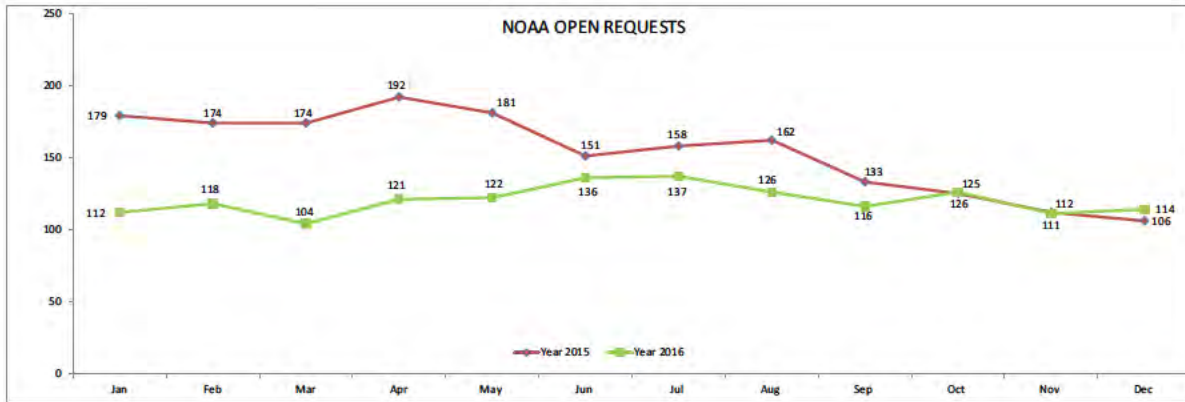
T.D.
12/11/2016

Bob Troyer
United States Attorney
1225 17th Street
Suite 700
Denver, CO 80202

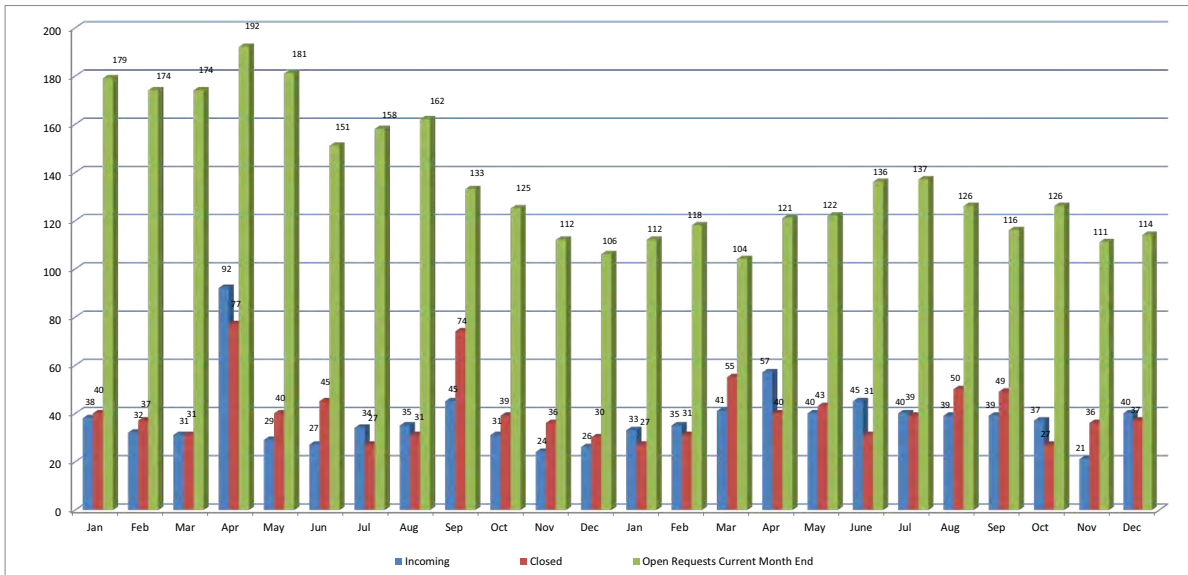
FOIA Monthly Status Report 12 31 2016

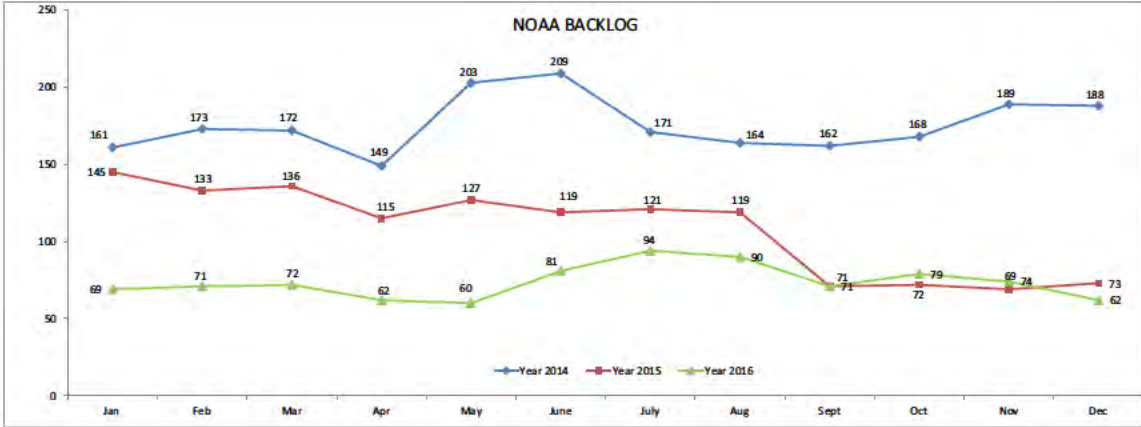
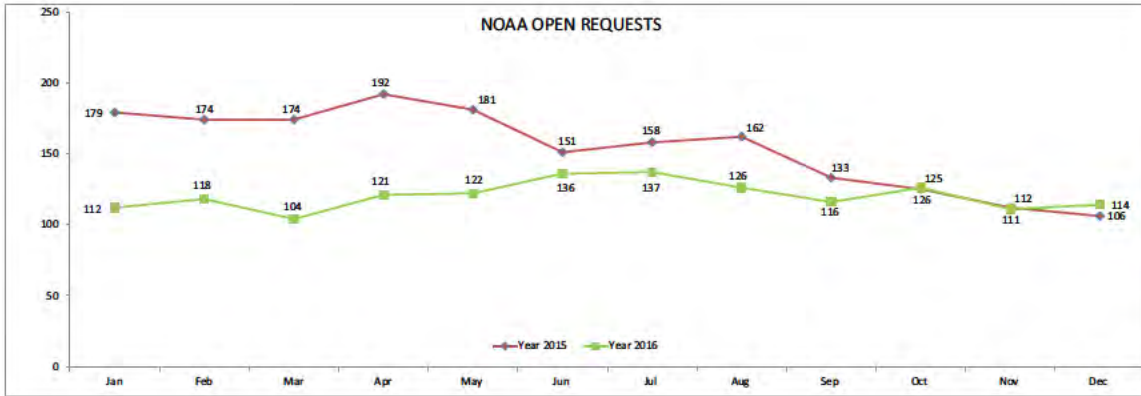
Organization	Open Requests Previous Month End	Incoming Requests	Closed Requests	Open Requests Current Month End	Backlog 21-120 days	Backlog 121-364 days	Backlog 365 or more days	Total Backlog
AGO	2	4	0	6	1	4	0	5
CAO	0	0	0	0	0	0	0	0
CFO	0	0	0	0	0	0	0	0
CIO	1	0	0	1	0	0	0	0
CIO/FOIA	20	14	7	27	2	0	0	2
GC	2	1	0	3	0	1	0	1
IA	0	0	0	0	0	0	0	0
LA	1	1	0	2	0	0	0	0
NESDIS	1	13	1	13	1	1	0	2
NMFS	44	0	19	25	21	11	2	34
NOS	16	6	3	19	6	1	1	8
NWS	11	0	1	10	3	0	0	3
OAR	4	0	2	2	1	0	1	2
OMAO	0	0	0	0	0	0	0	0
OC	0	0	0	0	0	0	0	0
PPI	0	0	0	0	0	0	0	0
USAO	1	0	1	0	0	0	0	0
WFMO	8	1	3	6	4	1	0	5
NOAA Totals	111	40	37	114	39	19	4	62





Organization	Open Requests Previous Month End	Incoming Requests	Closed Requests	Open Requests Current Month End	Backlog 21-120 days	Backlog 121-364 days	Backlog 365 or more days	Total Backlog
AGO	2	4	0	6	1	4	0	5
CAO	0	0	0	0	0	0	0	0
CFO	0	0	0	0	0	0	0	0
CIO	1	0	0	1	0	0	0	0
CIO/FOIA	20	14	7	27	2	0	0	2
GC	2	1	0	3	0	1	0	1
IA	0	0	0	0	0	0	0	0
LA	1	1	0	2	0	0	0	0
NESDIS	1	13	1	13	1	1	0	2
NMFS	44	0	19	25	21	11	2	34
NOS	16	6	3	19	6	1	1	8
NWS	11	0	1	10	3	0	0	3
OAR	4	0	2	2	1	0	1	2
OMAO	0	0	0	0	0	0	0	0
OC	0	0	0	0	0	0	0	0
RPI	0	0	0	0	0	0	0	0
USAO	1	0	1	0	0	0	0	0
WFMO	8	1	3	6	4	1	0	5
NOAA Totals	111	40	37	114	39	19	4	62





From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, January 11, 2017 1:40 PM
To: Lois Schiffer - NOAA Federal; Stephen Lipps - NOAA Federal; John Almeida - NOAA Federal; Holmes, Colin; Robert Moller - NOAA Federal; Scott Smullen - NOAA Federal
Cc: Tom Taylor; Kimberly Katzenbarger - NOAA FEDERAL; Charles; Dennis Morgan - NOAA Federal; Stacey Nathanson - NOAA Federal; Robert Swisher - NOAA Federal; Steven Goodman - NOAA Federal; Samuel Dixon - NOAA Affiliate; Lola Stith - NOAA Affiliate; Zachary Goldstein - NOAA Federal; Douglas Perry - NOAA Federal
Subject: Weekly Incoming and High Visibility Requests
Attachments: Weekly FOIA Incoming and High Visibility Requests 1.4 to 1.11.17.xls; 2017.01.11 - Answer Final.pdf

Good Afternoon,

Please find attached the report for this week. As you will notice, report submissions have lagged following the New Year. The one noteworthy request received was from BuzzFeed News, which is seeking all communications to, from, or copying Kathryn Sullivan from December 10-December 23.

In litigation, NOAA filed its answer in the Friends of Animals litigation this morning. (b)(5)

[REDACTED]
[REDACTED] A copy of the Answer filed this morning is attached.

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) (C)

Confidentiality Notice: This e mail message is intended only for the named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 16-cv-03007-DME-MJW

FRIENDS OF ANIMALS, and
SEA SHEPHERD LEGAL

Plaintiffs,

v.

NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION,

Defendant.

ANSWER

Defendant, the National Oceanic and Atmospheric Administration (“NOAA”), hereby answers Plaintiffs’ Complaint as follows:

All allegations not specifically admitted are denied.

The following numbered paragraphs correspond to the numbered paragraphs in the Complaint.

1. Paragraph 1 contains Plaintiffs’ characterization of their lawsuit to which no response is required. To the extent a response is required, NOAA denies the allegations.
2. Paragraph 2 sets forth Plaintiffs’ characterization of their FOIA request, which is attached as Exhibit A to Plaintiffs’ Complaint and speaks for itself, requiring no response.
3. In response to the allegations in paragraph 3, NOAA admits that, as of the time of the Complaint, NOAA had not made a final determination regarding the release of non-exempt agency records responsive to Plaintiffs’ FOIA request. NOAA affirmatively states that at the

time of the Complaint, NOAA was in the administrative process of responding to Plaintiffs' FOIA request as evidenced by the acknowledgement of receipt of the FOIA request on April 21, 2016, the May 16, 2016 letter extending the response time due to extraordinary circumstances and stating that responses will be made on a rolling basis, and interim release letters dated June 9, 2016, July 26, 2016, and September 28, 2016.

4. Paragraph 4 contains legal conclusions to which no response is required. To the extent a response is required, NOAA denies the allegations.

5. Paragraph 5 contains a legal conclusion and summarizes the relief sought by Plaintiffs in this action; no response is required. To the extent a response is required, NOAA denies the allegations.

6. NOAA lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 6.

7. Paragraph 7 sets forth legal conclusions to which no response is required. To the extent that a response is required, NOAA admits that the Court has jurisdiction over this action and has the power to award relief in appropriate cases.

8. The first and third sentences of paragraph 8 set forth legal conclusions to which no response is required. To the extent a response is required, NOAA admits that venue is proper in this district. NOAA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of paragraph 8.

9. NOAA lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 9.

10. NOAA lacks knowledge or information sufficient to form a belief about the truth

of the allegations in paragraph 10.

11. NOAA lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 11.

12. NOAA lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 12.

13. In response to the first sentence of paragraph 13, NOAA denies that it is an agency within the meaning of 5 U.S.C. § 552(f), and affirmatively states that NOAA is a component of such an agency, the United States Department of Commerce. In response to the second sentence, NOAA admits that it has located certain records responsive to Plaintiffs' request within its possession and control and that it is responsible for fulfilling the requests with respect to those records (subject to appropriate exemption withholding, if applicable); except as otherwise admitted, NOAA denies the allegations in the second sentence of paragraph 13.

14. Paragraph 14 sets forth legal conclusions to which no response is required; NOAA affirmatively states that FOIA and cases interpreting it speak for themselves and are the best evidence of their contents.

15. Paragraph 15 recites a statutory provision and requires no response; FOIA speaks for itself and is the best evidence of its contents. To the extent a response is required, NOAA states that Plaintiffs have accurately quoted 5 U.S.C. § 552(a)(6)(A)(i).

16. Paragraph 16 recites a statutory provision and requires no response; FOIA speaks for itself and is the best evidence of its contents. To the extent a response is required, NOAA states that Plaintiffs have accurately quoted 5 U.S.C. § 552(a)(6)(C)(i).

17. Paragraph 17 recites a statutory provision and requires no response; FOIA speaks

for itself and is the best evidence of its contents. To the extent a response is required, NOAA states that Plaintiffs have accurately quoted 5 U.S.C. § 552(a)(6)(B)(i).

18. Paragraph 18 recites a statutory provision and requires no response; FOIA speaks for itself and is the best evidence of its contents. To the extent a response is required, NOAA states that Plaintiffs have accurately quoted 5 U.S.C. § 552(a)(6)(B)(ii).

19. Paragraph 19 sets forth general legal conclusions and purports to summarize the terms of a statutory provision and cases interpreting it; it requires no response. To the extent that a response is required, NOAA admits the allegations.

20. Paragraph 20 recites a statutory provision and cases interpreting FOIA, and requires no response; FOIA and the cases interpreting it speak for themselves and are the best evidence of their contents.

21. Regarding paragraph 21, NOAA admits that Plaintiffs submitted a FOIA request on April 12, 2016. The remaining clause of paragraph 21 is a conclusion of law to which no response is required; to the extent a response is required, NOAA denies the allegations.

22. NOAA admits the allegations in paragraph 22.

23. NOAA denies the allegations in paragraph 23 and affirmatively states that NOAA sent correspondence to Plaintiffs on April 19, 2016 requesting a scope clarification conference and that the April 21, 2016 acknowledgement letter includes a request to clarify the scope of the request.

24. In response to the first sentence of paragraph 24, NOAA admits that a scope-clarification conference was held on April 29, 2016. Regarding the second sentence of paragraph 24, NOAA denies the allegations and affirmatively states that the conference sought to

clarify the scope of the request due to the potential large volume of responsive documents. In response to the third sentence of paragraph 24, NOAA admits the allegations.

25. NOAA admits the allegations in paragraph 25.

26. NOAA admits the allegations in paragraph 26.

27. NOAA admits that May 12, 2016 was twenty workdays from April 14, 2016, but otherwise denies the allegations in paragraph 27.

28. In response to the first sentence of paragraph 28, NOAA denies that it made only two interim releases of documents, and affirmatively states that NOAA made three interim releases of documents. In response to the second sentence of paragraph 28, NOAA admits the allegation. In response to the third sentence of paragraph 28, NOAA admits the allegation.

29. NOAA denies the allegation in paragraph 29, and NOAA affirmatively states that it made a third interim release of documents by cover letter dated September 28, 2016, and was released on October 21, 2016 via FOIAOnline.

30. NOAA denies the allegation in paragraph 30, and NOAA affirmatively states that, on September 28, 2016, NOAA informed Plaintiffs that due to the complexity of the request NOAA would continue to search for and process responsive records and provide interim responses as they became available.

31. NOAA admits the allegations in paragraph 31.

32. Paragraph 32 sets forth a legal conclusion to which no response is required. To the extent a response is required, NOAA denies the allegations in paragraph 32.

33. NOAA admits that, as of the time of the Complaint, it had not had any discussions

with Plaintiffs concerning the timing of its response since the October 21, 2016 interim release. Except as otherwise admitted, NOAA denies the allegations and characterizations in paragraph 33.

34. Paragraph 34 sets forth a legal conclusion to which no response is required. To the extent a response is required, NOAA admits the allegations.

35. Paragraph 35 incorporates Plaintiffs' prior allegations, and no response is required. To the extent a response is required, NOAA incorporates its prior responses.

36. Paragraph 36 recites a statutory provision and requires no response; FOIA speaks for itself and is the best evidence of its contents.

37. NOAA admits that Plaintiffs made a record request and admits that NOAA has located certain documents within its control; except as specifically admitted, denied.

38. In response to the allegations, NOAA admits that, as of the time of the Complaint, NOAA had not made a final determination on Plaintiffs' FOIA request. Except as specifically admitted, denied.

39. NOAA denies the allegations in paragraph 39.

40. NOAA denies the allegations in paragraph 40.

41. NOAA denies the allegations in paragraph 41.

42. Paragraph 42 sets forth legal conclusions to which no response is required.

43. Paragraph 43 sets forth a legal conclusion to which no response is required. To the extent a response is required, NOAA denies that Plaintiffs are entitled to the relief requested in this litigation and affirmatively states that it is continuing the process of reviewing documents, for potential release subject to FOIA exemptions, in response to Plaintiffs' request.

Plaintiffs' "Prayer for relief" sets forth the relief that Plaintiffs are requesting from the Court and no response is required. To the extent a response is required, NOAA denies that Plaintiffs are entitled to the relief requested.

DEFENSES

1. NOAA conducted a reasonable search for documents responsive to Plaintiffs' FOIA request and is in the process of reviewing agency records and will continue to produce non-exempt agency records that are responsive to Plaintiffs' FOIA request.

* * *

NOAA reserves its right to amend, alter, and supplement its answer and the defenses as the facts and circumstances giving rise to the Complaint become known to NOAA in the course of litigation.

Respectfully submitted this 11th day of January, 2017.

Respectfully submitted,

ROBERT C. TROYER
Acting United States Attorney

s/ Marisela D. Sandoval
Marisela D. Sandoval
Special Assistant United States Attorney
1225 Seventeenth Street, Suite 700
Denver, Colorado 80202
Telephone: (303) 454-0100
Fax: (303) 454-0404
Email: marisela.sandoval@usdoj.gov
Counsel for Defendant

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
CERTIFICATE OF SERVICE (CM/ECF)**

I hereby certify that on this 11th day of January, 2017, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Michaelharris@friendsofanimals.org
Brett@seashepherdlegal.org

s/ Marisela D. Sandoval _____
Office of the U.S. Attorney

Tracking Number	Type	Requester
DOC-NOAA-2017-000414	Request	Arnold & Porter Kaye Scholer LLP
DOC-NOAA-2017-000411	Request	Sarah J. Edwards
DOC-NOAA-2017-000410	Request	Jacob H. Pratt
DOC-NOAA-2017-000408	Request	Jeremy Singer-Vine
DOC-NOAA-2017-000397	Request	Karen Troutman
DOC-NOAA-2017-000384	Request	Marshall Morales

Requester Organization	Submitted	Assigned To	Case File Assigned To	Perfected?	Due
Arnold & Porter Kaye Scholer LLP	01/09/2017	NOAA	NOAA	No	TBD
	01/08/2017	NOAA	NOAA	No	TBD
	01/07/2017	NOAA	NOAA	No	TBD
BuzzFeed News	01/06/2017	NOAA	NOAA	No	TBD
Dewey Publications, Inc.	01/04/2017	NOAA	NOAA	No	TBD
Riddell Williams	01/03/2017	NOAA	NOAA	No	TBD

Closed Date	Status	Dispositions
TBD	Submitted	
TBD	Submitted	
TBD	Submitted	
TBD	Initial Evaluation	
TBD	Initial Evaluation	
TBD	Submitted	

Detail

We request the agency records relative to the Hudson River PCBs Superfund Site (NYD980763841)

Marine Mammal Inventory Report n Orc nus orca at SeaWorld Parks at Orlando, San Diego, and San Antonio like all of the following information, if possible. Type of notice , when the notice was issued, planned start and end datetime, actual end datetime (if cancelled early), geofence data, population in geofence - Issuing office. Thank

Emails to/from/cc/bc Adm nistrator Kathryn Sullivan. Please see attached request le ter for details.

mailing address for persons in the following positions in your agency: 1. Human Relations Directors 2. Civil Rights Directors 3. Equal Employment Opportunity Directors 4. Labor Relations Directors 5. Workers' Compensation Directors 6. Training Directors 7. Within Personnel Offices/Employee Relations Offices/Labor Relations Offices a. Chiefs of Staffing/Classification b. Chiefs of Labor Relations c. Chiefs of Employee Relations 8. Within General

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
Sent: Thursday, January 12, 2017 2:51 PM
To: Lola Stith - NOAA Affiliate
Cc: Mark Graff - NOAA Federal; Arlyn Penaranda - NOAA Federal; Samuel Dixon - NOAA Af...
Subject: RE: FOIA DOC-NOAA-2016-001270

Hi Lola,

Regarding this FOIA, (b)(5) [REDACTED]

Lorna

Ms. Lorna Martin-Gross
OLE Records Manager
Office: 301-427-8244

From: Lola Stith - NOAA Affiliate [mailto:lola.m.stith@noaa.gov]
Sent: Monday, December 12, 2016 3:08 PM
To: Lorna Martin-Gross - NOAA Federal
Cc: Mark Graff - NOAA Federal; Arlyn Penaranda - NOAA Federal
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Hi Lorna (b)(5) [REDACTED].

Lola

On Mon, Dec 12, 2016 at 8:05 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:

Good morning Lola,

(b)(5) [REDACTED].

(b) (5)

Thank you,

Lorna

On Fri, Dec 9, 2016 at 10:41 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:
Thanks again!

On Fri, Dec 9, 2016 at 10:26 AM, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:
Hi Lorna (b)(5)

(b)(5)

Lola

On Fri, Dec 9, 2016 at 9:49 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:
Ok, thank you.

On Friday, December 9, 2016, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:
Lorna (b)(5)

Lola

On Fri, Dec 9, 2016 at 8:15 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:
Lola,

(b) (5)

Thank you,

Lorna

On Thu, Dec 8, 2016 at 11:34 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

Yes (b)(5)

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:(301)628-5658) (O)
(b)(6) (C)

On Thu, Dec 8, 2016 at 11:31 AM, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:

(b)(5)

Lola

On Thu, Dec 8, 2016 at 11:23 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

(b)(5)

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:(301)628-5658) (O)
(b)(6) (C)

On Thu, Dec 8, 2016 at 11:07 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:

Question,

(b)(5)

?

Lorna

On Thu, Dec 8, 2016 at 9:25 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

(b)(5)

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:(301)628-5658) (O)
(b)(6) (C)

On Thu, Dec 8, 2016 at 8:34 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:
Lola/Mark,

(b)(5)

?

Lorna

On Wed, Dec 7, 2016 at 11:36 AM, Scott Doyle <scottdoyle137@aol.com> wrote:
Ladies.

Just checking

1. Remaining FOIA docs have not be delivered any update. It has not been 4 months.

Ms. Smith

I have not been reimbursed and you look into this and give me a date certain for payment.

Scott Doyle

-----Original Message-----

From: Scott Doyle <scottdoyle137@aol.com>

To: lorna.martin-gross <lorna.martin-gross@noaa.gov>; lola.m.stith <lola.m.stith@noaa.gov>

Sent: Fri, Nov 18, 2016 4:29 pm

Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Nothing from OIG, today was the day it was estimated to upload its docs. OSY has now had close to 3 months and nothing from them.

Can you check and give me a update next week.

Also the reimbursement had not be paid.

Scott Doyle

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>

To: lola.m.stith <lola.m.stith@noaa.gov>

Cc: scottdoyle137 <scottdoyle137@aol.com>

Sent: Wed, Nov 2, 2016 2:05 pm

Subject: FW: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Ms. Stith,

Please provide Mr. Doyle with an update of his fee reimbursement.

Thank you,

Ms. Lorna Martin-Gross

OLE Records Manager

Office: [301-427-8244](tel:301-427-8244)

From: Scott Doyle [<mailto:scottdoyle137@aol.com>]

Sent: Wednesday, November 02, 2016 1:51 PM

To: lorna.martin-gross@noaa.gov

Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

I have not received my reimbursement and update.?

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>

To: Scott Doyle <scottdoyle137@aol.com>

Sent: Tue, Oct 18, 2016 1:39 pm

Subject: RE: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Hello Mr. Doyle,

If you did not hear back from Ms. Stith yesterday, based on her email response to you on 10/14, I recommend you follow-up with her directly. The NOAA FOIA office handles all FOIA related funds and they will be the first to know the status.

Kind regards,

Ms. Lorna Martin-Gross

OLE Records Manager

Office: [301-427-8244](tel:301-427-8244)

From: Scott Doyle [<mailto:scottdoyle137@aol.com>]

Sent: Tuesday, October 18, 2016 1:15 PM

To: lorna.martin-gross@noaa.gov

Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Thank you for the response.

Can you please let me know when the refund has been issued.

Scott

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>

To: Scott Doyle <scottdoyle137@aol.com>

Cc: arlyn.penaranda <arlyn.penaranda@noaa.gov>; foia <foia@noaa.gov>

Sent: Tue, Oct 18, 2016 12:58 pm

Subject: RE: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Hello Mr. Doyle,

I understand your concern about not having received the remaining documents responsive to your FOIA request, DOC-NOAA-2016-001270. I will address each item of your email as it was written:

1. "I have not received my reimbursement as per the email below. That was well over a 2 months ago."

The NOAA FOIA office is following up on the status of your refund.

2. "I have not received all the additional FOIA documents that were originally identified. Can you give me an idea when I will receive them and reason for the continued delay?"

The latest follow-up with the Department of Commerce was this morning. DOC's Office of Inspector General (OIG) estimates to have the documents uploaded into FOIAonline by November 18, 2016. DOC's Office of Security (OSY) has not provided an estimate, but we will continue to check the

status. Once the OIG documents are uploaded into FOIAonline, you will be provided a second interim release letter with instructions to access responsive documents to your request. When the documents are provided by DOC OSY, a third interim release letter will be sent electronically with instructions to access responsive documents.

3. "I would like to appeal that parts have been redacted which I don't believe which should have been redacted. I want to send in one comprehensive request. Items like complete email addresses, names, titles, the body of reports that speak to the internal investigate as it relates to my interview, witness statements and general facts of the investigation etc."

The appeal language from the interim release letter states:

"We encourage you to speak with us if you have concerns as we continue to process this request. Although you have the ability to appeal at this time, we encourage you to focus the appeal/mediation/NOAA discussion, if needed, on exemptions applied to the documents thus far, but hold specific challenges about production until you have received and reviewed more of the voluminous records that the agency is still in the process of gathering and processing.

You have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this release must be received within 90 calendar days of the date of this response letter at the following address:

Assistant General Counsel for Litigation, Employment, and Oversight

U.S. Department of Commerce

Office of General Counsel

Room 5875

14th and Constitution Avenue, N.W.

Washington, D.C. 20230

An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to [202-482-2552](tel:202-482-2552), or by FOIAonline at <https://foiaonline.regulations.gov/foia/action/public/home#>.

For your appeal to be complete, it must include the following items:

- a copy of the original request,*
- our response to your request,*
- a statement explaining why the withheld records should be made available, and why the denial of the records was in error.*
- "Freedom of Information Act Appeal" must appear on your appeal letter. It should also be written on your envelope, e-mail subject line, or your fax cover sheet.*

FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

FOIA grants requesters the right to challenge an agency's final action in federal court. Before doing so, an adjudication of an administrative appeal is ordinarily required.

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Office of Government Information Services

National Archives and Records Administration

Room 2510

8601 Adelphi Road
College Park, MD 20740-6001
Email: ogis@nara.gov

Phone: [301-837-1996](tel:301-837-1996)
Fax: [301-837-0348](tel:301-837-0348)
Toll-free: [1-877-684-6448](tel:1-877-684-6448)

If you choose to submit a formal appeal, as noted in your email, all activity on your request will be stopped until the appeal is vetted and fully processed. This means all DOC documents will be on hold until the appeal is final.

Before you decide to submit a formal appeal, I can offer to schedule a telephone call with you to discuss your specific exemption concerns of the OLE documents. Prior to the call, I ask that you provide me with identifying information of the documents in question in order to avoid searching for specific documents during the call.

4. "I have a time limit of 90 days on which to appeal (Started 8/3/16), which I would like to request be extended until the all the FOIA documents have been delivered. It is unfair to ask me to make my appeal decision without the totality of all the information. I have received less than 100 of the over 320 documents.

If this is not the proper way to request an extension of an appeal please let me know the method you require."

The interim release was uploaded and sent via FOIAonline on August 16, 2016. After our call, if you choose to submit a formal appeal, you will be within the 90 calendar days limit (November 14, 2016 by 5:00 p.m., Eastern Time). The correct procedure to submit a formal appeal is found in paragraph 3, above, and in the interim release letter sent on August 16, 2016.

Please contact me if you would like to schedule a call to discuss your exemption concerns. I can be reached by email, Monday - Friday, at lorna.martin-gross@noaa.gov, or by phone on Tuesday, Thursday, and Friday, at [301-427-8244](tel:301-427-8244).

Kind regards,

Ms. Lorna Martin-Gross
Records Manager
Office of Law Enforcement
NOAA Fisheries
U.S. Department of Commerce
1315 East-West Highway
SSMC 3, Suite 3301
Office: [301-427-8244](tel:301-427-8244)
lorna.martin-gross@noaa.gov

From: FOIA Office - NOAA Service Account [<mailto:foia@noaa.gov>]
Sent: Friday, October 14, 2016 2:20 PM
To: Scott Doyle
Cc: Lorna Martin-Gross - NOAA Federal
Subject: Re: Fee Reimbursement Request

Good afternoon Mr. Doyle,

Thank you for your inquiry.

Lorna and Mark will address the FOIA request status and appeal questions. I can be your point of contact concerning the refund for your FOIA request.

I will follow-up with the NOAA finance office to check the status of your refund, and will have an update for you on Monday.

Please do not hesitate to contact me at the number below should you have additional questions concerning your refund.

Regards,

Lola Stith
NOAA FOIA Office
[703-298-8005](tel:703-298-8005)

Mark H. Graff
FOIA Officer
National Oceanic and Atmospheric Administration
[\(301\)-628-5658](tel:301-628-5658)

On Fri, Oct 14, 2016 at 2:14 PM, Scott Doyle <scottdoyle137@aol.com> wrote:
Mr Graff, Ms. Martin,

Several items

1. I have not received my reimbursement as per the email below. That was well over a 2 months ago.
2. I have not received all the additional FOIA documents that were originally identified. Can you give me an idea when I will receive them and reason for the continued delay?
3. I would like to appeal that parts have been redacted which I don't believe which should have been redacted. I want to send in one comprehensive request. Items like complete email addresses, names, titles, the body of reports that speak to the internal investigate as it relates to my interview, witness statements and general facts of the investigation etc.
4. I have a time limit of 90 days on which to appeal (Started 8/3/16), which I would like to request be extended until the all the FOIA documents have been delivered. It is unfair to ask me to make my appeal decision without the totality of all the information. I have received less than 100 of the over 320 documents.

If this is not the proper way to request an extension of an appeal please let me know the method you require.

I appreciate your consideration on this matter and realize your office is not the reason for the delay.

Sincerely

Scott Doyle

-----Original Message-----

From: foia <foia@noaa.gov>
To: scottdoyle137 <scottdoyle137@aol.com>
Sent: Thu, Sep 1, 2016 9:08 am
Subject: Fee Reimbursement Request

09/01/2016 09:03 AM

FOIA Request: DOC-NOAA-2016-001270

This is in response to your request for the reimbursement of the fees paid for the processing of your FOIA request. You have argued that the 2016 FOIA Improvement Act of 2016 mandates the return of fees paid to you. Although that act is not retroactive, it is correct that your request is past due, and unusual circumstances have not been cited as justifying billable processing with fees assessed in your request after the statutory time frame for responding to your request. As such, I

have determined that your request is not billable, and that fees should be returned to you. A request for a refund of your fees paid will be submitted to the Office of the Chief Financial Officer.

Mark Graff
NOAA FOIA Officer

--

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: [301-427-8244](tel:301-427-8244)
lorna.martin-gross@noaa.gov

--

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: [301-427-8244](tel:301-427-8244)
lorna.martin-gross@noaa.gov

--

Lola Stith

Contractor - The Ambit Group, LLC
NOAA Office of the Chief Information Officer (OCIO)
(c (b)(6) [REDACTED])
lola.m.stith@noaa.gov

--

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: [301-427-8244](tel:301-427-8244)
lorna.martin-gross@noaa.gov

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Lola Stith
Contractor - The Ambit Group, LLC
NOAA Office of the Chief Information Officer (OCIO)
(c (b)(6) [REDACTED])
lola.m.stith@noaa.gov

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Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: [301-427-8244](tel:301-427-8244)
lorna.martin-gross@noaa.gov

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Lola Stith

Contractor - The Ambit Group, LLC

NOAA Office of the Chief Information Officer (OCIO)

(c (b)(6) [REDACTED])

lola.m.stith@noaa.gov

--

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: [301-427-8244](tel:301-427-8244)

lorna.martin-gross@noaa.gov

--

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: [301-427-8244](tel:301-427-8244)

lorna.martin-gross@noaa.gov

--

Lola Stith

Contractor - The Ambit Group, LLC

NOAA Office of the Chief Information Officer (OCIO)

(c (b)(6) [REDACTED])

lola.m.stith@noaa.gov

(b)(5)

(b)(5)

From: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>
Sent: Thursday, January 12, 2017 3:09 PM
To: Lorna Martin-Gross - NOAA Federal
Cc: Mark Graff - NOAA Federal; Arlyn Penaranda - NOAA Federal; Samuel Dixon - NOAA Af...
Subject: Re: FOIA DOC-NOAA-2016-001270

Hi Lorna - The second IR has been approved.

Lola

On Thu, Jan 12, 2017 at 2:51 PM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:

Hi Lola,

Regarding this FOIA (b)(5) [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Lorna

Ms. Lorna Martin-Gross

OLE Records Manager

Office: [301-427-8244](tel:301-427-8244)

From: Lola Stith - NOAA Affiliate [mailto:lola.m.stith@noaa.gov]
Sent: Monday, December 12, 2016 3:08 PM
To: Lorna Martin-Gross - NOAA Federal
Cc: Mark Graff - NOAA Federal; Arlyn Penaranda - NOAA Federal
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Hi Lorna (b)(5)

Lola

On Mon, Dec 12, 2016 at 8:05 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:

Good morning Lola,

Before the approvals are complete to release the 2nd interim for 1270, could you ensure the "REQ" docs in FO for OSY are marked UU? I found 3 more that need to be changed.

(b)(5)

Thank you,

Lorna

On Fri, Dec 9, 2016 at 10:41 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:

Thanks again!

On Fri, Dec 9, 2016 at 10:26 AM, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:

Hi Lorna (b)(5)

Lola

On Fri, Dec 9, 2016 at 9:49 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:

Ok, thank you.

On Friday, December 9, 2016, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:

Lorna (b)(5)

Lola

On Fri, Dec 9, 2016 at 8:15 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:

Lola,

(b)(5)

Thank you,

Lorna

On Thu, Dec 8, 2016 at 11:34 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

(b)(5)

Mark H. Graff

FOIA Officer/Bureau Chief Privacy Officer (BCPO)

National Oceanic and Atmospheric Administration

[\(301\) 628-5658](tel:3016285658) (O)

(b)(6) (C)

On Thu, Dec 8, 2016 at 11:31 AM, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:

(b)(5)

Lola

On Thu, Dec 8, 2016 at 11:23 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

(b)(5)

Mark H. Graff

FOIA Officer/Bureau Chief Privacy Officer (BCPO)

National Oceanic and Atmospheric Administration

[\(301\) 628-5658](tel:3016285658) (O)

(b)(6) (C)

On Thu, Dec 8, 2016 at 11:07 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:

Question,

(b)(5)

Lorna

On Thu, Dec 8, 2016 at 9:25 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

(b)(5)

Mark H. Graff

FOIA Officer/Bureau Chief Privacy Officer (BCPO)

National Oceanic and Atmospheric Administration

[\(301\) 628-5658](tel:3016285658) (O)

(b)(6) (C)

On Thu, Dec 8, 2016 at 8:34 AM, Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov> wrote:

Lola/Mark,

(b)(5)

?

Lorna

On Wed, Dec 7, 2016 at 11:36 AM, Scott Doyle <scottdoyle137@aol.com> wrote:

Ladies.

Just checking

1. Remaining FOIA docs have not be delivered any update. It has not been 4 months.

Ms. Smith

I have not been reimbursed and you look into this and give me a date certain for payment.

Scott Doyle

-----Original Message-----

From: Scott Doyle <scottdoyle137@aol.com>

To: lorna.martin-gross <lorna.martin-gross@noaa.gov>; lola.m.stith <lola.m.stith@noaa.gov>

Sent: Fri, Nov 18, 2016 4:29 pm

Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Nothing from OIG, today was the day it was estimated to upload its docs. OSY has now had close to 3 months and nothing from them.

Can you check and give me a update next week.

Also the reimbursement had not be paid.

Scott Doyle

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
To: lola.m.stith <lola.m.stith@noaa.gov>
Cc: scottdoyle137 <scottdoyle137@aol.com>
Sent: Wed, Nov 2, 2016 2:05 pm
Subject: FW: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Ms. Stith,

Please provide Mr. Doyle with an update of his fee reimbursement.

Thank you,

Ms. Lorna Martin-Gross

OLE Records Manager

Office: [301-427-8244](tel:301-427-8244)

From: Scott Doyle [<mailto:scottdoyle137@aol.com>]
Sent: Wednesday, November 02, 2016 1:51 PM
To: lorna.martin-gross@noaa.gov
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

I have not received my reimbursement and update.?

-----Original Message-----

From: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
To: Scott Doyle <scottdoyle137@aol.com>
Sent: Tue, Oct 18, 2016 1:39 pm
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Hello Mr. Doyle,

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Kind regards,

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OLE Records Manager

Office: [301-427-8244](tel:301-427-8244)

From: Scott Doyle [<mailto:scottdoyle137@aol.com>]
Sent: Tuesday, October 18, 2016 1:15 PM
To: lorna.martin-gross@noaa.gov
Subject: Re: Fee Reimbursement Request (FOIA DOC-NOAA-2016-001270)

Thank you for the response.

Can you please let me know when the refund has been issued.

Scott

-----Original Message-----

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The appeal language from the interim release letter states:

"We encourage you to speak with us if you have concerns as we continue to process this request. Although you have the ability to appeal at this time, we encourage you to focus the appeal/mediation/NOAA discussion, if needed, on exemptions applied to the documents thus far, but hold specific challenges about production until you have received and reviewed more of the voluminous records that the agency is still in the process of gathering and processing.

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U.S. Department of Commerce

Office of General Counsel

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National Archives and Records Administration

Room 2510

8601 Adelphi Road

College Park, MD 20740-6001

Email: ogis@nara.gov

Phone: [301-837-1996](tel:301-837-1996)

Fax: [301-837-0348](tel:301-837-0348)

Toll-free: [1-877-684-6448](tel:1-877-684-6448)

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Kind regards,

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

1315 East-West Highway

SSMC 3, Suite 3301

Office: [301-427-8244](tel:301-427-8244)

lorna.martin-gross@noaa.gov

From: FOIA Office - NOAA Service Account [<mailto:foia@noaa.gov>]

Sent: Friday, October 14, 2016 2:20 PM

To: Scott Doyle

Cc: Lorna Martin-Gross - NOAA Federal

Subject: Re: Fee Reimbursement Request

Good afternoon Mr. Doyle,

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I will follow-up with the NOAA finance office to check the status of your refund, and will have an update for you on Monday.

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Regards,

Lola Stith

NOAA FOIA Office

[703-298-8005](tel:703-298-8005)

Mark H. Graff

FOIA Officer

National Oceanic and Atmospheric Administration

[\(301\)-628-5658](tel:301-628-5658)

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Mr Graff, Ms. Martin,

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Sincerely

Scott Doyle

-----Original Message-----

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To: scottdoyle137 <scottdoyle137@aol.com>

Sent: Thu, Sep 1, 2016 9:08 am

Subject: Fee Reimbursement Request

09/01/2016 09:03 AM

FOIA Request: DOC-NOAA-2016-001270

This is in response to your request for the reimbursement of the fees paid for the processing of your FOIA request. You have argued that the 2016 FOIA Improvement Act of 2016 mandates the return of fees paid to you. Although that act is not retroactive, it is correct that your request is past due, and unusual circumstances have not been cited as justifying billable processing with fees assessed in your request after the statutory time frame for responding to your request. As such, I have determined that your request is not billable, and that fees should be returned to you. A request for a refund of your fees paid will be submitted to the Office of the Chief Financial Officer.

Mark Graff

NOAA FOIA Officer

--

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: [301-427-8244](tel:301-427-8244)

lorna.martin-gross@noaa.gov

--

Ms. Lorna Martin-Gross

Records Manager

Office of Law Enforcement

NOAA Fisheries

U.S. Department of Commerce

Office: [301-427-8244](tel:301-427-8244)

lorna.martin-gross@noaa.gov

--

Lola Stith

Contractor - The Ambit Group, LLC

NOAA Office of the Chief Information Officer (OCIO)

(c (b)(6) [REDACTED])

lola.m.stith@noaa.gov

--

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lorna.martin-gross@noaa.gov

--

Lola Stith

Contractor - The Ambit Group, LLC
NOAA Office of the Chief Information Officer (OCIO)
(c (b)(6) [REDACTED])

lola.m.stith@noaa.gov

--

Lola Stith

Contractor - The Ambit Group, LLC
NOAA Office of the Chief Information Officer (OCIO)
(c (b)(6) [REDACTED])

lola.m.stith@noaa.gov

(b)(5)

(b)(5)

From: Justin May - NOAA Affiliate <justin.may@noaa.gov>
Sent: Tuesday, January 17, 2017 5:00 PM
To: Sarah Brabson - NOAA Federal; Mark Graff - NOAA Federal
Cc: Brian Gross - NOAA Federal; Jean Apedo - NOAA Federal
Subject: NOAA0500 PTA
Attachments: NOAA0500 PTA Updated 122016 mod07Jan17+bdgsig.pdf

Sarah,

Please find attached, the most recent version of the signed PTA from Brian Gross for your records.

Signing of the attached document should now route to Jean -> Zach ->Mark.

--
Justin May, CISSP
Engility
RDHPCS IT Security Lead
(m) 303 437 8155

(b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, January 18, 2017 2:23 PM
To: Arlyn Penaranda - NOAA Federal
Cc: Lola Stith - NOAA Affiliate
Subject: Re: CUI and FOIA
Attachments: NOS FOIA Training.pptx

Hey Arlyn--

I'm actually providing a similar training today at 3:30 to NOS (b)(5)

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) (C)

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On Wed, Jan 18, 2017 at 1:20 PM, Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov> wrote:

Hi. I wanted to ask if you will be doing training on Controlled Unclassified Information (CUI) and the Freedom of Information Act (FOIA). I can help :D not to give the training but to help your office put together slides and information if needed.

Image not available for this document, ID: 0.7.3707.13647 000001

From: Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov>
Sent: Wednesday, January 18, 2017 3:03 PM
To: Mark Graff - NOAA Federal
Cc: Lola Stith - NOAA Affiliate
Subject: RE: CUI and FOIA

Mark,

(b)(5) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

Enjoy training at NOS!

Arlyn

From: Mark Graff - NOAA Federal [mailto:mark.graff@noaa.gov]
Sent: Wednesday, January 18, 2017 2:23 PM
To: Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov>
Cc: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>
Subject: Re: CUI and FOIA

Hey Arlyn--

I'm actually providing a similar training today at 3:30 to NOS (b)(5) [Redacted]
[Redacted]
[Redacted]

[Redacted]
[Redacted]

[Redacted]
[Redacted]
[Redacted]

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) [Redacted] (C)

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or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.

On Wed, Jan 18, 2017 at 1:20 PM, Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov> wrote:

Hi. I wanted to ask if you will be doing training on Controlled Unclassified Information (CUI) and the Freedom of Information Act (FOIA). I can help :D not to give the training but to help your office put together slides and information if needed.

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, January 18, 2017 9:08 AM
To: Lois Schiffer - NOAA Federal; Stephen Lipps - NOAA Federal; John Almeida - NOAA Federal; Holmes, Colin; Robert Moller - NOAA Federal; Scott Smullen - NOAA Federal
Cc: Tom Taylor; Kimberly Katzenbarger - NOAA FEDERAL; Charles; Dennis Morgan - NOAA Federal; Stacey Nathanson - NOAA Federal; Robert Swisher - NOAA Federal; Steven Goodman - NOAA Federal; Samuel Dixon - NOAA Affiliate; Lola Stith - NOAA Affiliate; Zachary Goldstein - NOAA Federal; Douglas Perry - NOAA Federal; Nkolika Ndubisi - NOAA Federal; Jeri Dockett - NOAA Affiliate
Subject: Weekly Incoming and High Visibility Requests
Attachments: Weekly FOIA Incoming and High Visibility Requests 1.11 to 1.18.17.xls

Good Morning,

Attached is the weekly report. One noteworthy request received from WALA FOX10 News is seeking records regarding how NOAA grant money was used by the National Maritime Museum of the Gulf of Mexico from 2006-2009 (DOC-NOAA-2017-000442).

Yesterday, in the Cause of Action litigation (b)(5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

Additionally (b)(5) [REDACTED]
[REDACTED]
[REDACTED].

Lastly, NOAA FOIA will be providing a FOIA presentation for NOS Subject Matter Experts today. We appreciate those who organized this event to improve FOIA awareness and processing with the increased FOIA request burden facing NOS.

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) [REDACTED] (C)

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Tracking Number	Type	Requester	Requester Organization	Submitted
DOC-NOAA-2017-000453	Request	Barry Harrell		01/16/2017
DOC-NOAA-2017-000442	Request	Kati Weis		01/11/2017
DOC-NOAA-2017-000438	Request	Claudia Lucio	Brayton Purcell LLP	01/11/2017
DOC-NOAA-2017-000441	Request	Elizabeth N. Moran	GARY GILBERT & ASSOCIATES, I	01/11/2017

Custom Report - 01/18/2017 08:46:55

Assigned To	Case File	Assigned To	Perfect?	Due	Closed Date	Status	Dispositions
NOAA	NOAA	No	TBD	TBD		Submitted	
NOAA	NOAA	No	TBD	TBD		Initial Evaluation	
NOAA	NOAA	No	TBD	TBD		Submitted	
NOAA	NOAA	No	TBD	TBD		Submitted	

Detail

Mr. Stephen Goodman, FOIA Officer Department of Commerce, National Oceanic Atmospheric Administration This
I am a local investigative news reporter with WALA FOX10 News in Mobile, Al. I am requesting copies of public rec
We are trying to obtain some records relating to the construction of a Survey ship that was built for the National Oc
The Law Offices of Gary M. Gilbert & Associates, P .C. represents Thomas Smith. Pursuant to the Freedom c

This is a request under the Freedom of Information Act (FOIA). I request that a copy of the following documents pertaining to five NOAA grants awarded to the National Maritime Museum of the Gulf of Mexico from the Oceanic and Atmospheric Administration in 1960 at National Steel and Ship Building Corp (Nassco now part of the Freedom of Information Act, 5 U.S.C. § 552a(d)(1), we request the following information. • Copies of any and all

ments be provided to me: OIG Case Notification 16-1404. Please see attached request. Thank you, Barry
m 2006 to 2009. Specifically, I am requesting any and all grant proposals submitted by the nonprofit to I
rt of General Dynamics). Under the Freedom of Information Act, we would like to obtain these documen
all documents and communications related to Vacancy Announcement Number NSDIS-OSP0-2016 -00:

/ Harrell

NOAA, including all supporting documents for those proposals (i.e. annual audits, tax records), as well as its 1. All Insurance Certificates or any other documents identifying the liability insurance carrier or insurer for the 37 Physical Scientist, ZP-1301-4 (DE/CR), position located in Suitland, Maryland, from January 1, 2014

s any and all follow-up financial reports submitted by the National Maritime Museum of the Gulf of Mexico
nce coverage for M. SLAYEN ("M. SLAYEN" shall refer to M. Slayen & Associates, Mor
to present including, but not limited to: communication s regarding any and all vacancies subject to the :

o to NOAA to show ho
rie Slayen aka Morris Slayen, an insulation subcontr
aforementioned vacancy announcemen

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, January 18, 2017 3:04 PM
To: Arlyn Penaranda - NOAA Federal
Cc: Lola Stith - NOAA Affiliate
Subject: Re: CUI and FOIA

Got it--there should be two trainings on there. One is for FOIA Professionals, the other is a FOIA Intro for regular employees that need to understand the FOIA at a high-altitude general level.

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) (C)

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On Wed, Jan 18, 2017 at 3:02 PM, Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov> wrote:

Mark,

(b)(5) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

Enjoy training at NOS!

Arlyn

From: Mark Graff - NOAA Federal [mailto:mark.graff@noaa.gov]
Sent: Wednesday, January 18, 2017 2:23 PM
To: Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov>

Cc: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>

Subject: Re: CUI and FOIA

Hey Arlyn--

I'm actually providing a similar training today at 3:30 to NOS (b)(5)

[REDACTED]

(b)(5)

Mark H. Graff

FOIA Officer/Bureau Chief Privacy Officer (BCPO)

National Oceanic and Atmospheric Administration

[\(301\) 628-5658](tel:3016285658) (O)

(b)(6) (C)

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On Wed, Jan 18, 2017 at 1:20 PM, Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov> wrote:

Hi. I wanted to ask if you will be doing training on Controlled Unclassified Information (CUI) and the Freedom of Information Act (FOIA). I can help :D not to give the training but to help your office put together slides and information if needed.

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From: Nkolika Ndubisi - NOAA Federal <nkolika.ndubisi@noaa.gov>
Sent: Wednesday, January 18, 2017 5:26 PM
To: Mark Graff - NOAA Affiliate
Subject: Fwd: FAL Template
Attachments: FAL on behalf of GC.docx

Hi Mark,

Jeri forwarded the FAL template you sent. I had a quick question about it. (b)(5) ? Thanks.

Nkolika Ndubisi (Nikki)
Administration Division
Management and Budget
National Ocean Service
(240) 533-0937

----- Forwarded message -----

From: **Jeri Dockett - NOAA Affiliate** <jeri.dockett@noaa.gov>
Date: Wed, Jan 18, 2017 at 11:36 AM
Subject: Fwd: FAL Template
To: Nkolika Ndubisi - NOAA Federal <nkolika.ndubisi@noaa.gov>

Hey Nikki (b)(5) ?

----- Forwarded message -----

From: **Mark Graff - NOAA Federal** <mark.graff@noaa.gov>
Date: Tue, Jan 3, 2017 at 1:39 PM
Subject: FAL Template
To: Jeri Dockett - NOAA Affiliate <jeri.dockett@noaa.gov>, Kimberly Katzenbarger - NOAA FEDERAL <kimberly.katzenbarger@noaa.gov>

Hi Guys--

Attached is a template for closures that already has the 90 day appeal language, OGIS language, and FOIA Liaison contact info plugged in from the 2016 FOIA Improvement Act in case you didn't already have it.

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) (C)

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--

Very respectfully,

Jeri Dockett

FOIA/Records Manager

National Oceanic Atmospheric Administration

Office of Response and Restoration

1305 East West Highway

SSMC4 RM 10124

Silver Spring, MD 20910

(O)[240.533.0395](tel:240.533.0395)



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of the Chief Information Officer
High Performance Computing and Communications

Via FOIAonline

January 19, 2021

Elizabeth A. Mitchell
Association for Professional Observers
P.O. Box 933
Eugene, OR 97440

Re: FOIA Request DOC-NOAA-2016-001765

Dear Ms. Mitchell:

This letter is in response to your Freedom of Information Act (FOIA) request which was received by our office on September 29, 2016, in which you requested, regarding the Environmental Protection Agency's Administrative Law Judge's Initial Decision and Order for NOAA Enforcement Case PI1401544:

A copy of the hearing transcript; A copy of the Respondents' and the Agency's exhibits; and A copy of Respondents' and Agency's post-hearing briefs and related reply briefs.

We have located 711 pages of documents responsive to your request. After two failed e-mail attempts, 207 of these pages were released to you in their entirety, on November 15, 2016.

An additional 230 pages are being released to you in their entirety, in this final response.

Two videos (Agency Exhibit 7), are available for viewing on YouTube at:

<https://www.youtube.com/watch?v=YfGp1Kdf-ds>

and

<https://www.youtube.com/watch?v=bkM09bzU-08>

We are also releasing 241 pages of documents responsive to your request that are partially redacted under exemptions 5 U.S.C. 552(b)(3); 5 U.S.C. 552(b)(4); 5 U.S.C. 552(b)(5); 5 U.S.C. 552(b)(6); and 5 U.S.C. 552(b)(7)(C), which prohibits from disclosure of records: information that is prohibited from disclosure by another federal statute; trade secrets or commercial or financial information that is confidential or privileged; privileged communications within or

between agencies, including attorney-client privilege; information that, if disclosed, would invade another individual's personal privacy; and information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy, respectively.

33 pages of documents responsive to your request are exempt under 5 U.S.C. 552(b)(3); 5 U.S.C. 552(b)(4); 5 U.S.C. 552(b)(6); and 5 U.S.C. 552(b)(7)(C), which prohibits from disclosure of records: information that is prohibited from disclosure by another federal statute; trade secrets or commercial or financial information that is confidential or privileged; information that, if disclosed, would invade another individual's personal privacy; and information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy, respectively. These pages are being withheld in their entirety.

You have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this release must be received within 90 calendar days of the date of this response letter at the following address:

Assistant General Counsel for Litigation, Employment, and Oversight
U.S. Department of Commerce
Office of General Counsel
Room 5875
14th and Constitution Avenue, N.W.
Washington, D.C. 20230

An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to [202-482-2552](tel:202-482-2552), or by FOIAonline at <https://foiaonline.regulations.gov/foia/action/public/home#>.

For your appeal to be complete, it must include the following items:

- a copy of the original request,
- our response to your request,
- a statement explaining why the withheld records should be made available, and why the denial of the records was in error.
- "Freedom of Information Act Appeal" must appear on your appeal letter. It should also be written on your envelope, e-mail subject line, or your fax cover sheet.

FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

FOIA grants requesters the right to challenge an agency's final action in federal court. Before doing so, an adjudication of an administrative appeal is ordinarily required.

The Office of Government Information Services (OGIS), an office created within the National Archives and Records Administration, offers free mediation services to FOIA requesters. They may be contacted in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001

Email: ogis@nara.gov

Phone: 301-837-1996
Fax: 301-837-0348
Toll-free: 1-877-684-6448

If you have questions regarding this correspondence please contact Susan S. Beresford at Susan.S.Beresford@noaa.gov, or by phone at (301) 427-8285, or the NOAA FOIA Public Liaison Robert Swisher at (301) 628-5755.

Sincerely,

Mark H. Graff
FOIA Officer/Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration



From: Nkolika Ndubisi - NOAA Federal <nkolika.ndubisi@noaa.gov>
Sent: Wednesday, January 18, 2017 7:49 PM
To: FOIA Office
Cc: Mark Graff - NOAA Affiliate; Lola Stith - NOAA Affiliate
Subject: Fwd: Revised FOIA Language
Attachments: FeeEstimateWorksheet RBOS FOIA REVISED 2017 0111.doc

Good evening,

I wanted to check with you all about the issue in the thread below. (b)(5). Thank you.

Nkolika Ndubisi (Nikki)
Administration Division
Management and Budget
National Ocean Service
(240) 533-0937

----- Forwarded message -----

From: Jeri Dockett - NOAA Affiliate <jeri.dockett@noaa.gov>
Date: Thu, Jan 12, 2017 at 9:58 AM
Subject: Fwd: Revised FOIA Language
To: Nkolika Ndubisi - NOAA Federal <nkolika.ndubisi@noaa.gov>

Hey Nikki (b)(5).

Thanks,
Jeri

----- Forwarded message -----

From: Mathew Dorsey - NOAA Affiliate <mathew.dorsey@noaa.gov>
Date: Wed, Jan 11, 2017 at 7:12 PM
Subject: Re: Revised FOIA Language
To: Jeri Dockett - NOAA Affiliate <jeri.dockett@noaa.gov>
Cc: Laurie Sullivan - NOAA Federal <laurie.sullivan@noaa.gov>, Amy Merten <amy.merten@noaa.gov>, Benjamin Shorr <benjamin.shorr@noaa.gov>, Greg Baker <greg.baker@noaa.gov>

Hi Jeri (b)(5)?

Thanks,

-Matt

On Thu, Jan 5, 2017 at 12:25 PM, Jeri Dockett - NOAA Affiliate <jeri.dockett@noaa.gov> wrote:
Happy New Year All!!

(b)(5) [Redacted]

Thanks,
Jeri

----- Forwarded message -----

From: **Christopher Plaisted - NOAA Federal** <christopher.plaisted@noaa.gov>

Date: Tue, Dec 20, 2016 at 2:36 PM

Subject: Revised FOIA Language

To: Jeri Dockett - NOAA Affiliate <jeri.dockett@noaa.gov>

Cc: Laurie Sullivan <Laurie.Sullivan@noaa.gov>

Jeri,

(b)(5) [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

--
Christopher J. Plaisted
Attorney-Advisor
National Oceanic and Atmospheric Administration
Office of General Counsel, Natural Resources Section
U.S. Department of Commerce
501 W. Ocean Blvd, Suite 4470
Long Beach, CA 90802

[562-980-3237](tel:562-980-3237)

(b)(6) (cell)

562-980-4084 (fax)

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--

Very respectfully,

Jeri Dockett

FOIA/Records Manager

National Oceanic Atmospheric Administration

Office of Response and Restoration

1305 East West Highway

SSMC4 RM 10124

Silver Spring, MD 20910

(O)240.533.0395

--

Mathew Dorsey

GIS Specialist

IM Systems Group

NOAA|NOS|OR&R

Assessment and Restoration Division - Spatial Data Branch

v: [562-980-3250](tel:562-980-3250) (b)(6)

--

Very respectfully,

Jeri Dockett

FOIA/Records Manager

National Oceanic Atmospheric Administration

Office of Response and Restoration

1305 East West Highway

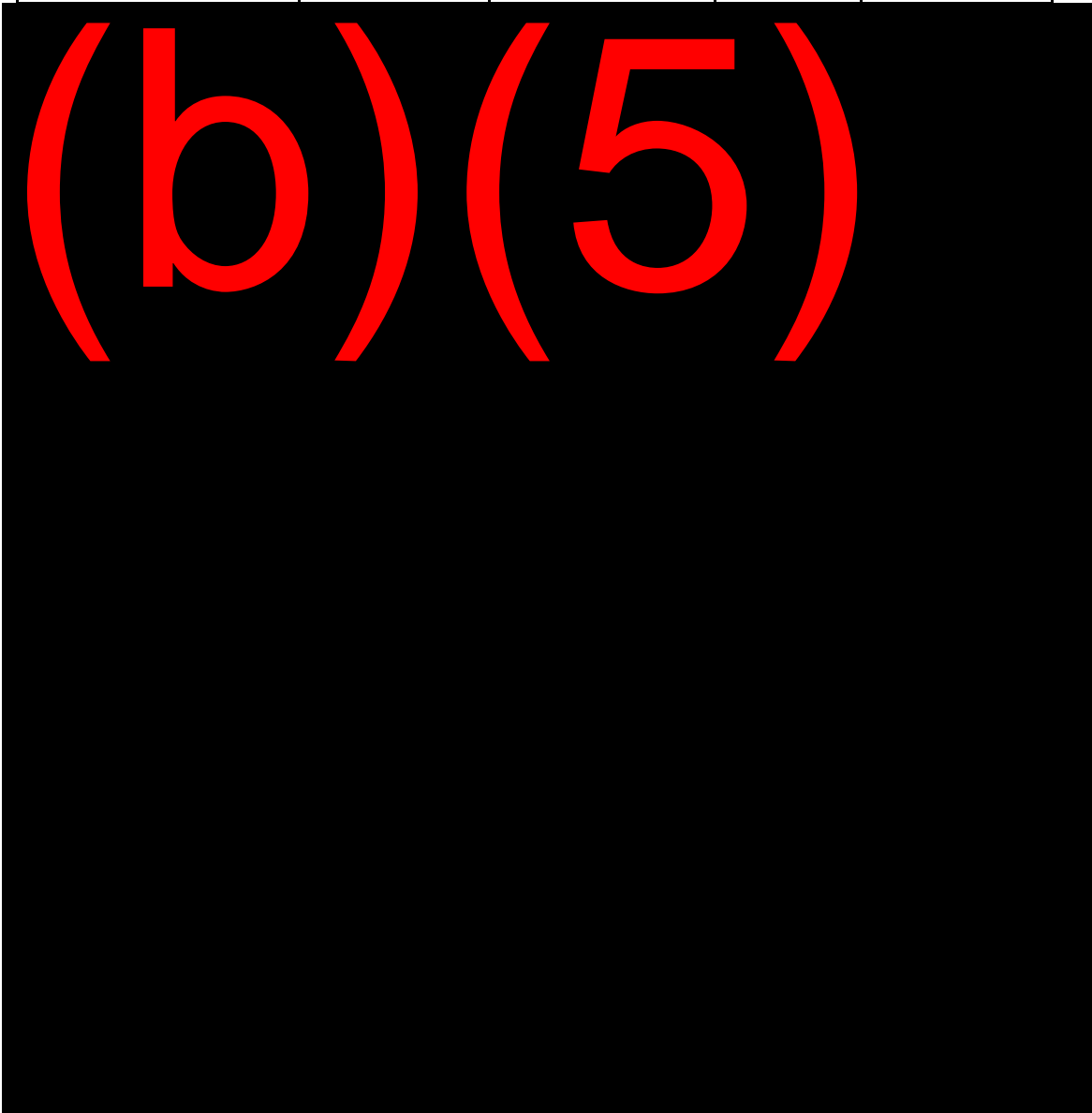
SSMC4 RM 10124

Silver Spring, MD 20910
(O)[240.533.0395](tel:240.533.0395)

**NOAA
Freedom of Information Act
Search, Review, Duplication Work Sheet
FOIA Request # 2016-001531**

Table 1. Estimated Labor Fees For Manual/Computer Search*(First 2 hrs free)

Name	Base Hourly Salary	Plus 16% Overhead	Number of Hours	Total
-------------	---------------------------	--------------------------	------------------------	--------------



Grand Total

*The time spent searching even if you do not locate responsive records.

**Includes the direct cost of making copies.

From: Jerenda Burroughs - NOAA Affiliate <jerenda.burroughs@noaa.gov>
Sent: Thursday, January 19, 2017 12:22 PM
To: Help Desk
Cc: Mark Graff - NOAA Federal; Peaches Hodge-Tonic - NOAA Federal; NMFS HQ PR FOIA Requests - NOAA Service Account
Subject: Re: Regarding Service Record #307,497 Accidentally deleted all correspondence from case file [Pls Restore Case in FO as it was on 8/3/16]
Attachments: FOIAonline Correspondence History for DOC-NOAA-2016-000603 as of 8-3-16.pdf




Good Afternoon FOIAonline Help Desk:













I know the above ticket number was closed because you were unable to restore activities performed in the system on January 17th; but **I'd like to pose another option to resolving this issue of "deleted correspondence and records"** to you.

Please see the attached document which shows part of the **correspondence history in system up until August 3, 2016**. **Here is a full list:**

- **8/3/16 Interim Release #2** [*includes attachment of letter & records*]
- **6/3/16 Interim Release #1** [*includes attachment of letter & records*]
- **3/30/16 Status Update Message**
- **3/30/16 Summary of Conference Call**
- **3/9/16 Unusual Circumstances Letter** [*includes a letter attachment*]
- **2/7/16 Acknowledgement Letter** [*includes a letter attachment*]

note: The Records tab should contain the following:

-  1st Interim - 20130821 4(b)(2) policy slides for internal with speaker notes.pdf
-  1st Interim - AdvMod Webinar 20140520.pdf
-  UR Interim2, 19 Records.zip

-  Interim 3, Full Rel-1 (50).zip
-  Interim 3, Full Rel-2 (26).zip
-  Interim 3, Partial-1 (50).zip
-  Interim 3, Partial-2 (50).zip
-  Interim 3, Partial-3 (50).zip
-  Interim 3, Partial-4 (50).zip
-  Interim 3, Partial-5 (49).zip
-  Interim 3, Partial-6 (50).zip
-  Interim 3, Partial-7 (50).zip
-  Interim 3, Partial-8 (50).zip
-  Interim 3, Partial-9 (46).zip
-  Interim 3, Withhold (47).zip

NOAA/NMFS/Office of Protected Resources would like you to please restore this case to what it was in the FOIAonline system as of August 3, 2016.

Please let us know when you will do this, and when it has been completed.

Thx

Jerenda Burroughs

PR FOIA Point of Contact for case# 2016-000603

Office of Protected Resources

On Wed, Jan 18, 2017 at 12:38 PM, Help Desk <cherokeeservicedesk@sysaidit.com> wrote:

Jerenda,

Below is the message that we received from the FOIA program office.

Hi all,

Please inform the user we have no ability to recover deleted correspondence. I have attached an audit log of the actions taken regarding correspondence for that request. I don't believe it will be useful in re-creating the correspondence.

Thanks,

Best Wishes,

Sherice Mariani
Lead Help Desk Coordinator

Cherokee Services Group
970-494-5507

Thank you for contacting the Help Desk. A new ticket has been created for you:

Service record details:

Title: Accidentally deleted all correspondence from case file

Description: Tracking Number :DOC-NOAA-2016-000603

caller thought that the past correspondence was going to send to requester so she deleted it all. She wants to see if this can be recovered. They have no records of it

We will respond to your inquiry within one business day.

Thank you,

The Help Desk Team

--

"The rewards of giving, far outweigh the act of giving"

Jerenda Burroughs
FOIA Admin & Point of Contact / Planning & Program Coordination Division (PR4)
Contractor
I B S S

In support of
National Marine Fisheries Service
Office of Protected Resources
301-427-8421

Request Details

Status : Evaluation of Records Due Date : 03/15/2016

209



Tracking Number : DOC-NOAA-2016-000603	Submitted Date : 02/10/2016
Requester : Margaret Townsend	Perfected Date : 02/16/2016
Organization : N/A	Last Assigned Date : 12/21/2016
Requester Has Account : Yes	Fee Limit : \$25.00
Email Address : foia@biologicaldiversity.org	Request Track : Complex
Phone Number : N/A	Due Date : 03/15/2016
Fax Number : N/A	Assigned To : Jerenda Burroughs (National Marine Fisheries Service)
Address : Center for Biological Diversity	Last Assigned By : Lamar Turner (National Marine Fisheries Service)
P.O. Box 11374	
City : Portland	
State/Province : OR	
Zip Code/Postal Code : 97211-0374	

- Submission Details
- Case File
- Admin Cost
- Assigned Tasks
- Comments (12)
- Review

Direct URL : <https://localhost:8443/foia/action/public/view/request/80b38bfb>

Case Details

Type of Case : FOIA	Received Date : 02/10/2016
Fiscal Year : 2016	Clock Initially Started On : 02/16/2016
Total Days Pending : 209	

- Records
- Consultations
- Correspondence
- Appeals
- Financing
- Restricted Materials

Correspondence to Requester

9 items found, displaying 1 to 5.

Subject	From	To	Date	Detail	Remove
Interim Release, Request DOC-NOAA-2016-000603	Lamar Turner	Margaret Townsend	08/03/2016		X
<p>DOC-NOAA-2016-000603 has been approved for an interim release.</p> <p>Records were released to the public as a result of this request. You may retrieve these records immediately using the following link: View Records. Over the next 2 hours, these records are also being added to FOIAonline's search pages, further enabling you to retrieve these documents associated with your FOIA request at any time.</p> <p>UR Interim2, 19 Records.zip , ZIP , 1.09 MB 16-000603 Interim2 Ltr.pdf , PDF , 0.28 MB (remove)</p>					
Interim Release, Request DOC-NOAA-2016-000603	Lamar Turner	Margaret Townsend	06/03/2016		X

Subject From To Date Detail Remove

DOC-NOAA-2016-000603 has been approved for an interim release.

Records were released to the public as a result of this request. You may retrieve these records immediately using the following link: [View Records](#). Over the next 2 hours, these records are also being added to FOIAonline's search pages, further enabling you to retrieve these documents associated with your FOIA request at any time.

- 1st Interim - AdvMod Webinar 20140520.pdf, PDF, 0.94 MB
- 2016-000603 Interim1 Response Ltr - 3.30.16.pdf, PDF, 0.27 MB (remove)
- 1st Interim - 20130821 4(b)(2) policy slides for internal with speaker notes.pdf, PDF, 0.83 MB

FOIA Request: DOC-NOAA-2016-000603 - Status Update

Lamar Turner

Margaret Townsend

03/30/2016



03/30/2016 10:14 AM

FOIA Request: DOC-NOAA-2016-000603

Dear Ms. Townsend,

We are writing to update you as to the status of processing of your FOIA requests DOC-NOAA-2016-000603 (re: the final 4(b)(2) policy and final rule defining "destruction or adverse modification"), DOC-NOAA-2016-000604 (re: the "incidental take statement" rule), and DOC-NOAA-2016-000605 (re: the final policy interpreting "Significant Portion of Its Range").

As we discussed, these complex requests present unusual circumstances, due to the need to collect voluminous records from multiple offices within NOAA and to coordinate with the Department of the Interior (DOI) and other agencies, as required under 15 C.F.R. § 4.5(b). Due to the need to develop a search plan for multiple offices and to coordinate the privilege review, we need more time to determine how many responsive documents we may be producing and when we will be making additional releases.

Please be assured we are working diligently to prepare interim releases for each of these matters and to make them available as soon as possible.

Lamar Turner

FOIA Coordinator, Office of Protected Resources

NOAA Fisheries

Summary of Conference Call

Lamar Turner

Margaret Townsend

03/14/2016



03/14/2016 06:36 AM

FOIA Request: DOC-NOAA-2016-000603

Dear Margaret,

Thank you for taking time today to discuss the pending NOAA FOIA requests 2016-000603 and 2016-000605, and to allow us to present our proposals for managing the requests to ensure we can get you the most relevant documents in the most efficient way possible. Below, I'll recap what we discussed and highlight our proposals.

Timing

As you know, we have determined these complex requests present unusual circumstances, due to the need to collect voluminous records and to coordinate with the Department of the Interior (DOI), and likely also other agencies, as required under 15 C.F.R. § 4.5(b). Thus, the agency has invoked the automatic 10-day extension under 15 C.F.R. § 4.6(c). We anticipate making at least one interim release by March 29, at which time we will have a better sense of the next steps in the process and when you can expect additional interim releases. How long it actually takes to complete the requests will depend on the extent of new searches we must complete, the time needed to upload the material for processing into our Clearwell database, the time required to "de-duplicate" the material, and the time needed for privilege review.

Issues of Scope Common to Both FOIAs

Thank you for confirming that you are seeking documents that reflect development of the policies and rule up through

their signing, ~~is in~~ the decision files. You indicated your client might be willing to further limit the scope to just those documents created after the proposed versions of the policies and rule were published. **Please let us know if it would be agreeable to apply that narrowed scope to our searches, so that we begin our search from publication of the proposed policies/rule.**

We noted that some of the responsive documents likely will cross categories of your requests (*i.e.*, some documents address more than one regulatory reform effort). Rather than produce documents in multiple instances, we will strive to produce those only once. **However, as you requested, we will also attempt to make clear in the transmittal letters for each release how many documents fit this description.**

Special Complexities Regarding the "Significant Portion of its Range" (SPR) Policy

As we discussed, the request regarding the SPR policy is significantly complicated by the fact that we have already compiled and filed NOAA's Administrative Record (AR) for the pending litigation in the District of Colorado. Because the AR itself has been filed with the court, it is now publicly available and will not be produced again here. The complications arise in that we have already gone through the very time-consuming exercise of collecting the most relevant documents from all affected personnel in the agency for the AR, including reviewing archived emails of persons who are no longer with the agency (and, in one case, deceased). Although the original search throughout the agency was limited in scope as to both time (June 2010 forward) and scope (we excluded materials that should already be in the DOI record), we believe that the original search was reasonably likely to have already yielded the vast majority of NOAA documents that might be relevant and informative regarding development of the policy for that time period.

For the period June 21, 2010 forward, then, we would propose to satisfy the request by reviewing those documents that have already been collected for the AR but that were excluded per the NOAA 2012 Administrative Record Guidance, to determine if additional material can be released. Since these documents have already been uploaded into our Clearwell database, we can relatively quickly and efficiently identify and review those documents and make determinations about potential release. Of course, the same privileges that applied for compiling the AR will also apply to these documents, but we do anticipate some documents will be releasable.

Regarding the personnel no longer with NOAA, we believe that it is not reasonably likely that significant additional records will be turned up by searching their email archives. The most relevant records should already have been gathered in the search to compile the AR. Yet the process will be very time consuming, both to have the Information Technology department conduct a search and upload the materials for review, and for us to complete review of the materials for responsiveness, de-duplication, and potential privilege. Considering that the effort to develop the SPR Policy got underway in earnest in 2010, and since if necessary we can still collect earlier email from the staff with the most direct and active roles in developing the policy (who are still with the agency), **we propose to exclude the emails of the persons who are no longer at NOAA from further search at this time.**

I apologize for the length of this email. Please let me know if you have any questions and whether you client agrees with our proposed approach.

Thanks,

Ruth Ann

Ruth Ann Lowery, Attorney-Advisor

NOAA Office of General Counsel

Extension Due to Unusual
Circumstances

Lamar Turner

Margaret Townsend

03/09/2016



Subject	From	To	Date	Detail	Remove
03/09/2016 01:09 PM					
FOIA Request: DOC-NOAA-2016-000603					
Ms. Townsend,					
Please see the attached letter, an extension due to unusual circumstances as it refers to your recent Freedom of Information Act (FOIA) Request.					
Sincerely,					
//s//					
Lamar Turner, FOIA Coordinator					
Office of Protected Resources					
📎 2016-000603 Unusual Circumstances Ext.pdf , PDF , 0.21 MB (remove)					
9 items found, displaying 1 to 5.					1 2 ▶▶

Other Correspondence



16 items found, displaying 1 to 5.








Attached File	Type	Size (MB)	Remove
NMFS Tasker _v102015.docx	Microsoft Word	0.02	✕
16-000603 Interim 3, All Indexes.xlsx	Microsoft Excel	0.14	✕
Interim Release, Request DOC-NOAA-2016-000603.pdf	PDF	0.01	✕
FOIA Search Log.docx	Microsoft Word	0.01	✕
16-000603 PR NMFS Tasker Interim1 (signed).pdf	PDF	0.53	✕

16 items found, displaying 1 to 5.



UR Interim2, 19 Records.zip

-  1st Interim - 20130821 4(b)(2) policy slides for internal with speaker notes.pdf
-  1st Interim - AdvMod Webinar 20140520.pdf

-  Interim 3, Full Rel-1 (50).zip
-  Interim 3, Full Rel-2 (26).zip
-  Interim 3, Partial-1 (50).zip
-  Interim 3, Partial-2 (50).zip
-  Interim 3, Partial-3 (50).zip
-  Interim 3, Partial-4 (50).zip
-  Interim 3, Partial-5 (49).zip
-  Interim 3, Partial-6 (50).zip
-  Interim 3, Partial-7 (50).zip
-  Interim 3, Partial-8 (50).zip
-  Interim 3, Partial-9 (46).zip
-  Interim 3, Withhold (47).zip

From: Kimberly Katzenbarger - NOAA Federal <kimberly.katzenbarger@noaa.gov>
Sent: Tuesday, January 24, 2017 12:23 PM
To: Tom Brosnan - NOAA Federal; Mark Graff; Samuel Dixon
Cc: Corinne Brown - NOAA Federal; jeri dockett; Brian Julius
Subject: Re: FOIA Guidance Available?
Attachments: Clearwell Reviewer Guide.pdf; GARFO FOIA Guidelines - August 2015.docx; Revised NMFS FOIA Tasker 5-16-16 (1).docx; FOIA 2016-000605 SPOIR Tasker.FINAL.docx

Tom, Corinne's work (b)(5) [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

Kim

On Tue, Jan 24, 2017 at 11:19 AM, Tom Brosnan - NOAA Federal <tom.brosnan@noaa.gov> wrote:
Hi Corinne: (b)(5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]?

If easier to relay, I can setup a call to discuss.

Thanks in advance!
Tom

	<h1>BisonConnect Update</h1> <p>It's now easier to respond to FOIA and Congressional requests!</p>
<p>Where do I find the FOIA DMU Processing Tool?</p>	<p>Colleagues,</p> <p>We are excited to announce it's now easier than ever to respond to Freedom of Information Act (FOIA) and Congressional requests!</p>
<p>The FOIA DMU Processing Tool is available in the BisonConnect Application launcher. From your BisonConnect email account, simply click on the Apps Launcher  in the top right corner, and then click 'more' at the bottom of the window.</p>	<p>Our FOIA Document Management Unit (DMU) Processing Tool has been updated with the following features:</p> <ul style="list-style-type: none"> • Individual emails can be selected from email threads • Each email thread can be saved as individual PDF documents • Most email images will now be included in generated PDF documents • Automatically assigns a standard naming convention for responses to Congressional requests <p>What does the FOIA DMU Processing Tool do? The FOIA DMU Processing Tool is a application that compiles all emails and attachments from a specified label. Refer to the FOIA DMU Processing Application Help Guide for installation and usage instructions.</p>
<p>BisonConnect Support</p> <ul style="list-style-type: none"> • BisonConnect Apps Support • View past Tips & Tricks 	<p>Information collected and processed is always stored safely in your Google Drive unless specifically chosen otherwise.</p> <p>If you have any questions, comments or feedback please send them to bc_application_feedback@doi.gov or contact your local help desk.</p> <p>Thanks, The BisonConnect Team</p>
<p align="right">U.S. Department of the Interior</p>	

--
Tom Brosnan
Acting Deputy, Assessment and Restoration Division
NOAA's Office of Response and Restoration
Office: [240-533-0431](tel:240-533-0431); Cell: [301-346-5840](tel:301-346-5840)
[Damage Assessment Remediation and Restoration Program](#)
[Response & Restoration Blog](#)
[Like us on Facebook.](#); [Follow us on Twitter.](#)

--
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1315 East West Hwy, Suite 15104
Silver Spring, MD 20910 3282
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Cell (b)(6)

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recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.




BisonConnect Update

It's now easier to respond to **FOIA** and Congressional requests!

Where do I find the **FOIA DMU Processing Tool**?

The **FOIA DMU Processing Tool** is available in the BisonConnect Application launcher. From your BisonConnect email account, simply click on the Apps

Launcher  in the top right corner, and then click 'more' at the bottom of the window.

BisonConnect Support

- [BisonConnect Apps Support](#)
- [View past Tips & Tricks](#)

Colleagues,

We are excited to announce it's now easier than ever to respond to Freedom of Information Act (**FOIA**) and Congressional requests!

Our **FOIA Document Management Unit (DMU) Processing Tool** has been updated with the following features:

- Individual emails can be selected from email threads
- Each email thread can be saved as individual PDF documents
- Most email images will now be included in generated PDF documents
- Automatically assigns a standard naming convention for responses to Congressional requests

What does the **FOIA DMU Processing Tool** do?

The **FOIA DMU Processing Tool** is an application that compiles all emails and attachments from a specified label. Refer to the [FOIA DMU Processing Application Help Guide](#) for installation and usage instructions.

Information collected and processed is always stored safely in your Google Drive unless specifically chosen otherwise.

If you have any questions, comments or feedback please send them to bc_application_feedback@doi.gov or contact your [local help desk](#).

Thanks,
The BisonConnect Team

Clearwell Reviewer Guide

Clearwell Version 8.1.1

20 June 2016 Version 3



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*Note: This guide is the result of combined input from the NMFS Regions.
To all contributors - Thank You!*

Introduction

Clearwell is the NMFS standard for processing Freedom of Information Act Requests (FOIAs). Many sites use it to process ARs and Litigations as well. This document is intended to cover the basics of reviewing documents in Clearwell. It is not meant to be a FOIA guide. For FOIA and related exemption questions please consult with your local FOIA expert or your General Counsel. Although Clearwell is web-based, there are several things that must be installed on your desktop to ensure Clearwell works properly. You will need the Clearwell ActiveX plugin and the Reasons.ini file. Contact your local IT Helpdesk for these. If you have Clearwell questions or need training contact your local Clearwell System Manager or Corinne Brown at 209-283-0807 / corinne.brown@noaa.gov.

Logging in

1. Using INTERNET EXPLORER go to the URL of your Clearwell Site.
2. Login using your Google email username and password
(Email address minus "@noaa.gov" and Google email password)

NOTE: Keep in mind that you will not find a Clearwell icon on your desktop. Clearwell must be accessed using a URL in Internet Explorer. Access must be from a NMFS network or via VPN. If your first attempt to log on fails, please try again before contacting the Clearwell System Manager. At some locations, Clearwell always fails the first time.

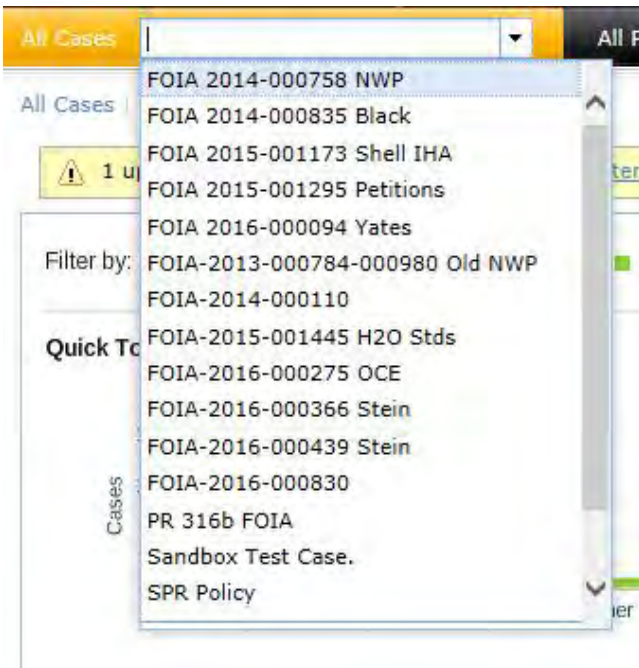
WARNING:
WARNINGWARNING**WARNING** This is a United States NOAA computer system, which may be accessed and used only for official Government business by authorized personnel. Unauthorized access or use of this computer system may subject violators to criminal, civil, and/or administrative action. All information on this computer system may be intercepted, recorded, read, copied, and disclosed by and to authorized personnel for official purposes, including criminal investigations. Access or use of this computer system by any person whether authorized or unauthorized, constitutes consent to these terms.
WARNINGWARNING**WARNING**

A successful login to Clearwell brings you to a screen that includes the example window shown below (exact location depends on the access level you have):



Select the drop down arrow. If you have access to more than one case, highlight the name of the case you want.

NOTE: The Sandbox Test Case is a practice case that you can use to become familiar with Clearwell. Most training for Clearwell will use this practice case.

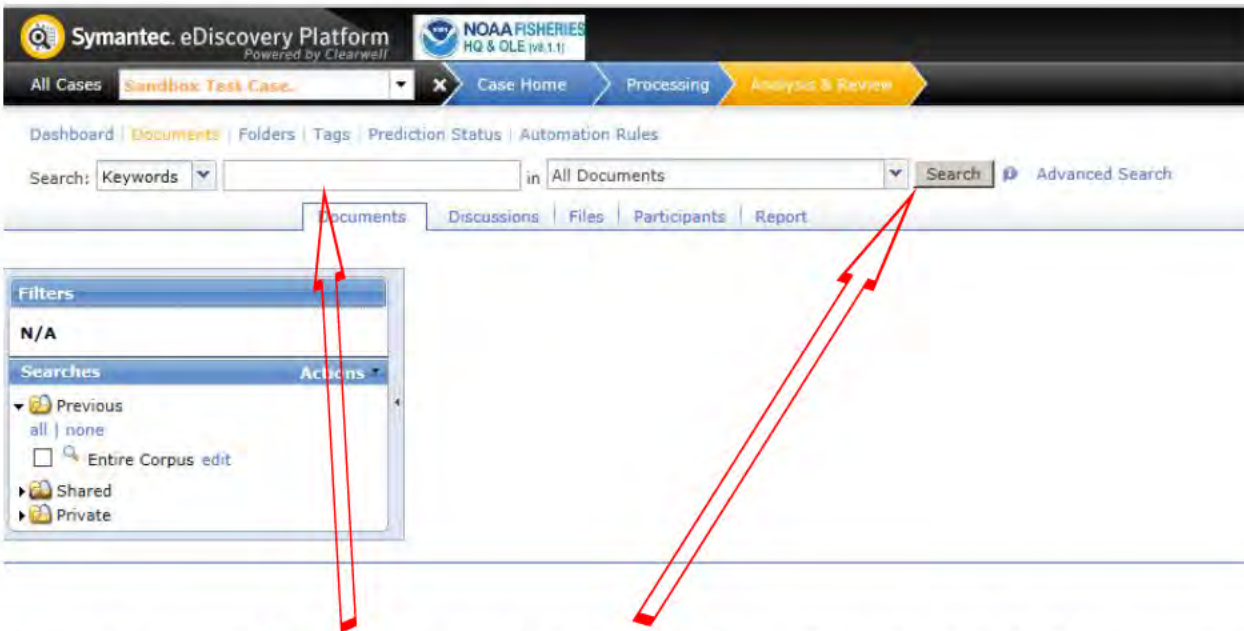


After you select your case, select the “Analysis and Review Tab.” This is where you will spend all of your reviewing time.



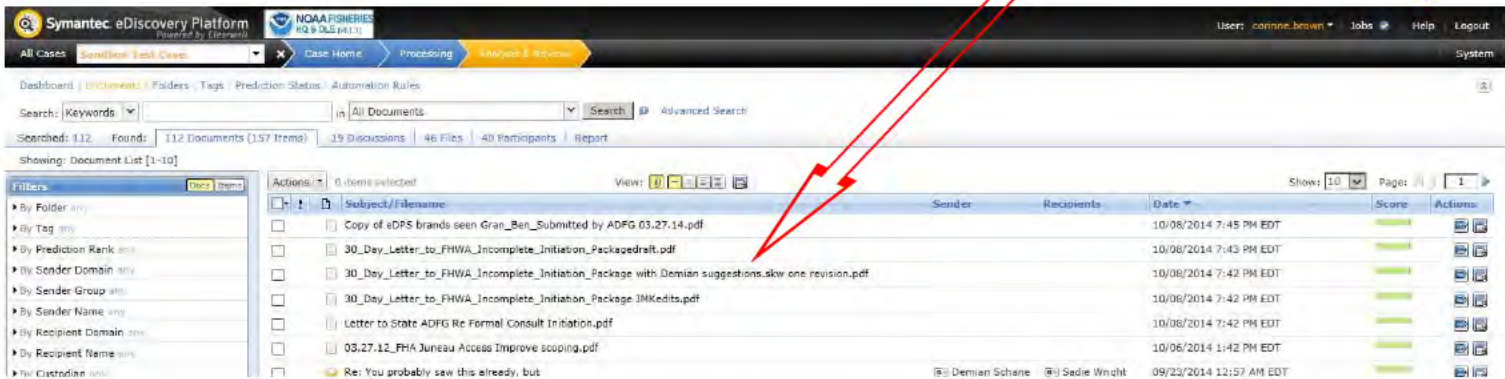
UNDERSTANDING THE ANALYSIS AND REVIEW INTERFACE

The screen will look like the one below:



Leave the search field blank and select "Search." You will see the list of all documents in the case.

NOTE: With the search field empty, selecting Search also acts as a Refresh – Refreshing the screen to show all documents.



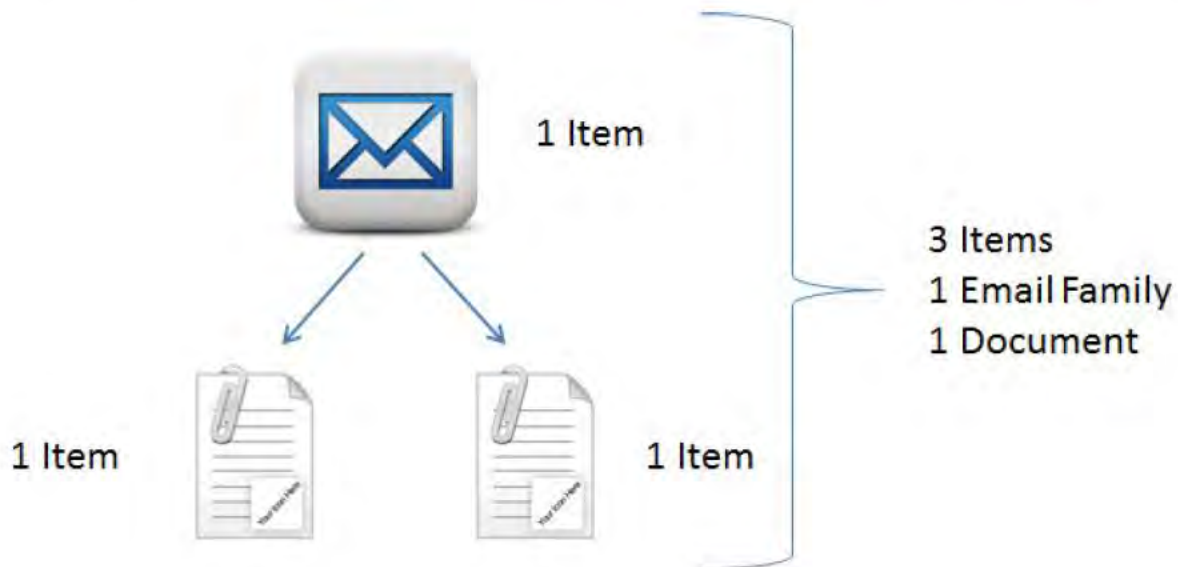
Document versus Item

The screenshot shows a software interface with a top navigation bar containing 'All Cases', 'Sandbox Test Case.', 'Case Home', 'Processing', and 'Analysis & Review'. Below this is a search bar with 'Keywords' selected and a search button. The search results show 'Searched: 112' and 'Found: 112 Documents (157 Items)'. Other statistics include '19 Discussions', '46 Files', '40 Participants', and a 'Report' link.

112 DOCUMENTS (loose documents or document families)

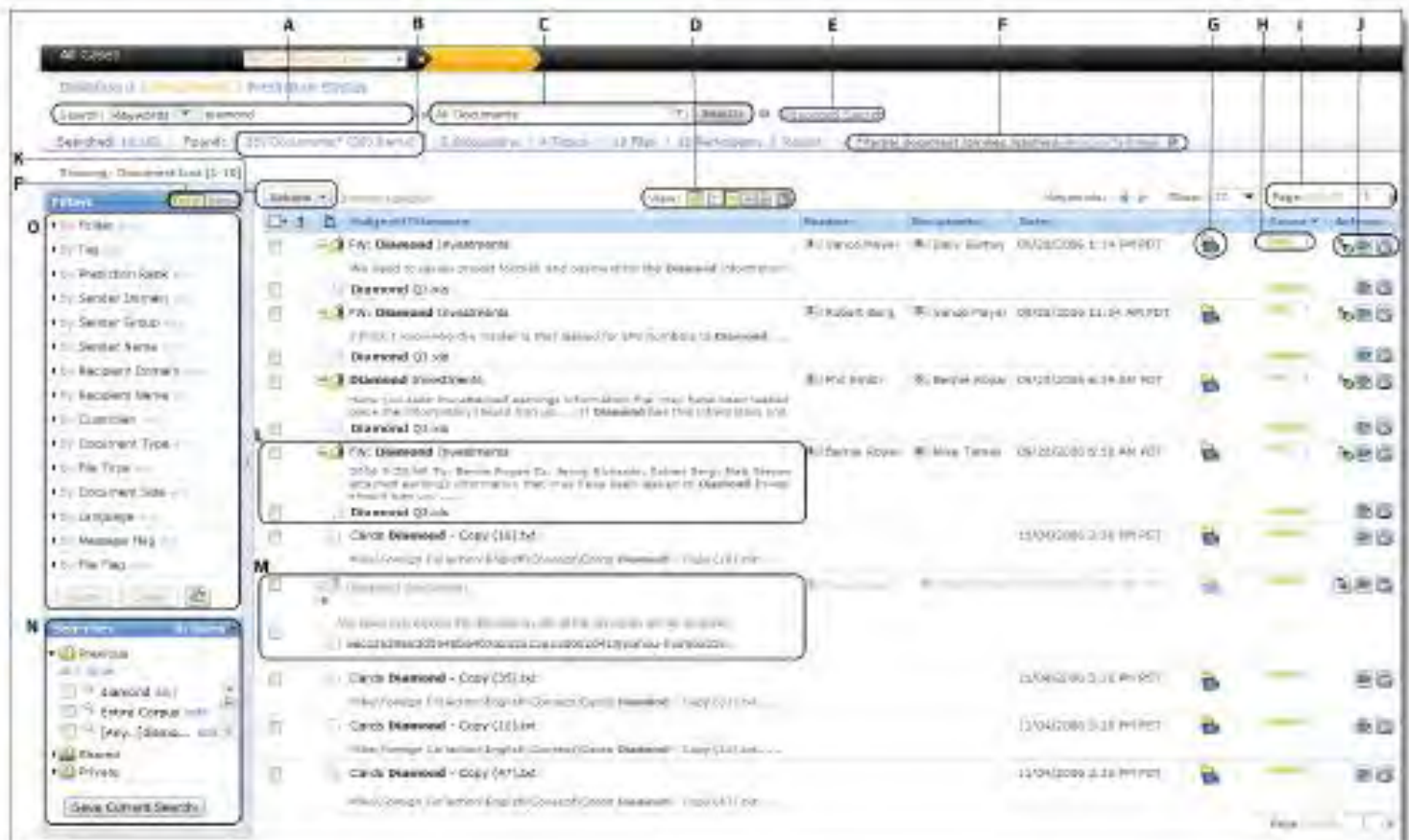
157 ITEMS (counts the attachments as separate items from the e-mail)

In Clearwell terminology, there is a major difference between an item and a document. A document is a single loose document or an email with all of its attachments. An email with no attachments is a document. An email with 2 attachments is one document (also known as an email family). In the case of the email with 2 attachments, **the email and each attachment is a separate item**, for a total of 3 items.



Understanding the Analysis & Review Interface

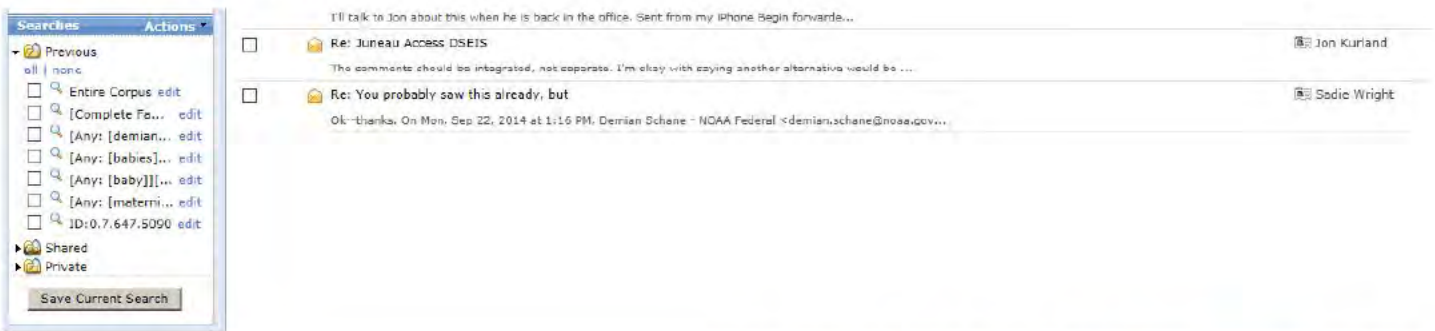
The Analysis & Review interface is where you perform all search, review, and document management tasks.



- A. (For basic searches) Select either a keyword or concept search query, and enter a search term.
- B. View search results by number of documents / items, (plus any hits resulting from advanced search queries).
- C. Select folders for review or production.
- D. Choose the level of detail displayed through viewing modes.
- E. Click to launch the **Advanced Search** screen.
- F. Version 8.0 introduces the option to add every member of a document family to your results. Before trying this option, consult the *User Guide* for more details.
- G. Tag Summary for each item will display when you hover over this icon, showing the folder and tag details.
- H. View the relevancy score for each document.
- I. Navigate through search term hits.

- J. Select an icon to tag or review an item. If the item is part of a family, another icon will appear, indicating whether items from the same family can be brought in or have been already.
- K. Select an action to **Tag, Export, Print, Batch,** and **Cache** groups of documents. (Depending on your account privileges, additional options may be available.)
- L. Select a default document or items to review. Attachments display in their own row and are no longer nested within the parent message hierarchy.
- M. See an incomplete document family. Hover over any of the document icons to learn more.
- N. Filter and cull down searches with Search Filters. Use the Filter Refresh option to update the search filters. The Filter Refresh option has smart controls to indicate when search filters are out of date and need updating. Any time the search filters are out of date, the Filter Refresh button will be highlighted orange. To update the search filters, simply click the Filter Refresh button.
- O. Rerun previous and saved searches.
- P. Docs Items Filter Count: Quickly switch between any of the ready-to-use search filters to view either Document Family or Item Level counts. Except for the Message Flag and Document Size filters, you can toggle between Document Family and Item-Level counts for all of the Search Filters for easy display of only the filter counts that interest you.

Find more documentation



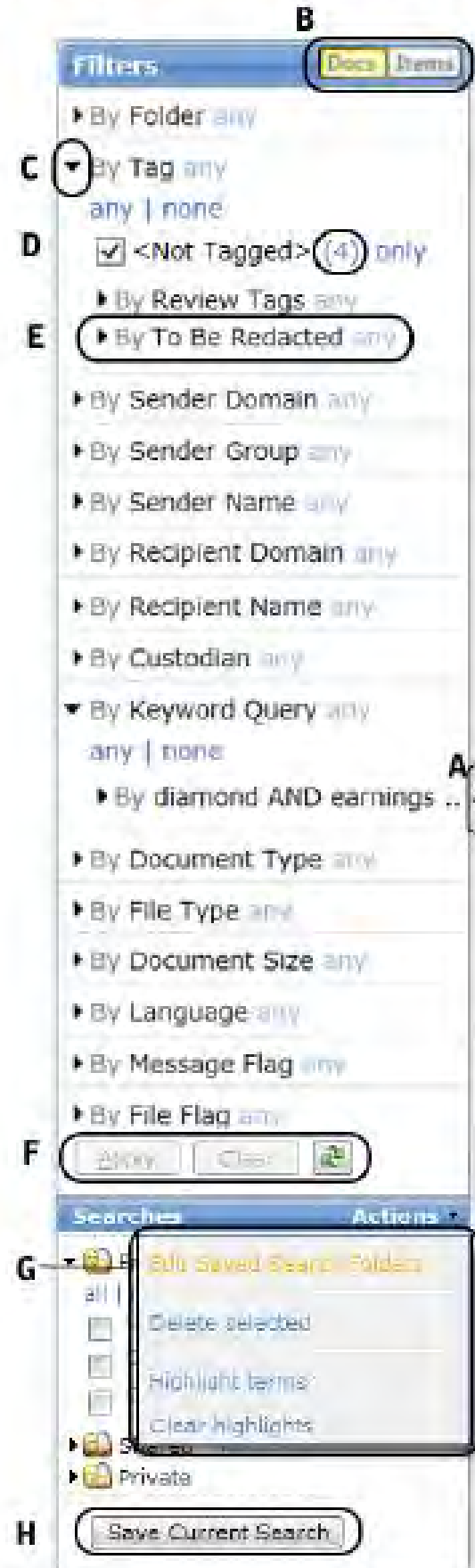
Close-up of picture above:



At the bottom of most screens you will see "Documentation". This is where you will find Clearwell manuals and Quick References.

Filters

A variety of filters are automatically generated based on the search results.



A.Hide or Show the Filter Pane. Click the arrow on the right of the pane.

B.Filter Documents or Items count. Quickly switch between any of the ready-to-use search filters to view either Document Family or Item Level counts. Except for the Message Flag and Document Size filters, you can toggle between Document Family and Item-Level counts for all of the Search Filters for easy display of only the filter counts that interest you.

C.Display Filter Values. Click the arrow to the left of each filter category.

D.View the Number of Results. Click the number associated with a filter to view that filter's results. Click again to return to all the results.

E.Filter Generated Tags for imaged items. Identify and locate tagged items. Click to display documents.

F.Apply Filters or Clear Filters. Click to apply or clear your search results. Click the **Filter Refresh** option to update the search filter.

G.Apply Highlights to Search Results.

H.Save the Current Search.

Note: Results displayed in the Filter pane can represent items or documents depending on the filter.

About Previous and Saved Searches

Previous Searches

A history of previous searches is recorded under the Previous Searches section. Click on the search name to run the search.

Saved Searches

Frequently used searches can be saved for quick access. To save the current search, click the Save Current Search button, then name the search and classify it as shared or private when prompted. Shared saved searches are available to all users. Private saved searches are only available to you. Saved searches are displayed under the Saved Searches section. Click on the search name to run the search.


While saving a search, you can specify a color to highlight search terms. You can later apply hit highlighting from multiple searches to any result set on screen. Select the searches with the desired terms and click the Highlight terms option in the Actions menu.

Note: If you are running an Activity Report, saved searches will appear as Basic, not Advanced searches, as separate line items. In Symantec eDiscovery Platform, basic searches are stemmed. Thus, saved searches (appearing as basic searches in the Activity Report) may or may not be stemmed depending on the search settings.

Specific Filter Examples:

Filters Docs Items

- ▶ By Folder any
- ▼ By Tag any
 - any | none
 - <Not Tagged> (7) only
 - ▶ By Image Status Tags any
 - ▼ By NMFS FOIA Tags Nov15 any
 - any | none | open | close
 - Non-Responsive (1) only
 - Full Release (23) only
 - ▼ Redacted (43) only
 - ▼ Partially Redacted (22) only
 - ▼ (b)(5) Inter/Intra-Agency Communications (22) only
 - ACP (Attorney Client Privilege) (22) only
 - ▼ Fully Redacted/Withheld (21) only
 - ▼ (b)(5) Inter/Intra-Agency Communications (21) only
 - ACP (Attorney Client Privilege) (21) only
 - ▼ Uncertain how to tag (1) only
 - Software/Technical Problem (1) only
 - ▶ By RedactionTagSet any
 - ▶ By Prediction Rank any
 - ▶ By Sender Domain any
 - ▶ By Sender Group any
 - ▶ By Sender Name any
 - ▶ By Recipient Domain any
 - ▶ By Recipient Name any
 - ▶ By Custodian any
 - ▶ By Document Type any
 - ▶ By File Type any
 - ▶ By Document Size any
 - ▶ By Language any
 - ▶ By Message Flag any
 - ▶ By File Flag any



If there is a number next to <Not Tagged> then there are untagged documents. Click on the number (159) to bring up just those items that are not yet tagged.

You can find all items tagged a certain way. 22 is the number of items tagged partially redacted/(b)(5)/ACP

The number 1 next to Software Technical Problem indicates that there is one document that won't display as normal and needs IT attention.

See what domain emails are from (eg noaa.gov or dot.gov or usaco.gov or gmail.com). This is a good way to quickly identify email that most likely has other agency implications.

Quickly find emails sent from GC attorneys. These may have (b)(5) implications.

Reviewing Documents

From the document list as shown below, select "Review" from above the list of documents to start reviewing with the first document or "Review" at the far right of the document you wish to specifically review. The document will open in "Text" mode. Using the pull down arrow at the top left of the screen, next to "View:" select "Native/Image" view.

The screenshot shows the Symantec eDiscovery Platform interface. At the top, there's a navigation bar with "All Cases", "New/View/Email Cases", "Case Home", "Processing", and "Analysis & Review". Below that, a search bar and filters are visible. The main area displays a list of documents with columns for checkboxes, Subject/Filename, Sender, Recipients, Date, Score, and Actions. Two red arrows point to the first document's checkbox and the "Review" button at the far right of the list. A callout box with the text "Select to review all items starting with the first" is positioned over the first document's checkbox. Another callout box with the text "Select to review an individual item" is positioned over the "Review" button at the far right of the list.

	Subject/Filename	Sender	Recipients	Date	Score	Actions
<input type="checkbox"/>	Copy of eDPS brands seen Gran_Ben_Submitted by ADFG 03.27.14.pdf			10/08/2014 7:45 PM EDT		[Review]
<input type="checkbox"/>	30_Day_Letter_to_FHWA_Incomplete_Initiation_Packagedraft.pdf			10/08/2014 7:43 PM EDT		[Review]
<input type="checkbox"/>	30_Day_Letter_to_FHWA_Incomplete_Initiation_Package with Demian suggestions skw one revision.pdf			10/08/2014 7:43 PM EDT		[Review]
<input type="checkbox"/>	30_Day_Letter_to_FHWA_Incomplete_Initiation_Package INKedits.pdf			10/08/2014 7:42 PM EDT		[Review]
<input type="checkbox"/>	Letter to State ADFG Re Formal Consult Initiation.pdf			10/08/2014 7:42 PM EDT		[Review]
<input type="checkbox"/>	03.27.12_FHA Jureau Access Improve scoping.pdf			10/06/2014 1:42 PM EDT		[Review]
<input type="checkbox"/>	Re: You probably saw this already, but	Demian Schane	Sadie Wright	09/23/2014 12:57 AM EDT		[Review]
<input type="checkbox"/>	Fwd: Jureau Access DSEIS	Sadie Wright	Linda Shaw	09/23/2014 12:48 AM EDT		[Review]
<input type="checkbox"/>	Re: Jureau Access DSEIS	Jon Kurtand	Sadie Wright	09/23/2014 12:35 AM EDT		[Review]
<input type="checkbox"/>	Re: You probably saw this already, but	Sadie Wright	Demian Schane	09/22/2014 5:21 PM EDT		[Review]

This close-up shows the "View:" dropdown menu in the document viewer. The menu is open, showing options: "Text" (selected), "Native/Image", "Redaction", and "Production". A red arrow points to the "Native/Image" option.

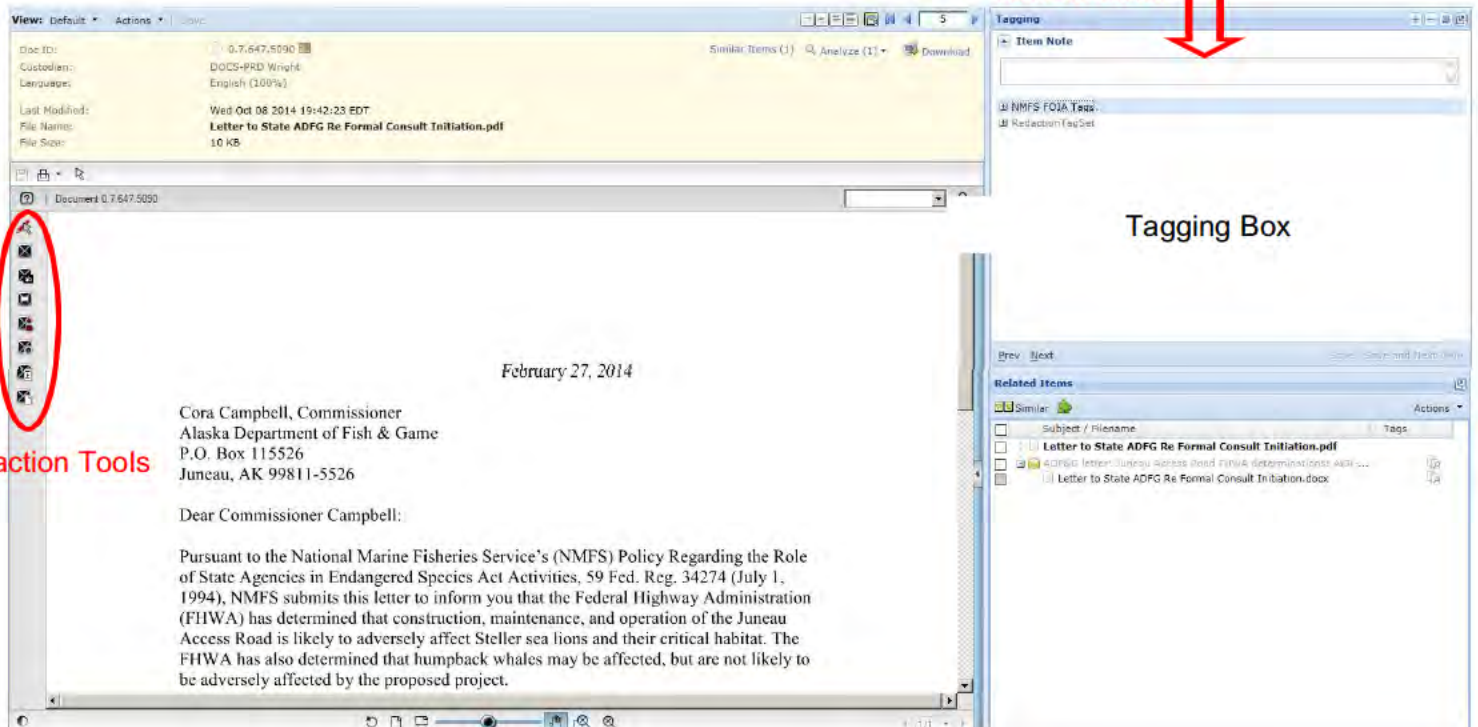
Note: If you can't see the document in Native/Image mode you probably need the ActiveX plugin. Contact your IT Helpdesk and ask for the Clearwell ActiveX plugin and the Clearwell Reasons.ini file.)

Now select Redaction/Default view



Remember "Item Notes" will print on the index. Discuss how the Notes field will be used prior to starting review of documents. Many people use Item Note to enter a description of the document at review time.

Below is what Redaction View looks like:



Redaction Tools

Tagging Box

Tagging Documents

The reviewer, subject matter expert and/or GC will determine if a document is responsive to the case.

If an item is fully or partially redacted it must be tagged **AND** redacted. These are two operations. The redaction tools are to the left of the document. Redacting blacks out portions of text on the document itself. Tagging adds the metadata to the document about its releasability and, if redacted, specifically why. This metadata is then written to the index. Tagging is done to the right of the document in the "Tagging Box". See the "ReviewerQuickStartGuide" for more information.

At the beginning of the case, the Tags can be altered if it makes them more appropriate. If you choose to use this option, remember that it must be requested before Tagging and Redactions begin.

The NMFS Standard FOIA Tag Template

A complete FOIA tag set is shown below. The AR tag set is very similar. The AR tags use words instead of (b) references (eg "PII" instead of (B)(6)).

Tagging

Item Note

NMFS FOIA Tags

- Non-Responsive
- Full Release
- Consult/Refer
 - Which Agency/Agencies?
 -
- Redacted
 - Partially Redacted
 - (b)(2) Internal-Human Resources
 - What type of info justifies redaction?
 -
 - (b)(3) Exempted by Statute
 - MSA 16 U.S.C. 1881 et seq.
 - MMPA 16 U.S.C. 1361
 - Other Statute
 - Which other statute?
 -
 - What type of info justifies redaction?
 -
 - (b)(4) Trade/Commercial/Financial
 - What type of info justifies redaction?
 -
 - (b)(5) Inter/Intra-Agency Communications
 - ACP (Attorney Client Privilege)
 - AWP (Attorney Work Product)
 - Deliberative Process
 - What type of communication justifies redaction?
 -
 - (b)(6) PII
 - What type of info justifies redaction?
 -
 - (b)(7) Law Enforcement
 - (A) Interference
 - (B) Fair Trial
 - (C) Personal Privacy
 - (D) Confidential Source
 - (E) Techniques & Procedures
 - (F) Endangerment
 - What type of info justifies redaction?
 -
 - Non-responsive Text

The Item Note box can be a great resource - allowing you to add document-specific information or make notes about the document that will show up on the index.

Reminder: Item Notes print on the index.

Fully Redacted/Withheld
 (b)(2) Internal-Human Resources
What type of info justifies redaction?

(b)(3) Exempted by Statute
 MSA 16 U.S.C. 1881 et seq.
 MMPA 16 U.S.C. 1361

Other Statute
Which other statute?

What type of info justifies redaction?

(b)(4) Trade/Commercial/Financial
What type of info justifies redaction?

(b)(5) Inter/Intra-Agency Communications
 ACP (Attorney Client Privilege)
 AWP (Attorney Work Product)
 Deliberative Process

What type of info justifies redaction?

(b)(6) PII
What type of info justifies redaction?

(b)(7) Law Enforcement
 (A) Interference
 (B) Fair Trial
 (C) Personal Privacy
 (D) Confidential Source
 (E) Techniques & Procedures
 (F) Endangerment

What type of info justifies redaction?

Uncertain how to tag
 Program Issue/Question
Nature of question (to remind yourself)

GC Issue/Question
Nature of question (to remind yourself)

Software/Technical Problem
Briefly describe the problem

Uncertain how to tag

If you are checking the “Uncertain” block, you **must** state “*why or who needs to be consulted*” and then skip to next document. When your question/problem has been cleared you must uncheck “Uncertain” box and select the final tag(s) for the document.

NOTES:

1. The "No Selection" tag is a system default that indicates that the document has not yet been tagged.
2. If you select a lower level tag, Clearwell will automatically fill the tags above it – saving you a few steps.
3. Remember to SAVE after every tag!!!
4. Emails with attachments: the attachments have the same Clearwell ID number as the parent item. You cannot search directly on an attachment number (eg 0.7.647.5027-000001) but if you search on the parent (0.7.647.5027) then you can go to the attachment.
5. You can tell if the document has been successfully tagged if you see the blue tag in the item header. If you hover over the tag a window will be displayed identifying how the item is tagged.

Redacting Documents

If an item is tagged fully or partially redacted, it must be physically redacted (blacked out) as well. This is very important! It is a TWO step process!

NOTE: If you have multiple partial redactions in an item, save after each to ensure all redactions are completed correctly.

Exemption Rationales

Most tags have a text block for you to enter the rationale for claiming the exemption. The tags are setup so you cannot continue until you have entered a rationale. Examples of rationales include: birthdate, observer data, attorney comments on draft document, etc.

The image shows a screenshot of a tagging interface with four main categories, each with a sub-selection box and a text input field for a rationale. Red arrows point to these text input fields:

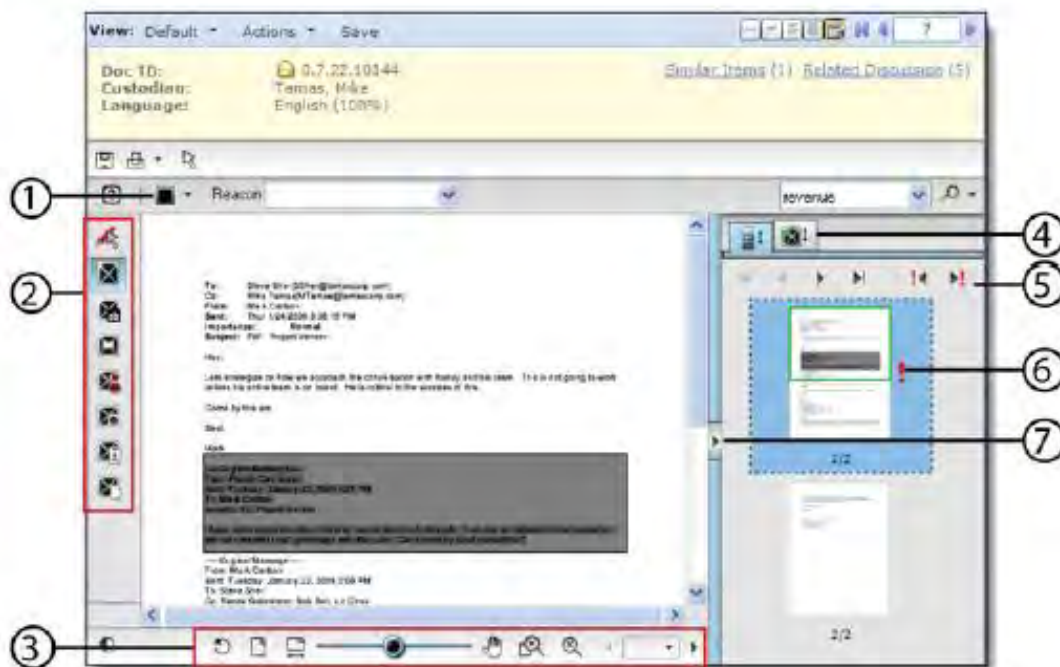
- (b)(4) Trade/Commercial/Financial
What type of info justifies redaction?
[Text box]
- (b)(5) Inter/Intra-Agency Communications
 ACP (Attorney Client Privilege)
 AWP (Attorney Work Product)
 Deliberative Process
What type of info justifies redaction?
[Text box]
- (b)(6) PII
What type of info justifies redaction?
[Text box]
- (b)(7) Law Enforcement
 (A) Interference
 (B) Fair Trial
 (C) Personal Privacy
 (D) Confidential Source
 (E) Techniques & Procedures
 (F) Endangerment
What type of info justifies redaction?
[Text box]

Multiple Exemptions

An item might have more than one EXEMPTION. Make sure the tagged exemptions are in agreement with the exemption(s) you stamped on the document when redacting. Be certain to save after each tag and each redaction!









The Redaction Interface

Redaction Mode provides the tools to redact case items, verify your redactions, and customize how items are displayed. The following diagram illustrates key functionality within Redaction Mode.



1. **Edit Color.** Select the color to use for redaction
2. **Redaction Tools.** Apply various redaction options to the item.
3. **Viewer Display and Magnification Options.** Select display options such as background color, monochrome, rotate, etc.
4. **Document Viewing Tabs.** Click to view thumbnails redaction verification options.
5. **Navigation Arrows.** Click to jump to the next redacted page.
6. **Redaction Indicator.** Exclamation mark indicates this page was redacted.
7. **Expansion toggle.** Click to hide or display the thumbnail pane.

Redaction Tools

	<i>"Select Redactions" on page 180</i>
 	<i>"Redact Area and Redact Text" on page 181</i>
	<i>"Allow Area" on page 181</i>
	<i>"Redact Privacy Information" on page 182</i>
	<i>"Find and Redact" on page 182</i>
	<i>"Find and Redact From/To" on page 183</i>
	<i>"Redact Pages" on page 183</i>

Select Redactions



Select and modify redactions. This includes changing the selected shape or area, modifying redaction reasons, or deleting the redaction altogether.

To edit a redaction

Select the Select Redactions tool, then press the SHIFT key and click the redaction to edit.

The redaction is selected and the redaction reason displays in the document header.

Redact Area and Redact Text



Redact area enables you to create a redaction on any part of the viewable document. You can draw redaction boxes over any part of a document. With Redact text, select text for redaction.

Once redacted, the document can then be printed or produced with these redacted areas burned into the printed or produced image thereby permanently hiding privileged or confidential information.

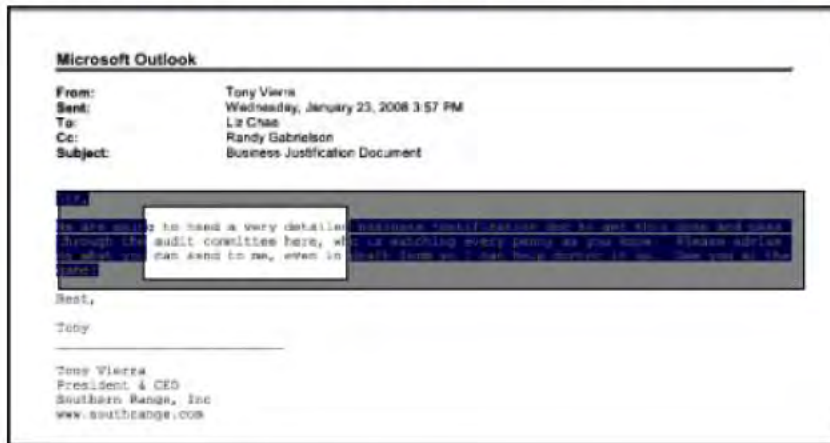
To redact an area

Click the icon and then hold down your mouse and drag to select an area to redact. Type a reason in the pop-up window, if prompted to do so, and click **OK**. The reason is displayed in the redacted area.

Allow Area



Allow area allows a portion of a redacted area to be revealed (i.e. un-redacted). This provides efficiency when all but a small area of the document needs to be redacted.



To allow an area within a redacted area

Click the icon and then hold down your mouse and drag to select an area within a redaction area to keep visible.

Redact Privacy Information



The Redact Privacy Information tool can be used to quickly find and automatically redact sensitive information commonly found in documents and forms including Social Security numbers, phone numbers, email addresses, dates of birth, and names. This can significantly improve the speed of redaction.

To redact privacy information

Click to open a pop-up window that allows you to modify privacy settings for redactions. The settings that you configure in the pop-up window apply until you modify these settings. Configure the following settings and click **Redact** to apply the settings or click **Cancel** to close the window without applying the settings.

- **Color**—Choose background color for the redacted content.
- **Reason**—Enter a default reason, which can be overridden for a specific redaction.
- **SSN (Social Security Number)**—Select to automatically redact any social security numbers found in the documents.
- **Phone numbers**—Select to automatically redact any phone numbers found in the documents. To exclude specific phone numbers from redaction, click **Use Exceptions** and specify the following:
 - Enter a phone number and click **Add**. Add additional phone numbers as needed.
 - Click **Edit** to modify a phone number.
 - Click **Open** to add a CSV file that contains phone numbers.
 - Click **Save** to save the phone number list.
 - Click **Delete** to remove a phone number.
 - Click **Clear All** to remove all phone numbers from the list.
 - Click **OK** to save the phone numbers and close the window.
 - Click **Cancel** to close the window without saving.

Find and Redact



This tool lets you find and mark for redaction multiple instances of a common word or phrase within the Redaction view of an open document. Reason codes and colors can also be applied. Find and Redact can help reduce the time required to redact a document by automatically redacting key phrases or confidential information.

To find and redact specific text

Click to open a pop-up window that allows you to find and automatically redact specified text. Enter the text, and click **Find whole word only** if you want to limit the search to whole words. Choose a redaction color and reason, and click **Redact**.

Find and Redact From/To



Find and Redact From/To finds and redacts sections of a document between two defined phrases including the application of specified reason codes and colors. This allows for fast redaction of blocks of text.

To find and redact from text string to a different text string

Click to open a pop-up window that allows you to find and automatically redact content that begins with a specified text string and ends with another text string. Enter the from and to text, and click **Include end text in redaction** if you want to include the ending text (the beginning text is automatically included). Choose a redaction color and reason, and click **Redact**.

Redact Pages



Redact Page allows you to quickly redact one or more full pages of email or file items with one command. Redaction reason codes and colors can also be applied as part of this command. ~~An alternative is to use the Redact whole e-mail option from the Actions menu, explained in the table, "Document Review Screen Icons and Functions" in this section. The latter produces only one completely redacted page as output, regardless of the total number of pages the document originally had.~~

To redact an entire page

Click to open a pop-up window that allows you to find and automatically redact specified pages. You can choose to redact all pages, the current page, or a page range. Choose a redaction color and reason, and click **Redact**.

In production, all pages print with black redaction fields.

~~**Note:** To redact an entire document, select Redact Whole E-mail from the Actions menu. The production, the document is replaced with a single slip sheet.~~

Redact Whole Item Discussion

As you can see from the lined out text above, there are two ways to redact an entire item:

1. Actions>Redact Whole Document OR
2. The Redaction Tool "Redact Pages" and select "All Pages"

ALWAYS use Redaction Tool "Redact Pages" and select "All Pages"

Why?

* Actions>Redact Whole Document replaces all of the pages with one blank page no matter how many pages there are, therefore the item gets one BATES number. Also, this method does not allow a Reason stamp on each page as required by FOIA rules.

* Redact Pages>All Pages blacks out and BATES numbers each page of the item and has a drop-down Reasons box to select from so the Reason will be stamped on each blacked out page.


While BATES numbering may not be important for a FOIA, if that FOIA is appealed or if it ultimately becomes an AR, BATES stamping becomes very important. If Actions>Redact Whole Document was used in the FOIA, someone would have to go back and change them all to Redact Pages>All Pages. Redact Pages>All Pages works for both FOIAs and ARs.

Saving Redactions

You can save redacted documents three ways:

- **Automatically**
The Auto-save feature saves your redactions when you advance to the next document. Auto-save is enabled by default.
- **When prompted**
If Auto-save is disabled, you are prompted to save your changes when you advance to the next document. Clicking **OK** saves your changes.
- **Manually**
You can click the **Save** icon anytime to save your redactions.

Editing Redacted Documents

If necessary, you can edit another reviewer's redactions on a document. Within the Redaction tools in Review Mode, select the "Select Redactions" () icon on the left toolbar. With the arrow cursor, press Shift and click on the redaction you want to change. This will make you the author of the redaction even if you do not subsequently edit the document.

When editing someone else's redactions, hold down the SHIFT key when selecting the redaction to gain control of the redaction and be able to change/delete the redaction.

Deleting Redactions

You can delete redactions one at a time by selecting them with the **Select Redactions** tool and pressing the Delete key, or you can delete all the redactions in a document from the **Actions** menu by clicking **Delete Redactions...**

When deleting all redactions from an item, it is OK to do it this way.

Viewing Redaction History Information

Hovering over a redaction provides information on the user who last created or edited the redaction, the time at which the edit was made and reason code for that redaction. This information makes it easier to perform quality control on redactions.

Drop Down Reason Box

When you redact any portion or all of a document, it must be stamped with the FOIA Exemption that justifies the redaction. Obviously then, the Reason when you are doing a redaction and the Tag on the right hand side of the screen must match.

NOTE: If you have an empty Reasons drop down box, call your IT Helpdesk and tell them that you need the Clearwell Reasons.ini file.




The screenshot shows a document viewer interface. On the left, a document titled "010313 JAI Final Meeting Notes DOTPF FHWA NMFS RE Sec 7.docx.docx" is open. A redaction is visible in the text "Aleria Jensen is on administrative leave", with a red circle around the redaction box. The document content includes sections for "Issues Overview" and "Discussion". On the right, the "Tagging" pane is open, showing a list of FOIA exemptions. The exemption "(b)(7)(C) Unlawful Disclosures" is selected and circled in red. Other exemptions listed include (b)(2) Internal-Human Resources, (b)(3) Exempted by Statute, (b)(4) Trade/Commercial/Financial, (b)(5) Inter/Intra-Agency Communications, (b)(6) PII, (b)(7)(A) Medical Information, (b)(7)(D) Law Enforcement, Non-responsive Text, and Uncertain how to tag.

Redaction Display Options











The screenshot shows a document viewer interface displaying a document from the United States Department of Commerce, National Oceanic and Atmospheric Administration. The document is dated March 27, 2012, and is addressed to Tim Haugh, Federal Highway Administration. The document title is "Re: Juneau Access Improvement STP-000S(131)/71100". A red circle highlights the document title and the "Re:" line. The document header includes the NOAA logo and contact information for the National Marine Fisheries Service in Juneau, Alaska. The footer includes the recipient's name and address.

Redaction Display Options

Viewer Display Options

Display Controls		
	Rotate 90	Rotate the document 90 degrees clockwise.
	Display Monochrome/ Display Color	Click to change the background color to black, white, gray, or default. Click to display the item in monochrome or color.
	Paging Controls	Click the arrows to page through the document.

Viewer Magnification Options

Markup, Print, and Page Controls		
	Markup Save	Click to save markups.
	Print	Click to print the document with the specified redactions.
	Select	Click and then use your mouse to select text.
	Fit All	Click to display the whole page.
	Fit Width	Click to display size the page to display the full width.
	Pan/Zoom	Click to clear the zoom and magnifier settings.
	Zoom Window	Click and then use your mouse to select an area. A zoomed version of the area is displayed. To return to the original size, using the page percent controls.
	Zoom In/Out	Click and then move your mouse back and forth to change the zoom level.
	Magnifier	Click and then click an area of the document to zoom in or that section.
	Find	Find specified text in the document.

Advanced Search

Running a search in Clearwell is easy! There are several ways you can search depending on what you are looking for. Below is a screen shot of the Advanced Search Screen. There are many options. For more information about using the Advanced Search feature please see page 86 of the Symantec eDiscovery User Guide 8.1.1

<https://clearwelldocs.symantec.com/manuals/8.1.1/UserGuide.pdf>

Symantec eDiscovery Platform Powered by Clearwell
NOAA FISHERIES HQ & OLE v81.11

All Cases **FOIA 2015-001173 Shell IHA** Case Home Processing Analysis & Review

Dashboard | Documents | Folders | Tags | Prediction Status | Automation Rules

Search: **Keywords** in All Documents Search Advanced Search

Searched: 75 Found: 75 Documents (75 Items) 0 Discussions 69 Files 2 Participants Report

Search Name: Entire Corpus

Style Keyword Concept Freeform Tag Event History **Run Search** **Save...** **Save As...** **Back** **Clear**

Scope Find by type and by folder

Families Include document families

Keywords Find by keyword or phrase
Any of these words
All of the words
The exact phrase
None of the words
Fields to search: All Clearwell fields and custom fields
 Search all variations of the keyword terms (stemmed search)
Filter and Count Generation:
 Limit filter and count generation for improved search speed
 Normal filter and count generation
 Generate keyword details for filters and report

Date Find by sent or last modified date

File Find by file properties

Size Find by size

Languages Find by language properties

Tags Find by tags or notes

Actions Find by the history of actions taken on them

Custom Fields Find by using fields imported through 3rd party load files

Email Headers Find by email header fields

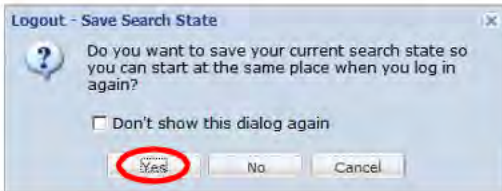
Production Numbers Find by production or Imported number

Identifiers Find by Document ID, Source Location, Custodian, or Batch

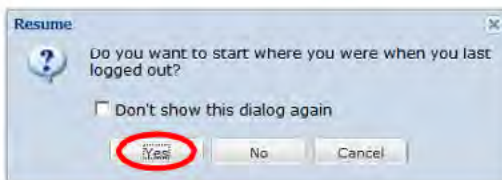
Run Search **Save...** **Save As...** **Back** **Clear**

Don't lose your place!

Clearwell will prompt you upon exit “do you want to save your current search state so that you can start at the same place when you log in again?”



Select YES. When you log into the system (the next time), you will be asked if you want to return to the same place where you left off.



Deduplication

Clearwell automatically deduplicates items loaded into a case. For an item to be a duplicate it must be EXACTLY the same. For a loose document this means the exact same title, size, date modified, etc. For an email this means that the Subject, Date and Time Sent, From, To, Cc and all of the attachments must be identical to another email. Although emails often contain identical attachments, if any other part of the email is not the same, it is not a duplicate. Clearwell never deduplicates out an attachment. Email families are always left in-tact.

Comments on this document

If you have comments on or suggestions for improving this document please contact: Corinne Brown at corinne.brown@noaa.gov

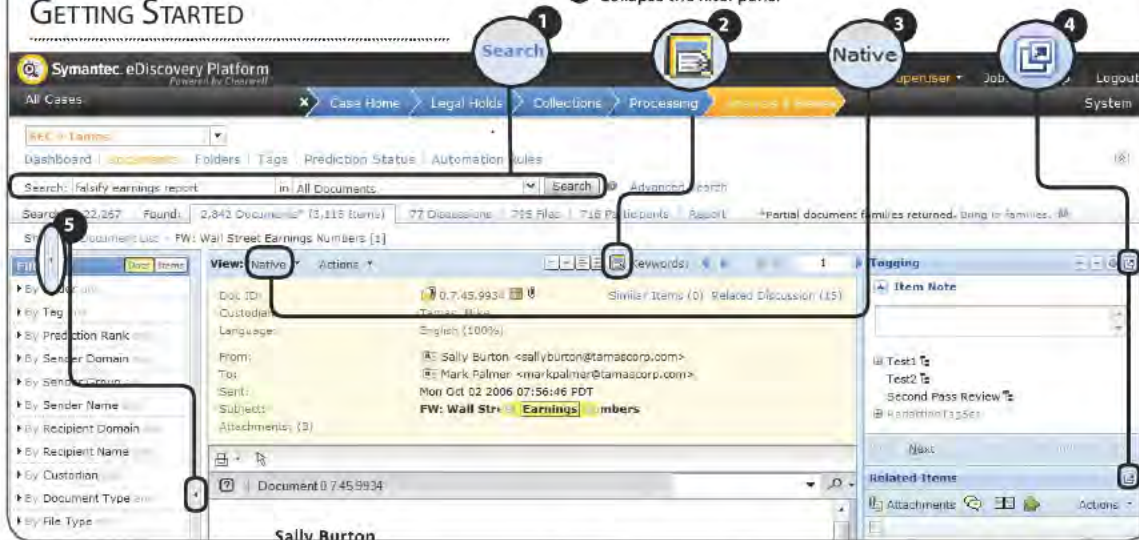
Appendices

Review Mode

Note: Certain documents in Review Mode may be unavailable if they have not been designated for review.

GETTING STARTED

- 1 Run a search query or open your review folder.
- 2 Open Review Mode. (In 8.0: also expand the collapsed filter pane)
- 3 View documents in Native/Image View.
- 4 Undock the Tagging & Related Items windows.
- 5 Collapse the filter pane.



REVIEW TIPS & TRICKS

Expand & Collapse the Tag Decision Tree

You can open the entire decision tree by clicking the + button.

Use Hit Highlighting

Use the arrow buttons or keyboard shortcuts to display the next hit.



- Circle arrow buttons move to the next, or previous hit.
- Arrows surrounding the document number field move to the next, or previous document.

View Attachments before clicking Next Document

Choose your View mode deliberately:

Text Mode. Faster display and multicolor highlighting.

Native Mode. Faster review by displaying messages in full, native fidelity.

Sort Records Chronologically
Before entering Review Mode, you can sort your records by date.

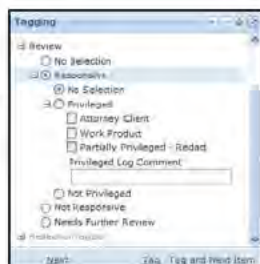
Keyboard Shortcuts:

- F11 hides browser toolbar
- ALT+N displays next document
- ALT+P displays previous document
- ALT+T saves marked tags
- ALT↓ displays next hit
- ALT↑ displays previous hit

TAGGING DOCUMENTS

Tags are a simple way to indicate the status and relevance of a document. Tags enable you to classify documents based on selection criteria predefined by your case administrator.

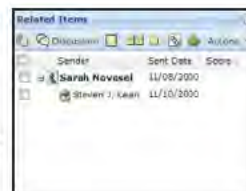
To tag a document:
Select a tag.
Click the Tag button to save the selection.



VIEWING RELATED ITEMS

The **Related Items** window accelerates review by providing a single place to view everything related to a document.

Attachments, Discussions, Topics, Similar Docs, Folders, Tag History, and Custom Attributes are all accessible from **Related Items** enabling you to view, tag, and bulk tag without changing modes.



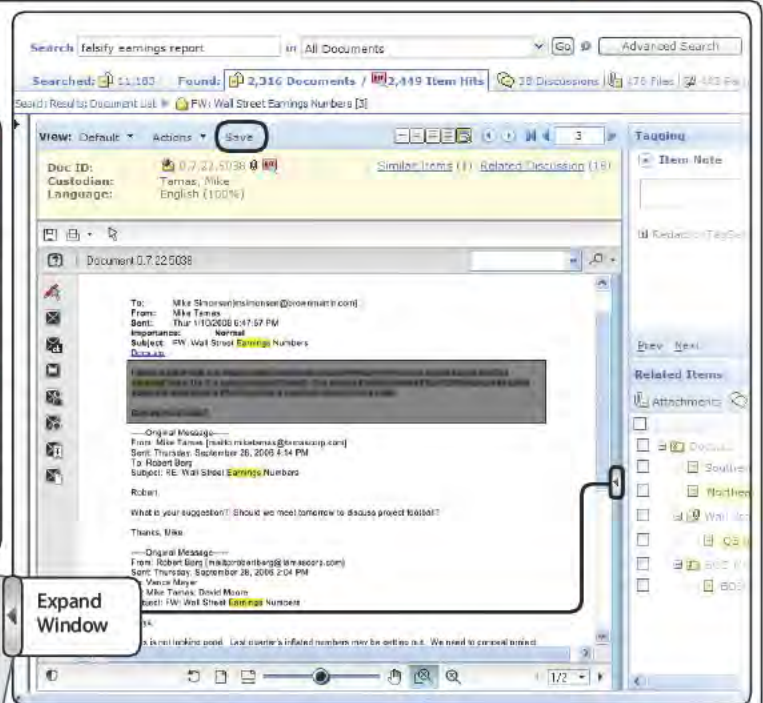
Redaction Mode

Note: Redaction Mode may be unavailable for certain documents if they have not been designated for review.

GETTING STARTED

1. Open Redaction Mode. (View: > Redaction > set name)
2. Redact the document using the Redaction drawing tools.
3. Save your redactions.
4. Use the Thumbnail & Verification views to review your redactions.
5. Produce the document to burn in your redactions.

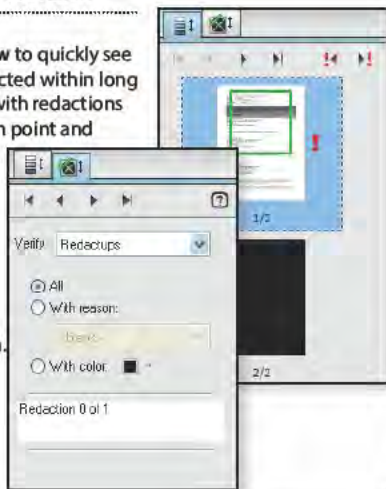
EDIT TOOL	Select Redactions	
BASIC TOOLS	Redact Area	
	Redact Text	
	Allow Area	
SEARCH-BASED REDACTION	Redact Privacy Data	
	Find and Redact	
BULK REDACTION	Redact Section	
	Redact Page	



VERIFYING REDACTIONS

Use thumbnail view to quickly see what has been redacted within long documents. Pages with redactions have an exclamation point and highlighted border.

Verify redaction accuracy by stepping through documents or searching based on case specific criteria.



REDACTION TIPS & TRICKS

For a faster redaction session, cache the review set first.

The Auto save feature automatically saves your redactions when you move to the next document.

You can redact an entire document two ways:

Redact whole document (preferred).
Produced document is replaced with a single slipsheet.

Redact Pages
All pages print with black redaction fields. This option is available from the vertical Redaction tool bar.

Redactions should be either black or white.



Keyboard Shortcuts

Remember: F11 hides your browser toolbar.

ANALYSIS & REVIEW



SHORTCUTS FROM THE ADVANCED SEARCH PAGE

- ALT+R** Run Search
- ALT+C** Clear Search



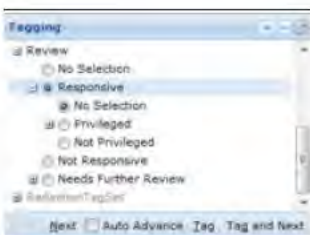
APPLYING NEWLY SELECTED FILTERS TO A SEARCH

- ALT+A** Apply Filter



TAGGING DOCUMENTS DURING INLINE REVIEW

- ALT+T** Display tagging window



TAGGING IN REVIEW MODE

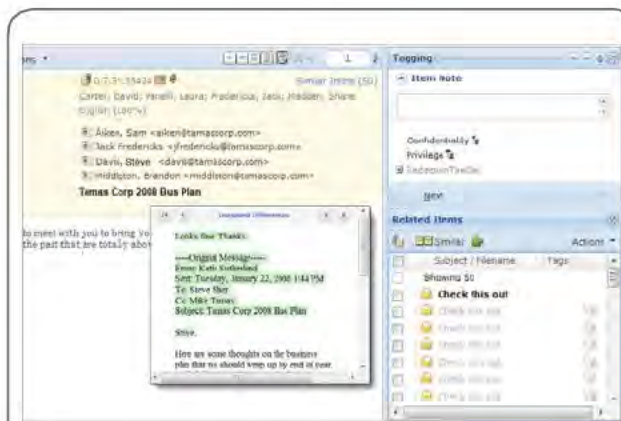
- ALT+N** Next
- ALT+G** Tag and Next
- ALT+P** Previous
- ALT+T** Tag

SCROLLING THROUGH SEARCH RESULTS

- ALT↓** Display next hit
- ALT↑** Display previous hit

SAVING YOUR MARKUP IN REDACTION MODE

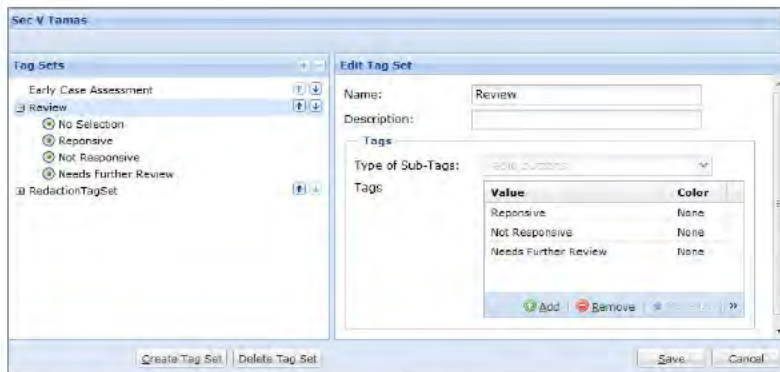
- CTRL+S** Save markup



DISPLAYING DIFFERENCES BETWEEN SIMILAR ITEMS

SHIFT + Ctrl + Click on an item appearing in the "Related Items" pane to show a popup with differences displayed.

CASE MANAGEMENT



CREATE TAGS AND TAG SETS FROM CASE HOME > TAGS

- ALT+C** Create Tag Set
- ALT+A** Add tag
- ALT+R** Remove or Delete Tag Set
- ALT+U** Move tag up
- ALT+W** Move tag down
- ALT+S** Save

April 11, 2016

MEMORANDUM TO: Offices Potentially Holding Responsive Records

FROM: NMFS PR FOIA Liaison **Lamar Turner**
Subject Matter Expert (SME) **Marta Nammack**

SUBJECT: FOIA DOC-NOAA-2016-000605

Center for Biological Diversity request regarding “Significant Portion of
Its Range Policy”

(b) (5)

(b)(5)

(b)(5)

(b)(5)

(b) (5)

(b) (5)

If you have questions about the procedures for collecting documents, please contact the **NMFS PR FOIA Liaison-Lamar Turner** at (301) 427-8492 or nmfs.hq.pr.foia@noaa.gov. If you have questions regarding the scope of the request, you may contact the subject matter expert (marta.nammack@noaa.gov).



**National Marine Fisheries Service
Greater Atlantic Regional Fisheries Office (GARFO)
Operations and Budget Division
Gloucester, MA**

Regional Guidelines under the Freedom of Information Act August 11, 2015

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GARFO Freedom of Information Act (FOIA) Policy and Procedures

Due to the stringency of FOIA completion requirements and the corresponding prospect of our being financially liable for fees and other penalties, the following guidelines are being implemented.

Under FOIA, we are initially given 20 working days from the day the request is received in NOAA to deliver responsive documents to a requester. This includes developing the fee estimate (once the scope of the request is clarified) for searching for the documents, conducting the search, producing copies, reviewing each responsive document for release determination, drafting of the forwarding letter, coordination with the General Counsel Northeast Section (GCNE), and if a partial or full denial, submitting the letter for Assistant Administrator's (AA) signature. When a request is complicated and/or voluminous, a longer processing period may be granted. Also, clarification of scope and fee waivers may stop the clock while they are being considered.

To expedite FOIA request processing, the following actions will be observed at GARFO:

I. ROLES AND RESPONSIBILITIES

1. **GARFO FOIA Coordinator** - GARFO shall have a FOIA Coordinator whose role will be to manage, process and coordinate assigned FOIA requests under established FOIA policies, procedures, and timelines as set forth in the NMFS Freedom of Information Act Handbook (July 2005), and NOAA Administrative Order 205-14. A primary role of the FOIA Coordinator is to act as a liaison amongst the various parties to a FOIA, including the requester, other Divisions and Regional Offices, the Headquarters FOIA Program and GCNE. The FOIA Coordinator will work with the Subject Matter Expert (SME) and requester to clarify the scope of the request and documents these changes in the response letter to the requester. The FOIA Coordinator shall participate on national FOIA calls and maintain an up-to-date understanding of FOIA processing issues both regionally and nationally, as well as maintain a substantive understanding of FOIA foreseeable harm standards. The FOIA coordinator may assist in individual FOIA responses, but response to an individual FOIA and all associated tasks therewith are primarily the responsibility of the Divisional Points of Contact and SMEs (see Roles and Responsibilities, Nos. 2 and 3).
2. **GARFO FOIA Points of Contact** - Each program office will appoint a FOIA point of contact (POC). The POC will be responsible for tracking FOIA request progress within his/her division and keeping the GARFO FOIA Coordinator informed of the FOIA status. The POC will also be responsible for quality assurance/quality control (QA/QC) and will need to develop an understanding and proficiency in FOIA's substance, its exemptions, as well as the NOAA's internal administrative orders and guidelines, including the NMFS FOIA Handbook and NAO 205-14. The POCs will work with the FOIA Coordinator to establish consistent FOIA processing amongst all

GARFO divisions, as well as consistency on a national level with other similarly situated divisions in other regions (e.g. the GARFO Habitat POC will be expected to have an understanding on how other regions handle similar habitat documents). When there are multiple regions/FMC's involved, then typically the "lead" for a FOIA request is assigned to the FMC/region and division with the largest amount of responsive material.

3. **GARFO SMEs** The involved program office shall assign the individual FOIA requests to staff familiar with the topics involved in the request. The SMEs are responsible for performing all tasks associated with searching, reviewing, and compiling the FOIA response. This may include liaison with other offices and regions conducting the search to determine if additional responsive materials exist and to minimize duplicate materials. The SME should be in touch with GCNE early in the process to keep them informed of any issues.

GCNE - GCNE provides legal advice and makes recommendations on regulatory, statutory or case law issues concerning FOIA. GCNE also provides legal review and clearance on all denial, no responsive record responses, and full releases that involve litigation or potential litigation. GCNE review and clearance is not required on full releases that do not involve litigation or the threat of litigation, although GCNE must be notified in advance of all full releases, so that a review may be provided if appropriate under the circumstances. GCNE will respond by email acknowledging notification of the proposed FOIA response and providing further input or review as may be appropriate.

II. REGIONAL FOIA PROCESS

1. Upon receipt of a FOIA request the FOIA Coordinator will notify the POC(s), IRM (Clearwell), and GCNE.
2. Within two days of receipt from the FOIA Coordinator, the POC will identify the SME(s) and determine if further clarification is needed from the requester. If clarification is needed, the FOIA Coordinator will then stop the FOIA clock (which counts days of processing time) until the request has been clarified, typically in a conference call arranged by the FOIA Coordinator between the program office(s) (SME, POC), GCNE (as needed), and the requester. During this call, it shall be the SME/POC's responsibility to negotiate the clarification with the requester.
3. At the same time, if a fee waiver has been requested, the NOAA FOIA Officer will be determining if a fee waiver should be granted this should be done in consultation with the Regional FOIA Coordinator. This activity will also stop the clock until the fee waiver determination is made. How long this takes will depend in part upon when the requester is able to respond to agency inquiries. Program offices should NOT conduct a search for documents unless/until a fee waiver is granted as the scope of the request may change or the requester may decide they are not willing to pay the fee.

4. If a fee is applicable (i.e. no fee waiver) and the scope has been clarified, then the clock is re-started and the program office will develop a fee estimate and submit it to the FOIA Coordinator within three days unless the expected effort to conduct the search and provide documents is minimal and therefore no fees (an hour or so of staff time). The fee estimate should incorporate search time by staff as well as review time by GCNE. If the fee estimate is above \$1,000.00, then it must be reviewed and approved by the program office division chief.
6. Program offices should NOT conduct a search for documents until notice of payment or agreement to pay has been received from the requester UNLESS the effort to produce the responsive documents is minimal.
7. FOIA Coordinator will draft/send a fee letter to the requester based upon the fee estimate provided by the program office. The clock stops again when the fee letter is sent.
8. The FOIA Coordinator will provide notification to conduct a search when either: (a) the requester pays the fee (or agrees to pay if under \$250.00), or (b) it is determined that the requester is exempt from fees. Upon notice of receipt of fees or exemption from fees, the clock is restarted.
9. The program office should complete the search portion of the process within 10 days after clarification and fees are received or waived. If the request is large and/or complicated or requires coordination with other divisions and FMCs and a longer period will be required, this information should be immediately conveyed to the FOIA Coordinator along with an estimate for when the search will be completed so this information can be conveyed to the requester. This information will be documented in FOIA online by the FOIA Coordinator. If multiple offices are involved in the search, the assigned SME will typically coordinate between the offices to insure that all responsive materials are located, as well as to avoid duplication. If needed, the FOIA Coordinator may assist in this effort.
10. When the search is completed, the SME shall review and analyze all documents such that the SME understands the information being conveyed in the documents as well as the overall context and issues surrounding the documents. The SME shall divide the documents into two categories: 1) releasable documents; and 2) non-releasable documents. The non-releasable documents should then be further subdivided by the applicable FOIA release exemption and the SME shall provide a brief explanation as to how/why the exemption applies to the specific document. If an exemption applies to a document, but if the agency nevertheless wants to exercise its discretion to release the document, the SME will similarly provide a brief explanation as to both the exemption and rationale for release. The SME is expected to consider not only the FOIA exemptions in deciding whether to release a document, but also GARFO's past policy and practices in releasing similar or identical documents. If the SME has a question or concern about releasing a document, the SME will first consult with his or her POC to get the question answered. If the POC cannot answer the question, the

SME and POC may next contact the FOIA Coordinator or GCNE as appropriate given the issue. If there are documents from another agency then the FOIA Coordinator should be contacted so that a release determination may be obtained from the originating agency.

11. The SME shall compile the responsive documents into an electronic folder in their native (e.g. MS Word, Excel, email, etc.) formats. Further guidance on this process can be obtained from Susan Galusha in IRM. IRM will be able to provide guidance on the use of software (“Clearwell”), which can aid in the organization and review of the responsive documents including redactions and exemptions.
12. When the SME completes the compilation, review, and analysis he or she shall forward the response and documents to the POC for a quality assurance/quality control (QA/QC) review. At this same time, the SME shall also notify the FOIA Coordinator and GCNE that the FOIA response has been submitted to the POC for a QA/QC review. This notification should also identify whether documents are being withheld and whether the matter involves litigation or the threat of litigation. If the SME believes that a full release of the documents is warranted, then the SME will similarly inform the FOIA coordinator and GCNE by email that the released records are responsive documents, that the released documents are not eligible for an exemption and/or their release would not cause foreseeable harm. GCNE will respond by email acknowledging notification of the proposed FOIA response and providing further input or review as may be appropriate.
13. The POC shall conduct QA/QC review of the response and the documents to ensure that the release and/or withholdings are consistent with past and present regional/national policy and practice. The POC shall notify the FOIA Coordinator and GCNE when the QA/QC review is completed. If the response involves a denial or a no responsive records response, or if the matter involves litigation or potential litigation, then GCNE will need to review and clear the matter. In such situations, the POC must make the documents and analysis electronically available by placing the documents on the GARFO network (e.g., the O drive) to the FOIA Coordinator and GCNE.
14. GCNE will conduct a legal review and clearance on all denial, no responsive record responses, and/or if the matter involves litigation or potential litigation. GCNE does not need to review and clear full releases that do not involve litigation or the threat of litigation, however, the SME, POC and FOIA Coordinator, shall notify GCNE in advance of all potential full releases consistent with these procedures so that GCNE may offer additional guidance if appropriate. If the review cannot be conducted within 4 days, then GCNE will immediately convey this information to the FOIA Coordinator so it can be relayed to the requester. In order to more speedily process the review, the POC and SME will meet with GCNE in person or by phone to discuss the overall context of the response, as well as any specific issues in the response, prior to GCNE review.

15. The program office will provide the document category tallies to the FOIA Coordinator. The document tallies can be a page count, document count, or file count, but should be consistent whichever method is chosen, across all categories. If documents are being withheld, the FOIA Coordinator will draft a foreseeable harm analysis to be signed by the program chief. The FOIA Coordinator will also draft a forwarding letter. If the letter requires AA signature, it will then be provided to GCNE for review.
16. After GCNE review, the draft letter will then be forwarded by the FOIA Coordinator to the NMFS FOIA Officer for AA signature. If the response is a Full Disclosure (no responsive items withheld) then the FOIA Coordinator may forward the responsive items to the requester under his/her own authority/signature.
17. Once the forwarding letter is signed, the FOIA Coordinator will forward one set of responsive document copies to the requester and retain the other set in the FOIA files and/or in FOIA online as well as providing a copy of the forwarding letter to the program office POC.

Please be advised that if you encounter exceptions or have questions about these guidelines or the FOIA process, you can contact the GARFO FOIA Coordinator for further guidance.

**NMFS GARFO FOIA Points of Contact
June 2015**

PRD.....	Julie Crocker
SFD.....	Mark Grant
APSD.....	Uvi Ajavon
HCD	Kathy Middleton
OBD.....	Nick Anderson
SED.....	Allison Ferreira
IRM.....	Susan Galusha
NEPA/RO.....	Jennifer Anderson

FOIA Critical Performance Elements for Staff and Their Supervisors

NOTE: These critical elements should be included in the Division Chief and Division POC's performance plans.

A. Program Staff Divisional Points of Contact

Critical Element: Freedom of Information Act (FOIA)

Objective: Respond in a timely manner to all assigned FOIA requests. Coordinate actions within organizational component. Ensure quality and consistency in regional FOIA responses.

Major Activities:

1. Receives FOIA requests.
2. Forwards to responsible staff.
3. When applicable, assists program staff in developing a fee estimate
4. Tracks document search when authorized to ensure completion to meet statutory deadlines.
5. Works with and provides substantive guidance to SME during the SME's review, analysis and response.
5. Reviews SME's completed FOIA response to ensure quality assurance and quality control of FOIA response.
6. Informs FOIA Coordinator of any delays.
7. Receives training and is knowledgeable in substantive FOIA law, as well as all FOIA policies procedures set forth in the NMFS FOIA Handbook, NOAA Administrative Order 205-14 and GARFO FOIA Guidelines in order to assist division in their FOIA response.
8. Coordinates with other regional POCs and FOIA programs on a national level to better understand agency policy and practice in response to FOIA, then relays that programmatic knowledge to staff who are responding to the specific FOIA request.

B. Program Staff: SMEs

Critical Element: Freedom of Information Act (FOIA)

Objective: Respond in a timely manner to assigned FOIA requests. Conduct search and processing of responsive materials.

Major Activities:

1. Clarify request (if needed).
2. Determine if responsive material exists.
3. Determine if other offices have responsive material.
4. Provide fee estimate inputs to POC.
5. When authorized conduct document search to ensure completion to meet statutory deadlines.

6. Conduct review of responsive materials to determine if any items require withholding and determine appropriate exemptions if needed.
7. Inform FOIA Coordinator and POC of any delays.
8. Coordinates with other SME's when needed to reduce duplication of responsive materials.
9. Provide completed response to POC for review.

C. Program Staff: Supervisors of Program Office FOIA POCs and SMEs

Critical Element: Freedom of Information Act (FOIA)

Objective: Respond in a timely manner to all assigned FOIA requests. Ensure coordination of actions within organizational component.

Major Activities:

1. Supervise staff to ensure FOIA requests are received and forwarded to the party with oversight of responsive documents.
2. Supervise POC and SME to ensure that Program Office FOIA responses are consistent with FOIA, as well as all FOIA policies and procedures set forth in the NMFS FOIA Handbook, NOAA Administrative Order 205-14, and GARFO FOIA Guidelines.
3. Ensure that staff provides required responses including fee estimates and responsive documents to FOIA Coordinator so that statutory reporting requirements can be met.
4. (Division Chiefs) Inform FOIA Coordinator of concurrence with fee estimates of \$1,000 or more.
5. Ensure that staff are not only trained in FOIA, but are competent both on the substance of FOIA, including its exemptions, as well as all FOIA policies procedures set forth in the NMFS FOIA Handbook, NOAA Administrative Order 205-14 and GARFO FOIA Guidelines.

D. GARFO FOIA Coordinator

Critical Element: Freedom of Information Act (FOIA)

Objective: Coordinate Greater Atlantic Region compliance with Freedom of Information Act (FOIA)

Major Activities:

1. Coordinate the timely development and clearance of GAR responses to FOIA requests.
2. Provide guidance to GAR staff on FOIA requirements.
3. Maintain records on FOIA actions.
4. Coordinate with HQ, GC, NEFSC, the fishery management councils, and other regions on FOIA activities.

Appendix 1: FOIA Document Withholding Criteria: NMFS GARFO

There are a number of FOIA document withholding exemptions but these are the ones that have proven to be subject to NMFS GARFO requests. A complete list is available in the NMFS FOIA Handbook.

5 U.S.C. 552(b)(3), prohibits from disclosure any information specifically exempted from disclosure by statute.

Examples include: Vessel landings information and fishing locations protected by the Magnuson Stevens Act.

5 U.S.C. 552(b)(4), protects confidential business information (CBI) from disclosure when release would cause substantial harm to the competitive position of an individual, a partnership or a corporation from whom the information was obtained.

Examples include: Vessel landings information and fishing locations.

5 U.S.C. 552(b)(5), protects inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency. This Includes:

Attorney-client privilege Applies to communications between client and attorney: withholding always at the discretion of the client (NMFS)

Attorney-work product privilege Always labeled as “Attorney-work product”, these are documents or writing drafted by an attorney

Pre-decisional deliberations

“The most commonly invoked privilege incorporated within Exemption 5 is the deliberative process privilege, the general purpose of which is to “prevent injury to the quality of agency decisions.” Specifically, three policy purposes consistently have been held to constitute the bases for this privilege: (1) to encourage open, frank discussions on matters of policy between subordinates and superiors; (2) to protect against premature disclosure of proposed policies before they are actually adopted; and (3) to protect against public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately the grounds for an agency's action.

*Traditionally, courts have established two fundamental requirements, both of which must be met, for the deliberative process privilege to be invoked. First, the communication must be pre-decisional, i.e., “antecedent to the adoption of an agency policy.” Second, the communication must be deliberative, i.e., “a direct part of the deliberative process in that it makes recommendations or expresses opinions on legal or policy matters.” The burden is upon the agency to show that the information in question satisfies both requirements.”**

*Guide to the Freedom of Information Act 2009 Edition, US Department of Justice

As well as being the most common category for potentially exempt NMFS documents, the pre-decisional exemption is also one of the most difficult to defend, and a presumption of release for any deliberative document is assumed. In other words, in order to withhold a document, we must be able to articulate a specific reason (that would cause damage) for withholding it. Such a reason is referred to as “Foreseeable Harm” and must be documented in a Withholding Review/foreseeable harm analysis. Some possible rationales for withholding deliberative documents include:

1. Public confusion This may be an acceptable basis for withholding when in the midst of developing an agency position before it is finalized.

Examples:

A) Preventing the public confusion that might result from disclosure of reasons and rationales that were **not** ultimately the grounds decisions

B) Premature Release: Preventing premature disclosure of proposed policies before they are finally adopted; e.g. prior to a rule being finalized in a regulatory process.

2. Chilling effect e.g. unable to process work efficiently because potential reviewers become reticent to offer their opinions fearing FOIA requests and other inquiries.

Remember, a presumption of release is assumed and current guidelines instruct us to “err on the side of releasing if there is any doubt.

5 U.S.C. 552(b)(6), protects information which would cause a clearly unwarranted invasion of personal privacy.

Assuming the responsive items in question are truly subject to this exemption, the exemption is almost always upheld without exception.

Examples include: Personally identifiable information (PII) such as social security numbers, bank account numbers, or medical information.

January 20, 2021

TASK MEMORANDUM FOR: Lead FOIA Coordinator
FROM: NOAA FOIA Office
SUBJECT: FOIA Request No. DOC-NOAA-2016-00[XXXX]

I am forwarding a copy of the attached FOIA request for your attention. Please follow this procedure:

1. Note the Time Period and Due Date:

The search period date for this FOIA is [DATE] to [DATE] or the start date of actual document search. In order to complete this request within the regulatory time-frame, please respond to the requester by [DUE DATE].

2. Attach Completed FOIA Search Log(s) (See “Correspondence Other” in FO for template)

Search every location that could reasonably contain responsive documents.

3. Assemble Potentially Responsive Records:

Note that potentially responsive records may include emails with attachments, final documents, draft documents, maps, shapefiles, raw data, handwritten notes, informal records, and electronic records.

4. Produce Two Document Sets:

Once assembled, produce two document-sets in electronic format. Mark each identical page from each document-set with a uniquely identifiable number. Maintain one set as an original set. The original documents must have no redactions. Maintain the original document set in an accessible repository for six years.

Use the second document-set to apply FOIA exemptions. **Annotate the FOIA exemptions next to, or over, each redaction.**

As you organize the potentially responsive documents, please identify documents or portions of documents that originated with another office, agency, or bureau. Please refer the documents, or request a consultation, as required by FOIA regulations.

5. Summarize the FOIA Review:

Please check **ALL** appropriate boxes.

Interim Response [DATE] and Interim Response [NUMBER]

Final Response

The NMFS FOIA office closed this request due to non-payment of fees, or requester's failure to respond to correspondence or,

Responsive records in our possession can be released in their entirety.

Responsive records in our possession contain segregable exempted material and should be partially withheld. The applicable exemption is noted over all drawn redactions.

Responsive records in our possession contain exempted material and should be withheld in full. The applicable exemption is noted over all drawn redactions and/or listed in the response letter and index.

Responsive records in our possession belonging to another, office, bureau, or federal agency for disclosure determination(s) have been sent to that component for referral or consultation.

Responsive records in our possession are openly available to the public.

A reasonable search was conducted and no responsive records were located.

A foreseeable harm review and analysis was not applicable.

A foreseeable harm review and analysis was completed for documents containing entirely or partially withheld content. Reviewers determined that disclosure of withheld content would result in harm to an interest protected by the statutory exemption(s), or that disclosure is prohibited by law.

Check **all** exemptions that apply to this foreseeable harm review:

(b)(2) Agency Personnel Rules/Practices

(b)(3) Federal Law Prohibits Disclosure

(b)(4) Business Trade and Financial Information

(b)(5) Attorney Work Product/Attorney-Client Privilege/Deliberative Process

(b)(6) Personal Privacy Protection

(b)(7) Law Enforcement Purposes

6. Verify the following items if a Final Response is being made:

Admin Cost tab has been completed (or request is being closed as Failure to Pay Fee or Failure to Clarify Scope).

NMFS FOIA Liaison (or assistant) has been set as first reviewer in the Review tab.

The responsive records have been uploaded to FOIAonline (FO) and properly coded for release type (UR, RR, etc.).

Exemptions used have also been noted in FO next to each record (click the pencil icon).

A FORDEM or Bulk Upload memo is being used in place of the responsive records and has been uploaded to both the Records tab and Other Correspondence.

Search Logs have been properly filled out, signed, and uploaded to Other Correspondence (if search was conducted).

The Final Action Letter (FAL) contains an accurate count of the records being released and describes all exemption(s) being applied to the records.

Draft FAL is uploaded to Other Correspondence.

7. Obtain Signatures to Verify Review:

Lead Coordinator

Date

RO/LO Senior Official

Date

*General Counsel

Date

GC was consulted on this response, but did not review documents. GC has no legal objection assuming the information contained in this form is accurate.

GC was consulted and reviewed certain documents containing possible redactions and withholdings. GC has no legal objection to the agency's response for those specific documents.

*** NOTE:** *GC review is necessary for any FOIA release that is in litigation or is related to a request in litigation. However, GC signature is not necessary for full releases that do not involve litigation or the threat of litigation.*

Image not available for this document, ID: 0.7.3707.13660

(b) (5)

(b) (5)

Image not available for this document, ID: 0.7.3707.13660 000002

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Tuesday, January 24, 2017 5:26 PM
To: John Almeida - NOAA Federal; Kimberly Katzenbarger - NOAA FEDERAL
Cc: Robert Swisher - NOAA Federal; Lola Stith - NOAA Affiliate
Subject: FOIA Regulation Consolidation Memorandum
Attachments: FOIA Regulation Consolidation Memorandum.docx

Hey Guys--

As discussed (b)(5)

?

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) (C)

Confidentiality Notice: This e mail message is intended only for the named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.

(b) (5)

(b) (5)

Image not available for this document, ID: 0.7.3707.13661 000002

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Tuesday, January 24, 2017 4:11 PM
To: Arlyn Penaranda - NOAA Federal
Subject: Fwd: Rough Draft of FOIA Reg Consolidation Memo
Attachments: FOIA Regulation Consolidation Memorandum.docx

Just finished the first (very rough) draft of it--see attached.

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) (C)

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----- Forwarded message -----

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Date: Tue, Jan 24, 2017 at 4:10 PM
Subject: Rough Draft of FOIA Reg Consolidation Memo
To: Robert Swisher - NOAA Federal <robert.swisher@noaa.gov>
Cc: Dennis Morgan - NOAA Federal <dennis.morgan@noaa.gov>, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>

Rob--

(b)(5)

[Redacted]

[Redacted]

[Redacted]

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
(b)(6) (C)

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(b) (5)

(b) (5)

Image not available for this document, ID: 0.7.3707.13662 000002

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Tuesday, January 24, 2017 5:30 PM
To: Samuel Dixon - NOAA Affiliate
Subject: Fwd: FOIA Regulation Consolidation Memorandum
Attachments: FOIA Regulation Consolidation Memorandum.docx

FYI--

Here is a copy of the draft Memo. Let me know if you've got any input or thoughts on it--

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) (C)

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Date: Tue, Jan 24, 2017 at 5:26 PM
Subject: FOIA Regulation Consolidation Memorandum
To: John Almeida - NOAA Federal <john.almeida@noaa.gov>, Kimberly Katzenbarger - NOAA FEDERAL <kimberly.katzenbarger@noaa.gov>
Cc: Robert Swisher - NOAA Federal <robert.swisher@noaa.gov>, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>

Hey Guys--

(b)(5)

_____?

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) (C)

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(b) (5)

(b) (5)

Image not available for this document, ID: 0.7.3707.13663 000002

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, January 25, 2017 9:39 AM
To: Stacey Nathanson - NOAA Federal
Cc: Robert Swisher - NOAA Federal; Dennis Morgan - NOAA Federal; Lola Stith - NOAA Affiliate
Subject: Judicial Watch Extension for Plaintiff's Memo in Opposition to SJ
Attachments: Consent to Plaintiff's Extension to File Opposition.pdf

Hey Stacey,

I saw on Pacer the stipulated extension the Plaintiff's got for filing their Opposition to our Motion for Summary Judgment (b)(5)

[REDACTED]
[REDACTED]
[REDACTED]?

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) (C)

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

_____)	
JUDICIAL WATCH, INC.,)	
)	
Plaintiff,)	
)	
v.	)	Civil Action No. 15-2088 (CRC)
)	
U.S. DEPARTMENT OF)	
COMMERCE,)	
)	
Defendant.)	
_____)	

CONSENT MOTION FOR 30 DAY EXTENSION OF BRIEFING SCHEDULE

Plaintiff Judicial Watch, Inc., by counsel and pursuant to Rule 6(b)(1) of the Federal Rules of Civil Procedure and Local Civil Rule 7, hereby moves the Court to grant a 30 day extension of time to file its combined opposition and cross-motion for summary judgment and to extend the remaining briefing schedule dates accordingly. The parties have conferred and Defendant consents to this 30-day extension of time. As grounds for the motion, Plaintiff states as follows:

MEMORANDUM OF POINTS AND AUTHORITIES

1. The Court may, for good cause, extend the time by which an act may or must be done “with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires.” Fed.R.Civ.P. 6(b)(1)(A).
2. By minute order entered on October 7, 2016, the Court set a briefing schedule for summary judgment motions in this Freedom of Information Act (“FOIA”) lawsuit. Pursuant to that schedule, Defendant’s motion for summary judgment was due by December 16, 2016; Plaintiff’s cross-motion for summary judgment and opposition to Defendant’s motion are due on

January 20, 2017; Defendant's reply in support of its motion and opposition to Plaintiff's motion are due on February 17, 2017; and Plaintiff's reply in support of its motion is due on March 17, 2017.¹ Defendant's motion for summary judgment was filed on December 15, 2016 (Dkt Entry No. 16) and Plaintiff's response is due this Friday, January 20, 2017.

3. Good cause exists for granting this motion. Plaintiff's undersigned counsel went on maternity leave earlier than expected in October. Counsel returned to work last Friday, January 13, 2017. While reviewing the status of several cases, counsel noticed that Plaintiff's combined opposition and cross-motion for summary judgment in this case was due in two days. As a result of the abrupt transfer of files from undersigned counsel to colleagues covering cases in her absence, Defendant's motion for summary judgment filing and Plaintiff's pending opposition filing date in this case were mistakenly overlooked. Today, January 18, 2017, is the first time undersigned counsel has read Defendant's motion for summary judgment and related documents filed on December 15, 2016.

4. Plaintiff respectfully requests a 30 day extension of time to file its combined cross-motion and opposition to give undersigned counsel time to properly read, review, and respond to Defendant's dispositive motion arguments and brief Plaintiff's motion for summary judgment.

5. Under the circumstances described above, a 30 day extension of time is reasonable, will not prejudice the parties, and will not unduly delay this case. Granting this extension will allow Plaintiff to understand Defendant's arguments and articulate an appropriate

¹ The parties' October 6, 2016 joint status report offered a proposed briefing schedule that included Plaintiff's reply in support of its cross-motion due on March 10, 2017. The Court's minute order states Plaintiff's reply due by March 3, 2017. However, the October 11, 2016 docket entry setting deadlines reflects Plaintiff's reply due by March 17, 2017.

reply to help ensure Plaintiff's responsive brief will be most helpful to the Court in aid of its eventual decision on the summary judgment motions.

6. Counsel for both parties have conferred. Defendant consents to modifying the briefing schedule to accommodate the requested 30 day extension of time for Plaintiff to file its combined cross-motion and opposition to Defendant's motion for summary judgment.

7. Accordingly, the parties propose the following modifications to the current briefing schedule for dispositive motions for summary judgment:

- Plaintiff's combined cross-motion for summary judgment and opposition to Defendant's motion due on February 20, 2017;
- Defendant's combined reply in support of its motion and opposition to Plaintiff's motion due on March 17, 2017; and
- Plaintiff's reply in support of its motion due on April 17, 2017.

For the reasons stated above, Plaintiff's motion should be granted.

Dated: January 18, 2017

Respectfully submitted,

JUDICIAL WATCH, INC.

/s/ Lauren M. Burke

Lauren M. Burke

D.C. Bar No. 1028811

425 Third Street SW, Suite 800

Washington, DC 20024

Tel: (202) 646-5172

Fax: (202) 646-5199

Email: lburke@judicialwatch.org

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

_____)	
JUDICIAL WATCH, INC.,)	
)	
Plaintiff,)	
)	
v.	)	Civil Action No. 15-2088 (CRC)
)	
U.S. DEPARTMENT OF)	
COMMERCE,)	
)	
Defendant.)	
_____)	

PROPOSED ORDER

Having considered Plaintiff’s consent motion for a 30 day extension of the briefing schedule and finding that good cause exists, the Court hereby:

ORDERS that the motion is **GRANTED**. Plaintiff’s combined cross-motion for summary judgment and opposition to Defendant’s motion is due on February 20, 2017; Defendant’s combined reply in support of its motion and opposition to Plaintiff’s motion is due on March 17, 2017; and Plaintiff’s reply in support of its motion is due on April 17, 2017.

SO ORDERED.

Date: _____

Christopher R. Cooper
United States District Judge

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From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Thursday, January 26, 2017 7:33 AM
To: Stephen Lipps - NOAA Federal; John Almeida - NOAA Federal; Holmes, Colin; Robert Moller - NOAA Federal; Scott Smullen - NOAA Federal; Jeff Dillen - NOAA Federal; Kristen Gustafson - NOAA Federal
Cc: Tom Taylor; Kimberly Katzenbarger - NOAA FEDERAL; Charles; Dennis Morgan - NOAA Federal; Stacey Nathanson - NOAA Federal; Robert Swisher - NOAA Federal; Steven Goodman - NOAA Federal; Samuel Dixon - NOAA Affiliate; Lola Stith - NOAA Affiliate; Zachary Goldstein - NOAA Federal; Douglas Perry - NOAA Federal; Nkolika Ndubisi - NOAA Federal; Jeri Dockett - NOAA Affiliate
Subject: Weekly Incoming and High Visibility Requests
Attachments: Weekly FOIA Incoming and High Visibility Requests Report 01182016-01252016.xls; JW complaint.pdf; FOA v. NOAA Complaint.pdf

Good Morning,

Please see the attachment for this week's report. The only request of note seeks all communications that took place on or after January 20, from the Trump Administration or Transition Team, as well as internal NOAA communications, discussing which agency matters NOAA employees may or may not publicly discuss with external individuals or organizations. The request is from Public Citizen, Inc. (DOC-NOAA-2017-000497).

In litigation, Judicial Watch obtained an extension for filing their Opposition to our Motion for Summary Judgment in the *Judicial Watch v. NOAA* case. The original request sought records regarding the underlying scientific data for the Tom Karl Hiatus paper and the Oct. 13, 2015 Rep. Lamar Smith subpoena. The new date for the Plaintiff's filing deadline is February 20, 2017. A copy of the underlying complaint is attached.

In the *Friends of Animals v. NOAA* litigation (b)(5) [REDACTED]
[REDACTED]
[REDACTED]. A copy of the underlying complaint is attached.

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) [REDACTED] (C)

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AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
District of Colorado

FRIENDS OF ANIMALS, a New York non-profit corporation, and
SEA SHEPHERD LEGAL, a Washington non-profit corporation
Plaintiff(s)
v.

Civil Action No. 16-3007

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, an agency of the United States
Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Bob Troyer
United States Attorney
1225 17th Street
Suit 700
Denver, CO 80202

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Michael Harris
Wildlife Law Program
Friends of Animals
7500 E. Arapahoe Road, Suite 385
Centennial, CO 80112

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 16-3007

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):*

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
FRIENDS OF ANIMALS, a New York non-profit corporation, and SEA SHEPHERD LEGAL, a Washington non-profit corporation
(b) County of Residence of First Listed Plaintiff Arapahoe County
(c) Attorneys (Firm Name, Address, and Telephone Number)
Michael Harris
Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Suite 385, Centennial, CO 80112; Tel: (720) 949-7791

DEFENDANTS
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, an agency of the United States
County of Residence of First Listed Defendant District of Columbia
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT
PERSONAL INJURY
REAL PROPERTY
TORTS
PRISONER PETITIONS
FORFEITURE/PENALTY
LABOR
IMMIGRATION
BANKRUPTCY
SOCIAL SECURITY
TAX SUITS
OTHER STATUTES

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
5 U.S.C 552- Failure to respond to request under the Freedom of Information Act
Brief description of cause: AP Docket

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMANDS
CHECK YES only if demanded in complaint.
JURY DEMAND: Yes No

DATE: 12/08/2016
SIGNATURE OF ATTORNEY OF RECORD: /s/ Michael Ray Harris

FOR OFFICE USE ONLY
RECEIPT #
AMOUNT
APPLYING IFP
JUDGE
MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows.

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment noting, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example:

U.S. Civil Statute: 47 USC 553

Brief Description:

Unauthorized reception of cable service

Or:

"AP Docket"

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

FRIENDS OF ANIMALS, and
SEA SHEPHERD LEGAL;

Plaintiffs,

v.

NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION
an agency of the United States,

Defendant.

Civ. No. 16-3007

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF
(FREEDOM OF INFORMATION ACT)**

INTRODUCTION

1. This action is brought to remedy violations of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et. seq.* Specifically, it challenges the failure of the National Oceanic and Atmospheric Administration (“Federal Defendant”) to provide a final determination, including all responsive documents, within the time required by FOIA in regard to Plaintiffs Friends of Animals’ and Sea Shepherd Legal’s (“Plaintiffs”) April 14, 2016 request for information (“Request”).

2. In the Request, Plaintiffs asked for all documents in Federal Defendant’s possession related to pending or final approvals under the Marine Mammal Protection Act, National Environmental Policy Act and the Endangered Species Act for anthropogenic activities affecting the Cook Inlet beluga whale. Plaintiffs also sought all documents related to biological analyses and threats to the Cook Inlet beluga whale. *See Exhibit A.*

3. As of the date on this Complaint, Federal Defendant has not made a final determination regarding the release of documents, nor has Federal Defendant provided a timeline or other plan for compliance with the requirements of FOIA to indicate when or whether the Request will be fully satisfied.

4. Federal Defendant is unlawfully withholding public disclosure of information that Plaintiffs are entitled to receive under FOIA. By failing to make either a timely determination or timely and complete releases after the initial tranche of documents, Federal Defendant failed to comply with the statutory mandates and deadlines imposed by FOIA.

5. Accordingly, Plaintiffs seek declaratory relief establishing that Federal Defendant has violated FOIA. Plaintiffs also seek injunctive relief directing Federal Defendant to make a determination on the Request, provide a timeline for the release of the remaining documents, and promptly provide the requested material free of cost.

6. Plaintiffs bring this lawsuit to obtain timely disclosure of critical information related to authorized takes, and to pending authorizations of requested takes, of hundreds of Cook Inlet beluga whales from multiple and geographically overlapping oil and gas projects in the Cook Inlet. Given the significant potential impact upon the rapidly diminishing population of Cook Inlet beluga whales and the strong public interest in disclosure of information that may directly assist Plaintiffs' ongoing efforts to protect this population, Plaintiffs seek expeditious treatment of their Complaint pursuant to 28 U.S.C. § 1657.

JURISDICTION AND VENUE

7. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA) and 28 U.S.C. § 1331 (federal question). This Court may grant the declaratory relief under 28 U.S.C. §§ 2201, *et seq.* (Declaratory Judgment Act) and injunctive relief under 5 U.S.C. § 552(a)(4)(B) (FOIA). An actual, justiciable controversy exists within the meaning of the Declaratory Judgment Act between Plaintiffs and Federal Defendant. The Court has jurisdiction, upon receipt of a complaint, "to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B).

8. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B), which provides venue for FOIA cases in this district as the district in which a plaintiff resides. Friends of Animals maintains a principle office here in Colorado. Venue is also proper under 28 U.S.C. § 1391(b) because the defendant is subject to personal jurisdiction in this federal district.

PARTIES

9. Friends of Animals is a nonprofit international advocacy organization with nearly 200,000 members, incorporated in the state of New York since 1957. Friends of Animals seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living and domestic animals. Friends of Animals engages in a variety of advocacy programs in support of these goals. Friends of Animals informs its members about animal advocacy issues as well as the organization's progress in addressing these issues through its magazine called *ActionLine*, its website, and other reports. Friends of Animals has published articles and information advocating for the protection of wild species so that they can live unfettered in their natural habitats.

10. In 2013, Friends of Animals created a federal wildlife law program. The program established its principle office in Centennial, Colorado. The office consists of four full-time employees and one part-time employee. Through this office, Friends of Animals submitted the Request at issue in this action.

11. Sea Shepherd Legal is a nonprofit public interest law organization dedicated to its mission to end the destruction of habitat and slaughter of wildlife in the world's oceans in order to conserve and protect ecosystems and species. In furtherance of that mission, Sea Shepherd Legal has been involved in protecting marine life throughout the world. Sea Shepherd Legal uses public outreach and education to advocate for and motivate the creation of greater protections for cetaceans and other marine life.

12. The interests of Plaintiffs and their members are harmed by Federal Defendant's failure to release the requested documents in a timely manner, which prevents Plaintiffs

from obtaining, analyzing, disseminating and using the requested information to advance Plaintiffs' missions of ensuring the protection of marine wildlife and, in particular here, the Cook Inlet beluga whale.

13. Federal Defendant is an agency within the meaning of 5 U.S.C. § 552(f)(1). Federal Defendant is responsible for fulfilling Plaintiffs' Request and complying with all federal laws.

STATUTORY BACKGROUND

14. Congress enacted FOIA to ensure public access to U.S. government records. FOIA carries a presumption of disclosure. *Dep't of State v Ray*, 502 U.S. 164 (1991). Upon receipt of a written request that "reasonably describes" the records sought and complies with "published rules . . . and procedures to be followed," agencies of the United States government are required to "promptly" disclose their records, unless they can be lawfully withheld from disclosure under one of nine specific exemptions in FOIA. 5 U.S.C. § 552(a)(3)(A). The burden is on the government—not the requestor or public—to justify why particular information may be withheld. *Ray*, 502 U.S. at 164.

15. FOIA requires agencies to "determine within 20 days . . . after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefore, and of the right of such person to appeal to the head of the agency any adverse determination." *Id.* at § 552(a)(6)(A)(i).

16. On determination by an agency to comply with the request, the records shall be made "promptly available." *Id.* at § 552(a)(6)(C).

17. In "unusual circumstances," an agency may extend the time limits for up to 10 working days by providing written notice to the requester setting forth the unusual circumstance(s) and the date on which the determination is expected to be dispatched. *Id.* at § 552(a)(6)(B).

18. In some limited circumstances, FOIA allows an agency to seek an extension potentially beyond 10 days. Specifically, FOIA requires an agency to provide written notification to the requester: (1) offering an opportunity to limit the scope of the request so that it may be processed within the 20 work-day limit, or (2) offering an opportunity to arrange with the agency an “alternative time frame” for processing the request. *Id.* at § 552(a)(6)(B)(ii). If the agency elects this option, it must make its FOIA Public Liaison available to the requester to assist in any disputes with the agency. *Id.*

19. If the agency fails to make a determination on a document request within 20 work-days, or within the limited additional time permitted upon proper notification of “unusual circumstances,” the requester is deemed to have constructively exhausted administrative remedies and may seek judicial review. *Id.* at § 552(a)(6)(C). *Oglesby v. Dep’t of Army*, 920 F.2d 57(D.C. Cir 1990), *Nurse v. Sec’y of the Air Force*, 231 F. Supp. 2d 323, 328 (D.D.C. 2002) (“The FOIA is considered a unique statute because it recognizes a constructive exhaustion doctrine for purposes of judicial review upon the expiration of certain relevant FOIA deadlines.”)

20. FOIA requires that the agency “shall make the records promptly available to any person” and may not defer release of responsive documents indefinitely. *Id.* at § 552 (a)(3)(A). Failure to issue a determination and to complete the release of documents in a timely fashion is a violation of FOIA even if the initial response and releases may have been prompt. *Munger, Tolles, Olsen v. Dept. of Army*, 58 F. Supp. 3d 1050 (C.D. Cal 2014). *See also Fiduccia v. U.S. Dep’t of Justice*, 185 F.3d 1035, 1041 (9th Cir. 1999)(“Congress gave agencies 20 days, not years, to decide whether to comply with requests and notify the requesters”); *Long v. IRS*, 693 F.2d 907, 910 (9th Cir. 1982) (“[U]nreasonable delays in disclosing non-exempt documents violate the intent and purpose of the FOIA, and the courts have a duty to prevent these abuses.”).

FACTUAL BACKGROUND

21. On April 12, 2016, Plaintiffs submitted the Request under FOIA to Federal Defendant reasonably describing all documents of which Plaintiffs sought disclosure.

22. On April 21, 2016, Federal Defendant provided written notification confirming receipt of the Request and disclosing that the Request had been assigned for processing on April 14, 2016.

23. In the confirmation, Federal Defendant did not request any additional information needed to clarify the Request. Federal Defendant did request a Scope Conference with Friends of Animals.

24. On April 29, 2016, Federal Defendant and Friends of Animals conducted the Scope Conference. During this conference, Federal Defendant did not request any additional information needed to clarify the Request but asked Plaintiffs to prioritize the individual document categories identified in the Request. Friends of Animals instructed Federal Defendant to proceed with the original FOIA request, but agreed to send a letter outlining the priorities of the original FOIA request.

25. On May 10, 2016, Friends of Animals submitted a letter to Federal Defendant outlining the top priorities of the original FOIA request. In that letter, Friends of Animals stated as follows: "As discussed on the April 29, 2016 conference call, Friends of Animals has not changed or altered the original request, nor are we waiving under [sic] rights under FOIA. We provide the following priorities merely to assist the agency in processing our request."

26. On May 16, 2016, Federal Defendant confirmed receipt of Friends of Animals' May 10 letter outlining the top priorities of the original FOIA request and indicated the need for a 10-day extension due to "unusual circumstances." Federal Defendant further stated that the first interim release of records could be anticipated on May 25, 2016.

27. The 20 work-day time limit for providing a determination on the Request commenced on April 14 and, thus, expired on May 12, 2016.

28. Federal Defendant made two interim releases of documents. The first release was dated June 9, 2016. The second was dated July 26, 2016 (but not received until August 29, 2016).

29. Since August 29, 2016, no further documents have been released.

30. Since August 29, 2016, Federal Defendant has not provided any timeline for the release of any remaining documents.

31. As of the date of this complaint, Plaintiffs have not received a final determination on their Request.

32. Plaintiffs believe and allege that Federal Defendant is unlawfully withholding public disclosure of information sought by Plaintiffs, information to which they are entitled to receive promptly, and for which Federal Defendant has not provided a valid disclosure exemption.

33. Federal Defendant has offered no reasonable explanation for its delay, and it has failed to estimate when it will finally be able to comply with its obligations under FOIA.

34. Since Federal Defendant has neither produced responsive documents nor provided an appealable final determination, Plaintiffs have constructively exhausted their administrative remedies with respect to the requested documents.

CLAIM FOR RELIEF
Violation of Freedom of Information Act
Failure to Respond with a Determination

35. Plaintiffs herein incorporate all allegations contained in the proceeding paragraphs.

36. FOIA provides that any person may obtain those agency records that are not subject to the FOIA disclosure exemptions promptly. 5 U.S.C. § 552 (a)(3)(A).

37. Plaintiffs properly requested records within the control of Federal Defendant.

38. Federal Defendant failed to provide Plaintiffs with a final determination as to whether Federal Defendant has any non-exempt records responsive to the Request and whether it intended to release such records within the required timeframe. *Id.* § 552(a)(6)(A)(i) and § 552(a)(6)(B).

39. Federal Defendant failed to properly invoke and comply with FOIA's provision allowing a 10 working day extension for "unusual circumstances." *Id.* at § 552(a)(6)(B)(i).

40. Federal Defendant failed to properly invoke and comply with FOIA's provision permitting an extension of potentially greater than 10 working days by offering Plaintiffs an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. *Id.* at § 552(a)(6)(B)(ii).

41. Federal Defendant has failed to promptly make available responsive documents without unreasonable delay.

42. Federal Defendant's failures to comply with FOIA are subject to judicial review under 5 U.S.C. § 552 (a)(4)(B). Federal Defendant's failure to issue a determination within the statutory deadlines violates 5 U.S.C. § 552 (a)(3)(A).

43. Accordingly, Plaintiffs are entitled to injunctive and declaratory relief with respect to a determination on the Request.

PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court enter judgment providing the following relief:

1. Declare that Federal Defendant violated FOIA by failing to (1) make a determination on Plaintiffs' Request and (2) make records responsive to Plaintiffs' Request available within the statutory deadlines.
2. Order Federal Defendant to (1) provide Plaintiffs with a final determination and (2) process and release all records responsive to the Request at no cost to Plaintiffs within 10 days from the date of such order;

3. Retain jurisdiction of this action to ensure the processing of the Request, and to ensure that no agency records are wrongfully withheld;
4. Award Plaintiffs costs, including reasonable attorney fees and litigation costs in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
5. Grant Plaintiffs any other relief that the Court deems just and proper.

Dated: December 08, 2016

Respectfully Submitted,

/s/ Michael Harris
Michael Ray Harris
Director, Wildlife Law Program
Friends of Animals
7500 E. Arapahoe Road, Suite 385
Centennial, CO 80112
720-949-7791
michaelharris@friendsofanimals.org

Attorney for Plaintiff Friends of Animals

/s/ Brett Sommermeyer
Brett Sommermeyer (admission pending)
Legal Director
Sea Shepherd Legal
2226 Eastlake Ave., E.
No. 108
Seattle, WA 98102
brett@seashepherdlegal.org

Attorney for Plaintiff Sea Shepherd Legal

EXHIBIT A

~~EXPLOITERS~~
FRIENDS
of ANIMALS

April 12, 2016

Submitted Via U.S Certified Mail and FOIAonline

National Oceanic and Atmospheric Administration
Public Reference Facility (SOU1000)
1315 East-West Highway (SSMC3)
Room 9719
Silver Spring, Maryland 20910

Re: FOIA Request for Records Relating to Incidental Harassment Authorizations
Issued for Activities Impacting Cook Inlet Beluga Whales in Federal Waters
Administered by the National Oceanic and Atmospheric Administration

Dear FOIA Officer:

I am writing on behalf of Friends of Animals, Sea Shepherd Legal, and the Turtle Island Restoration Network (collectively, the "Requesters"). Pursuant to 43 C.F.R. Part 2, and the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, Requesters seek the disclosure of all documents¹ in the categories listed below regarding the harassment of the distinct population segment of Cook Inlet beluga whales in waters managed by the National Oceanic and Atmospheric Administration ("NOAA"). Unless otherwise specified, Requesters seek all documents for the time period starting January 26th, 2007 and ending April 11, 2016. Requesters also request a full waiver of all search and duplication fees.

¹ The terms "document(s)" and "records" are used in the broadest sense contemplated by Federal Rule of Civil Procedure 34. It means all written, transcribed, recorded or graphic matters, however produced or reproduced. This definition includes, but is not limited to, any and all original copies or drafts of any and all of the following: records; notes; nonconforming copies that contain deletions, insertions, corrections, handwritten notes or comment summaries; memoranda; schedules; contracts; binders; work papers; logs; diaries; work sheets; files; letters; correspondence; summaries of memoranda; reports or memoranda of telephone conversations or records of personal conversations or interviews; handwritten notes; telephone logs; facsimiles; summaries; invoices; promissory notes; contracts; loan agreements; vouchers; billing statements; tape recordings or transcripts of tape recordings; photographs; videotapes; computerized output or data bases; electronic files; computer disks; computer CDs; electronic mail transmittals; data and all other writings; calculations; and figures or symbols of any kind which, in any manner mentioned, relate to the subjects of the specific requests contained below. This request includes all documents that have ever been within your custody or control, including all inter and intra agency documents, whether they exist in agency working, investigative, retired, electronic mail, or other files currently or at any other time.

A. FOIA Request.

Over the course of several years, NOAA has issued multiple Letters of Authorization (“LoA”) and Incidental Harassment Authorizations (“IHA”) for Level B takes of Cook Inlet beluga whales under the Marine Mammal Protection Act (“MMPA”) incidental to anthropogenic activities in Cook Inlet. Under the MMPA, Level B takes have “the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, feeding, or sheltering.” 16 U.S.C. § 1362(18).

Please provide the following documents in your possession, whether received, created, and/or distributed by NOAA:

- (1) All documents regarding the status of any pending anthropogenic activities in the Cook Inlet area for which IHAs or LoAs have been requested for takes of Cook Inlet belugas;
- (2) All documents regarding the final IHAs or LoAs issued for anthropogenic activities in Cook Inlet, including all documents supporting a “negligible” impact finding pursuant to the MMPA;
- (3) All documents, including research or commentary, not currently available to the public concerning the specific effects of anthropogenic noise or cumulative effects of Level B takes on the Cook Inlet beluga population;
- (4) All documents regarding the cumulative or synergistic effects of Level B takes of Cook Inlet beluga whales resulting from anthropogenic development activities over the past ten years (2007-2016);
- (5) All documents regarding Level A² takes of Cook Inlet belugas resulting from anthropogenic activities;
- (6) All documents regarding the status of NOAA’s preparation of the programmatic EA and EIS analyzing takes of marine mammals of Cook Inlet incidental to anthropogenic activities and all records of anticipated new agency actions or research pertaining to Cook Inlet belugas;
- (7) All documents regarding the preparation of the final recovery plan for Cook Inlet belugas under the federal Endangered Species Act (“ESA”);
- (8) All documents regarding any limiting factors analysis completed or in progress for Cook Inlet belugas;
- (9) All documents regarding any prioritization of threats to Cook Inlet belugas;
- (10) All documents of any accounting(s) of anthropogenic activities in the Cook Inlet that may result in the taking of a beluga whale;

² As defined as having “the potential to injure a marine mammal or marine mammal stock in the wild.” 16 U.S.C. § 1362(18)(A)(i).

- (11) All documents regarding any population monitoring for Cook Inlet belugas planned or in progress for 2016;
- (12) All documents regarding any population monitoring for Cook Inlet belugas conducted within the last three years, including any population surveys (or similar activities) in proposed project areas conducted by the applicant(s) for an IHA or LoA;
- (13) All documents regarding any formal or informal consultations involving Cook Inlet belugas under Section 7 of the ESA.

The items specifically requested are not meant to be exclusive of any other documents that, although not specially requested, have a reasonable relationship to the subject matter of this request.

For purposes of this request, "anthropogenic activities" are defined to encompass any activity wholly or substantially relating to vessel or aircraft noise (if vessel or aircraft movements are products of an anthropogenic project), ship traffic, including strikes, dredging, pile driving, explosions, demolition, sonar use, oil and gas exploration (including seismic operations, drilling, platform noise, airguns, multibeam echosounders, and sub-bottom profilers), shore construction, military testing activities (i.e. explosions, sonar), pipe and cable laying, water pollution and any other activities reasonably affiliated with anthropogenic projects.

The Supreme Court has stated that FOIA establishes a "strong presumption in favor of disclosure" of requested information, and that the burden is on the government to substantiate why information may not be released under the act's various exemptions. *Department of State v. Ray*, 502 U.S. 164, 173 (1991). Congress affirmed these tenets of FOIA in the Open Government Act of 2007, finding that "the Government [should] remain open and accessible to the American people" and always be based "not upon the need to know but upon the fundamental right to know." Public Law 110-175, 121 Stat. 2524, 2525 (Dec. 31, 2007) (internal citations omitted). President Obama has also directed that "[t]he presumption of disclosure should be applied to all decisions involving FOIA." 74 Fed. Reg. 4683 (Jan. 26, 2009). Please consider the foregoing before withholding any documents that are responsive to this request.

The Requesters anticipate that you will make the requested materials available within the statutorily prescribed period. We also request that you waive any applicable fees since disclosure meets the statutory standard for a fee waiver in that it is clearly "in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii).

B. Fee Waiver Request.

FOIA provides that "documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). The legislative history of FOIA, as well as the case law interpreting the Act, indicates that the statute's fee waiver provision is to be liberally construed favoring the public interest. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 Cong. Rec. S14298 (Sept. 30, 1986) (Sen. Leahy)).

This request for information qualifies for a fee waiver under this standard and, accordingly, we request that all fees be waived. This request satisfies both statutory and regulatory requirements for granting a fee waiver. Below we explain how the request and the Requesters meet each of requirements for a fee waiver delineated in NOAA's FOIA regulations (under its parent agency, the Department of Commerce) 15 CFR § 4.11(k).

1. Disclosure of the Information Requested is in the Public Interest.

(i) *"The subject of the request: whether the subject of the requested records concerns the operations or activities of the Government."*

The requested records concern the operations and activities of NOAA, a federal agency. Specifically, they concern the operation of this federal agency, its management of federally protected Cook Inlet beluga whales, and its permitting decision-making process.

(ii) *"The informative value of the information to be disclosed: whether the disclosure is 'likely to contribute' to an understanding of Government operations or activities."*

(a) How the contents of the records are meaningfully informative;

The requested documents would have substantive, meaningfully informative value and would be likely to contribute to a better understanding of NOAA and its actions. The documents will illuminate in a clear and direct way the operations and activities of the federal government and the activities that it undertakes in regards to management of Cook Inlet beluga whales and the anthropogenic projects that affect them. Although Cook Inlet beluga whales have been in the public spotlight in recent years due to their dwindling numbers and Endangered Species Act listing in 2008, not much is definitively known about the Level B take, cumulative, and noise pollution impacts on Cook Inlet beluga whales from anthropogenic activities. The information requested concerns the operations of the agency responsible for approving activities that have the potential to seriously injure or even kill Cook Inlet

beluga whales and the details of NOAA's past and current permitting decisions and decision-making process in regards to these whales.

- (b) The logical connection between the content of the records and the operations or activities;

The release of the requested documents will significantly contribute to public understanding and oversight of the federal government's operations. For example, the records will help the public understand the status of current Cook Inlet projects, how often and to which activities the federal government authorizes Level B takes, how the government evaluates the significance of cumulative and noise impacts, and the process by which the government makes decisions that affect Cook Inlet beluga whales.

- (iii) *"The contribution to an understanding of the subject by the public likely to result from disclosure: whether disclosure of the requested information will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester."*

Friends of Animals:

Friends of Animals is a nonprofit, international animal advocacy organization incorporated in the state of New York since 1957. Friends of Animals seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living, and domestic animals. The public impact of this disclosed information would be magnified through Friends of Animals' public engagement mechanisms. Friends of Animals has a proven track record of contributing to public understanding of issues surrounding animal advocacy and human-wildlife interactions.

Friends of Animals informs its members about animal advocacy issues, as well as the organization's progress in addressing such issues, through its quarterly magazine called *ActionLine*, its website, and other reports. Friends of Animals has published articles and information advocating for the protection of animals so that they can live unfettered in their natural habitat. In particular, Friends of Animals has a long-standing commitment to protecting animals imperiled due to human-caused activities. Friends of Animals regularly publicizes information about wildlife. Friends of Animals employs several experts who are able to quickly digest and circulate the information obtained from this request, including attorneys and media correspondents.

Friends of Animals plans to disseminate the requested information to Friends of Animals' members, members of other conservation organizations, and other interested members of the public through its website, its quarterly magazine,

and through outreach to other media outlets. By disseminating and distributing this information, Friends of Animals will significantly contribute to the public's understanding of how the government manages harassment of Cook Inlet beluga whales. Friends of Animals also informs its members about animal advocacy issues—including government management of birds, wild horses, and other wildlife—through lawsuits.

Friends of Animals staff has the ability to review, consolidate, and disseminate this information to the public. By consolidating and releasing the information, Friends of Animals will significantly enhance the public's understanding of how the government is currently operating. Additionally, the requested information will constitute a significant contribution to public understanding because it will allow Friends of Animals and the public to determine how the federal government's actions are impacting Cook Inlet beluga whales and whether the federal government has met its obligations under the National Environmental Policy Act, the Marine Mammal Protection Act, and Endangered Species Act.

Sea Shepherd Legal

Sea Shepherd Legal is an international, nonprofit, public interest environmental law firm with a mission to save marine wildlife and habitats by enforcing, strengthening, and developing protective laws, treaties, policies, and practices worldwide. Sea Shepherd Legal works on a range of matters from ensuring proper governmental agency action to developing innovative policy approaches, in order to encourage greater protections for marine wildlife and ecosystems. Public outreach is a key aspect of Sea Shepherd Legal's work.

Sea Shepherd Legal engages in public outreach in order to raise awareness about marine conservation facts, law, resources and tools. Through outreach and education, Sea Shepherd Legal promotes public understanding regarding the importance of biodiversity conservation and how members of the public can play an essential role in protecting marine wildlife and habitats.

Sea Shepherd Legal's general public outreach work involves the bi-weekly publication of a blog, disseminating information regarding marine wildlife protection through social media, and initiating calls to action through online campaign petitions. Related Sea Shepherd entities selectively disseminate these materials to more than one million followers.

The public has a right to know which wildlife species and habitats are at risk, the nature of such risk – including anthropogenic impacts, the role the government is required to play in assessing and mitigating risks, and the government's official response thereto. Through its extensive public outreach endeavors, Sea Shepherd

Legal will ensure that the public acquires this knowledge.

Turtle Island Restoration Network

Turtle Island Restoration Network (“TIRN”) is an international public interest non-profit with a strong track record of disseminating information from FOIA requests to its own membership, decision-makers, the media and the general public. TIRN is a non-profit organization that informs, educates, and counsels the public regarding environmental issues, policies, and laws relating to imperiled species, including marine species. TIRN has been substantially involved in the management activities of numerous government agencies for years, and has consistently displayed its ability to disseminate information granted to it through FOIA requests. As a long established advocacy organization, our informational publications supply information not only to our membership, but also to the memberships of most other conservation organizations, locally as well as nationally. Our informational publications continue to contribute information to public media outlets, as well. TIRN routinely disseminates such information through e-mail alerts and newsletters, which are sent to over 200,000 members and activists. In addition, we disseminate information through our websites, which receives over 100,000 page views per month. Furthermore, we bring such information to our partner organizations and to the media for dissemination to the membership of other organizations and the public at large. Information and our analyses of NMFS’s compliance with the MSA, the MMPA and the ESA will likely be disseminated through all of these means.

TIRN will publicize the results of any analysis of the data to inform the public about the policy choices and information regarding the management of anthropogenic impacts to the Cook Inlet Beluga Whale. This is certain to result in a significant increase in public understanding of government agency activity, especially NOAA’s approach to the conservation of marine species. In addition to informing the public about information relevant to policy and management, TIRN has a proven track record of enforcing environmental laws and publicizing agency compliance with the provisions of various environmental laws through information gained from FOIA requests like this one. TIRN intends to use the documents requested in this request in a similar manner, as appropriate.

- (iv) *“The significance of the contribution to public understanding: whether the disclosure is likely to contribute ‘significantly’ to public understanding of Government operations or activities.”*

Requesters seek the requested documents to increase their understanding, and subsequently contribute to public understanding, of how the federal government is managing activities that affect Cook Inlet beluga whales in Alaska. Many anthropogenic projects are approved by NOAA each year, many of them

granted Level B takes of marine mammals, and the government claims that these actions have a negligible effect on marine mammals. However, the public does not have access to all of the documents available to NOAA and thus cannot understand exactly how NOAA makes its non-negligible impact determinations during agency review of project applications. Additionally, the public cannot understand the justifications used by NOAA staff, its decision-making process, or how risks associated with permitting are assessed without more information about the operations of NOAA.

If the information is not disclosed to the Requesters, the public will remain uninformed about what activities the federal government conducts and authorizes. Disclosure, however, will permit the Requesters to disseminate information to the public, and it will increase transparency surrounding the federal government's activities. This is particularly important because NEPA grants the public a right to this information and a right to participate in federal decisions, such as commenting on proposed anthropogenic activities in Cook Inlet.

The information requested is not, to our knowledge, publicly available. The government may omit sending us requested records that are available in publicly accessible forums (e.g. Internet) or in published materials that are routinely available at public or university libraries. If the government chooses to omit such information, please provide the Requesters with adequate references and/or website links so that we may obtain these materials on our own. We would request that the government provide us with an index of such omitted documents, so that we may have reasonable certainty that we have access to the complete record regarding the management and protection of the Cook Inlet Beluga whales. However, we suspect that the majority of requested materials will not be available unless we receive them from the government in satisfaction of this FOIA request.

2. Disclosure of the Information is Not Primarily in the Commercial Interest of the Requester

When considering whether a request for a fee waiver meets the second prong of the fee waiver requirement, the agency is directed to consider: (1) "whether or not the requester has a commercial interest that would be furthered by the requested disclosure," and (2) "the primary interest in disclosure," i.e. whether the interest of the requester is primarily commercial or public.

None of the Requesters have a commercial, trade, or profit interest in the requested records. In fact, the Requesters do not have any commercial, trade, or profit interests.

Friends of Animals is a non-profit, international animal advocacy organization, incorporated in the state of New York since 1957. It serves the public interest by increasing the general public's awareness of animal advocacy issues and

by teaching how to end animal cruelty and exploitation around the world. Friends of Animals seeks to promote a respectful view of nonhuman, free-living and domestic animals. The Internal Revenue Service recognizes Friends of Animals as a 501(c)(3) tax-exempt organization (IRS Employer Identification#: 13-6018549). Friends of Animals' successful and well-orchestrated public education programs on animal advocacy issues and government operations merit granting a fee waiver for the requested records.

Sea Shepherd Legal was established in 2014 for the purpose of saving marine wildlife and habitats by enforcing, strengthening, and developing protective laws, treaties, policies, and practices worldwide. Sea Shepherd Legal works on a range of matters to ensure greater protections for marine wildlife and ecosystems, via the use of tools including litigation, policy development and public outreach. The IRS recognizes Sea Shepherd Legal as a public interest environmental law firm. Sea Shepherd Legal's EIN number is 47-2272507.

Turtle Island Restoration Network is a 501(c)(3) that has been working to protect marine wildlife, especially sea turtles, but also marine mammals and other endangered species, since the early 1980s. TIRN works through a combination of legal and advocacy strategies and grassroots organizing and education to strengthen protections worldwide. TIRN's EIN is 91-1818080.

CONCLUSION

Please produce the records regarding this FOIA request by electronic mail to wlp_admin@friendsofanimals.org or to the physical address listed below:

Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112

Please produce the records on a rolling basis to the extent possible; at no point should the search for—or the deliberation concerning—certain records delay the production of others that the federal government has already retrieved and elected to produce.

Thank you for your attention to this request. If you have any questions about the requested documents or the requested fee waiver, please do not hesitate to contact me at 720-949-7791 or at wlp_admin@friendsofanimals.org.

Sincerely,



Kaylee Dolen, Administrative Assistant

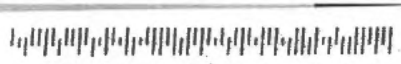
Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Rd., Ste. 385
Centennial, CO 80112
720-949-7791
wlp_admin@friendsofanimals.org

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U.S. DISTRICT COURT
DISTRICT OF COLORADO
CENTENNIAL

harris
Law P
Animal
Arapahoe Rd. Suite 385
A, CO 80112



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RETURN RECEIPT
REQUESTED

T.D.
12/11/2016

Bob Troyer
United States Attorney
1225 17th Street
Suite 700
Denver, CO 80202

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,)	
425 Third Street SW, Suite 800)	
Washington, DC 20024,)	
	)	Civil Action No.
Plaintiff,)	
v.)	
)	
UNITED STATES DEPARTMENT)	
OF COMMERCE,)	
1401 Constitution Avenue, NW)	
Washington, DC 20230,)	
)	
Defendant.)	
_____)	

COMPLAINT

Plaintiff Judicial Watch, Inc. brings this action against Defendant U.S. Department of Commerce to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). As grounds therefor, Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

PARTIES

3. Plaintiff Judicial Watch, Inc. is a not-for-profit, educational organization incorporated under the laws of the District of Columbia and headquartered at 425 Third Street S.W., Suite 800, Washington, DC 20024. Plaintiff seeks to promote transparency, integrity, and accountability in government and fidelity to the rule of law. As part of its mission, Plaintiff regularly requests records from federal agencies pursuant to FOIA. Plaintiff analyzes the

responses and disseminates its findings and the requested records to the American public to inform them about “what their government is up to.”

4. Defendant United States Department of Commerce is an agency of the United States Government and is headquartered at 1401 Constitution Avenue, NW, Washington, D.C. 20230. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. On October 30, 2015, Plaintiff submitted a FOIA request to the National Oceanographic and Atmospheric Administration, a component of Defendant, seeking access to:

1. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the methodology and utilization of Night Marine Air Temperatures to adjust ship and buoy temperature data.
2. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the use of other global temperature datasets for both NOAA’s in-house dataset improvements and monthly press releases conveying information to the public about global temperatures.
3. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the utilization and consideration of satellite bulk atmospheric temperature readings for use in global temperature datasets.
4. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to a subpoena issued for the aforementioned information by Congressman Lamar smith on October 13, 2015.

The time frame for the requested records is October 30, 2014 through October 30, 2015.

6. Plaintiff sent its request via U.S. Postal Service (“USPS”) Certified Mail, Receipt No. 70150640000798544253. USPS provided Plaintiff a Domestic Return Receipt signed showing that Defendant received the request by certified mail on November 3, 2015.

7. Defendant has failed to acknowledge Plaintiff’s request and has provided no information concerning the status of the request.

8. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), Defendant was required to determine whether to comply with Plaintiff’s request within twenty (20) working days after receipt of the request and to notify Plaintiff immediately of its determination, the reasons therefor, and the right to appeal any adverse determination. Accordingly, Defendant’s determination was due by November 23, 2015.

9. As of the date of this Complaint, Defendant has failed to: (i) determine whether to comply with Plaintiff’s request; (ii) notify Plaintiff of any such determination or the reasons therefor; (iii) advise Plaintiff of the right to appeal any adverse determination; or (iv) produce the requested records or otherwise demonstrate that the requested records are exempt from production.

10. Because Defendant has failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A), Plaintiff is deemed to have exhausted any and all administrative remedies with respect to its request, pursuant to 5 U.S.C. § 552(a)(6)(C).

COUNT 1
(Violation of FOIA, 5 U.S.C. § 552)

11. Plaintiff realleges paragraphs 1 through 10 as if fully stated herein.

12. Additionally, Defendant is violating FOIA by failing to search for and produce all records responsive to Plaintiff’s request that are not lawfully exempt from production.

13. Plaintiff is being irreparably harmed by reason of Defendant's violations of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to comply fully with FOIA.

WHEREFORE, Plaintiff respectfully requests that the Court: (1) order Defendant to search for any and all records responsive to Plaintiff's FOIA request and demonstrate that it employed search methods reasonably calculated to uncover all records responsive to the request; (2) order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA request and a *Vaughn* index of any responsive records withheld under claim of exemption; (3) enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA request; (4) grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and (5) grant Plaintiff such other relief as the Court deems just and proper.

Dated: December 2, 2015

Respectfully submitted,

/s/ Lauren M. Burke
Lauren M. Burke
D.C. Bar No. 1028811
JUDICIAL WATCH, INC.
425 Third Street SW, Suite 800
Washington, DC 20024
(202) 646-5172

Counsel for Plaintiff

Tracking Number	Type	Requester	Requester Organization
DOC-NOAA-2017-000466	Request	Shannon M. Cremeans	
DOC-NOAA-2017-000467	Request	Shannon M. Cremeans	
DOC-NOAA-2017-000473	Request	David Hutt	Morris James LLP
DOC-NOAA-2017-000474	Request	Steven McIntosh	
DOC-NOAA-2017-000484	Request	Darren Council	Edgepoint
DOC-NOAA-2017-000492	Request	Michael Ravnitzky	
DOC-NOAA-2017-000497	Request	Rachel Clattenburg	Public Citizen
DOC-NOAA-2017-000499	Request	Zeenat Mian	
DOC-OS-2017-000428	Other	Robert Faturechi	ProPublica

Submitted	Assigned To	Case File Assigned To	Perfected?	Due	Closed Date
01/18/2017	NOAA	NOAA	No	TBD	TBD
01/18/2017	NOAA	NOAA	No	TBD	TBD
01/20/2017	NOAA	NOAA	No	TBD	TBD
01/22/2017	NOAA	NOAA	No	TBD	TBD
01/24/2017	NOAA	NOAA	No	TBD	TBD
01/24/2017	NOAA	NOAA	No	TBD	TBD
01/25/2017	NOAA	NOAA	No	TBD	TBD
01/25/2017	NOAA	NOAA	No	TBD	TBD
01/25/2017	NOAA	James Davis	No	02/27/2017	TBD

Status
Assignment Determination
Assignment Determination
Submitted
Submitted
Submitted
Submitted
Submitted
Submitted
Initial Evaluation
Open

Detail

I am writing to request a copy of the Marine Mammal Inventory Report (MMIR). I would like this copy to include all i
I am writing to request a list/table of all changes to the Marine Mammal Inventory Report / National Inventory of Ma
All records, including correspondence, related to or mentioning the sea vessel "Island Girl, II" or its cap
I am requesting the following information from NOAA: Copies of the resumes of the applicants who were successf
Edge Point Contracting, Inc. hereby requests a copy of the following in electronic format and/or whatever format ex
A copy of the home page for <http://intranet.mcmurdo.usap.gov> A copy of each page connected to that home page
On behalf of Public Citizen, Inc., and pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. s. 552, I request
Please provide information of HMMA's Hawaiian monk seal duties as specified on the cooperative grant with NOAA
All correspondence between employees at the under secretary level or above and Todd Ricketts from Jan. 1, 2012

[REDACTED]
e every facility. Please sort/organize this request first by holder/facility then chronologically. A PDF copy
aths and transfers submitted within the last six months.

to, any records of communications with the Delaware Department of Natural Resources and Environme
; ZA-1801-2 (DE/CR), NMFS OLE 2016-0002, Opened 4/27/16. Closed 6/3/16. Enforcement Officer, ZA
ent agency and remain outstanding) for six (6) months or more as of the date of this letter. Please only i

e Trump Transition Team to the National Oceanic and Atmospheric Administration (NOAA) providing guid

[REDACTED]
is preferred

ntal Control (including its employees, attorneys and agents); the case package and any other information
1801-2 (MAP), NMFS OLE 2016-0001, Opened 4/27/16. Closed 6/3/16. This information should be ma
nclude items that can still be claimed by the payee and have not been escheated to the state. • Please i

dance on which agency matters NOAA employees may or may not publicly discuss and/or regulating ho


[REDACTED]

received from the Delaware's Department of Natural Resources and Environmental Control from its budget available because of the precedent set forth in Core v. USPS, which finds there is "no substantial" information include the payee name, date, amount and check number. • If it is less time consuming and more cost effective

or whether NOAA employees may speak about any agency matter with individuals or organizations outside

[REDACTED]

arding of Island Girl, II on December 4, 2016; and any determination made regarding Kenneth Kaiss.
tial invasion of privacy in information identifying successful federal job applicants." I understand th
ffective, please only provide amounts which equal \$1,000.00 or more • If possible, please include the las
tside the agency, for the period from January 20, 2017, through the date of processing this request. Bac



at information such as social security numbers, addresses, email, phone numbers, dates of birth and su
st known address of the payee. 2. An accounting of any unclaimed funds which have not been escheate

Background discussion of the concerns motivating this request is provided in the January 24, 2017, article i

[REDACTED]

supervisor's name are not releasable under FOIA and I am not requesting that information. I understand that information is provided to the state. • Please include the payee name, date, amount, and any additional information if available.

in Politico by Andrew Restuccia, Alex Guillén, and Nancy Cook, entitled Information lockdown hits



that personally protected information will be blacked out on the applicants resumes. However, information
3. • If it is less time consuming and more cost effective, please only provide amounts which equal \$1,000
3 Trump's federal agencies, available at <http://www.politico.com/story/2017/01/federal-agencies-trump-in>

[REDACTED]

1 on the resume such as work experience, previous work experience, skills, education, and knowledge is
).00 or more • If possible, please include the last known address of the payee. Edge Po

information-lockdown-234122.

 2. All records of communications disseminated into



s generally

From: Susan Beresford - NOAA Federal <susan.s.beresford@noaa.gov>
Sent: Thursday, January 26, 2017 2:37 PM
To: Lola Stith - NOAA Affiliate
Cc: Mark Graff - NOAA Federal; Joe H; Charles Green
Subject: Request to log in a FOIA request from Paul Muniz.

Hi Lola,

(b)(5)

? Thanks.

Susie.

From: Paul Muniz [mailto:pmuniz@donovanhatem.com]
Sent: Friday, January 20, 2017 5:38 PM
To: 'Joseph Heckwolf - NOAA Federal'; 'Charles Green - NOAA Federal'
Cc: Paul Muniz
Subject: RE: Anthony & Enzo Inc. and Princess Elena Inc.

Attorneys Heckwolf and Green,

Please consider this to be a request pursuant to the Freedom of Information Act for all correspondence, including emails and faxes, dated after January 1, 2014, between the Agency (including but not limited to NOAA Finance), and/or either Robert Roberge and/or Jesse Drinkwater concerning, referring and/or related to the civil penalties for which they are jointly and severally liable and which are referenced in Attorney Heckwolf's email below. For clarification, I am seeking any and all documents evidencing any effort whatsoever by the Agency to collect amounts owed to the government by Mr. Roberge and/or Mr. Drinkwater.

The Agency may redact all personal financial information.

If there are any fees for the documents, please let me know before you process my request and please provide an itemized breakdown of those fees.

In order to save the cost of copying, I request that any and all responsive documents be sent to me electronically via email.

If you deny all or any part of this request, please cite each specific FOIA exemption that justifies your denial and notify me of appeal procedures available under the law.

If you have any questions about the scope of this request or processing this request, you may telephone me during business hours at any of the telephone numbers listed below (or contact me by email).

Thank you for your anticipated cooperation.

If I can be of any further assistance, please let me know.

Please acknowledge receipt of this request by return email.

Have a nice weekend,

Paul Muniz, Esq.

Partner

Donovan Hatem LLP

53 State St | 8th Floor | Boston, MA | 02109

Tel (617) 406-4610 | Cell (978) 729-5052 | Fax (617) 406-4501



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From: Joseph Heckwolf - NOAA Federal [<mailto:joseph.heckwolf@noaa.gov>]

Sent: Friday, January 20, 2017 5:04 PM

To: Paul Muniz

Subject: RE: Anthony & Enzo Inc. and Princess Elena Inc.

Paul,

I have not received a decision from the Tribunal in the Pasquale DiMaio case.

NOAA Finance has several addresses on file for Mr. DiMaio's companies: 108 Commercial St., 14 Parker St. Middle Unit, and 29 Lawndale Circle. NOAA Finance informs me they have been billing these addresses. If Mr. DiMaio could provide an email address and a single physical address for billing it would probably streamline things. A bill sent to Commercial St. was returned by the Post Office, and some of the payments are late, which is probably why NOAA Finance contacted you. Here is what NOAA Finance has received from Mr. DiMaio's companies as of yesterday:

NE1300388 Payment received for January and February

NE1305018 Payment received for January

NE1202710 No payment received

Pursuant to paragraphs 14 and 15 of the Settlement Agreement, Mr. DiMaio's companies will receive a revised payment schedule in the event Roberge or Drinkwater pay any of the civil penalties for which they are jointly and severally liable. The Settlement Agreement sets forth the entire agreement of the parties, and there are no other provisions in the Settlement Agreement requiring the Agency to notify Mr. DiMaio's companies of its efforts to collect from Drinkwater or Roberge.

Have a nice weekend,

Joe Heckwolf

From: Paul Muniz [<mailto:pmuniz@donovanhatem.com>]
Sent: Tuesday, January 17, 2017 3:23 PM
To: Joseph L. Heckwolf (joseph.heckwolf@noaa.gov)
Cc: Paul Muniz
Subject: FW: Anthony & Enzo Inc. and Princess Elena Inc.

Resending complete version:

Joe,

1. Please instruct the Agency to send all invoices directly to the Respondents in each of the matters that were resolved. For some reason copies of the Anthony & Enzo Inc. invoices were sent to me.

2. Please advise me as to the status of the case against Pasquale DiMaio.
3. Please keep me advised of all efforts to collect from the Respondents, Jesse Drinkwater and Robert Roberge and Pasquale DiMaio . Thank you.

Paul Muniz, Esq.

Partner

Donovan Hatem LLP

53 State St | 8th Floor | Boston, MA | 02109

Tel (617) 406-4610 | Cell (978) 729-5052 | Fax (617) 406-4501

--

Susan S. Beresford

Paralegal

Enforcement Section

NOAA Office of the General Counsel

U.S. Department of Commerce

1315 East-West Highway

SSMC3, Room 15829

Silver Spring, MD 20910

(301) 427-8285 Office

(301) 427-2211 Fax

--

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DONOVAN

HATEM LLP

Construction and Labor







From: Samuel Dixon <samuel.dixon@noaa.gov>
Sent: Friday, January 27, 2017 1:14 PM
To: Mark Graff - NOAA Federal; Lola Stith - NOAA Affiliate
Subject: Fwd: Freedom of Information Act Appeal
Attachments: Appeal 2017-000226.pdf

Hi Mark and Lola,

(b)(5) [Redacted]
[Redacted] ?

Thanks,

Samuel Dixon
Contractor IBSS Corp
NMFS Assistant FOIA Liaison
(301) 427 8739
samuel.dixon@noaa.gov

----- Forwarded message -----

From: **Ana Liza Malabanan - NOAA Federal** <ana.liza.malabanan@noaa.gov>
Date: Fri, Jan 27, 2017 at 11:47 AM
Subject: Fwd: Freedom of Information Act Appeal
To: Samuel Dixon - NOAA Affiliate <samuel.dixon@noaa.gov>
Cc: Shawn Martin <shawn.martin@noaa.gov>, Doug Chow <doug.chow@noaa.gov>

Hi Sam,

(b)(5) [Redacted]
[Redacted]
[Redacted]
[Redacted].

(b)(5) [Redacted]
[Redacted]
[Redacted] ? Please confirm if this is correct or let me know what I should advise requester when I get back to her.

Thanks!

Ana Liza

----- Forwarded message -----

From: **Emma Hiolski** <ehiolski@ucsc.edu>
Date: Thu, Jan 26, 2017 at 5:57 PM
Subject: Fwd: Freedom of Information Act Appeal

To: ana.liza.malabanan@noaa.gov

Dear Ana-Liza,

Thank you very much for your phone message - I am sorry I wasn't able to answer (I tried, but I think my phone sent the call to voicemail regardless)!

Below is the confirmation I received from Alvin, and I've attached the appeal document as well. Thank you so much for following up on this, I really appreciate it. I have appointments tomorrow morning through about 3:30 p.m., but will be reachable by email.

Please let me know if you need anything further from me. Thanks very much for your help,
~ Emma

----- Forwarded message -----

From: **Chua, Alvin (Federal)** <achua@doc.gov>

Date: Thu, Jan 19, 2017 at 6:28 AM

Subject: RE: Freedom of Information Act Appeal

To: Emma Hiolski <ehiolski@ucsc.edu>

Cc: "Appeals, FOIA" <foiaappeals@doc.gov>

Dear Ms. Hiolski:

This is to acknowledge receipt of your Freedom of Information Act (5 U.S.C. § 552) (FOIA) appeal received on January 18, 2017. In accordance with the FOIA and Departmental regulations, a final determination will be issued by the Assistant General Counsel for Litigation, Employment and Oversight. Your appeal has been assigned to counsel.

If you have any questions about this matter, you may contact our office at foiaappeals@doc.gov.

From: Emma Hiolski [mailto:ehiolski@ucsc.edu]

Sent: Wednesday, January 18, 2017 7:55 PM

To: Appeals, FOIA <foiaappeals@doc.gov>

Subject: Freedom of Information Act Appeal

Dear FOIA Officer,

I am attaching an appeal letter in response to denial of my fee waiver request (request no: DOC-NOAA-2017-000226). You will find the denial letter and original request within the same document. Please let me know that you have received the file, and whether there is any trouble with the attachment.

Thank you very much,

~ Emma Hiolski

--

Emma Hiolski, Ph.D.

Science Communication Program

University of California, Santa Cruz

ehiolski@ucsc.edu

Cell: [\(773\) 742-1104](tel:(773)742-1104)

--

Emma Hiolski, Ph.D.

Science Communication Program

University of California, Santa Cruz

ehiolski@ucsc.edu

Cell: [\(773\) 742-1104](tel:(773)742-1104)

--

Ana Liza S. Malabanan

Freedom of Information Act (FOIA) Coordinator

Information Services and Management Branch

Operations, Management & Information Division

NOAA Fisheries West Coast Region

U.S. Department of Commerce

Office: [562-980-4008](tel:562-980-4008)



Emma Hiolski
Science journalist
Science Communication Program
University of California, Santa Cruz
1156 High Street
Santa Cruz, CA 95064
ehiolski@ucsc.edu
(773) 742-1104

January 18, 2017

Assistant General Counsel for Administration (Office),
Room 5898-C,
U.S. Department of Commerce,
14th and Constitution Avenue, N.W.,
Washington, D.C. 20230

RE: FREEDOM OF INFORMATION ACT APPEAL

FOIA Request No DOC-NOAA-2017-000226

To Whom It May Concern,

I write to appeal the decision denying a fee waiver for the Freedom of Information Act (“FOIA”) request that I submitted on November 28, 2016, seeking access to and copies of any and all documents pertaining to California Governor Jerry Brown's request (February 09, 2016 letter to Secretary of Commerce Penny Pritzker) that a federal fishery disaster be declared following extended closure of West Coast Dungeness crab fisheries (“the Request”).

The fee waiver denial states:

“No indication of qualifications for extraction of the records, analysis, or production of a unique work is given, and no mention of the dissemination of the records to a segment of interested individuals is provided.”

I am a freelance journalist, with a track record of publication on topics in science and environmental journalism. Here is a sample of my recent published work:

Science:

<http://www.sciencemag.org/news/2017/01/how-white-blood-cells-rip-holes-your-blood-vessels-and-how-your-blood-vessels-recover>

<http://www.sciencemag.org/news/2016/12/ocelot-bathrooms-are-meeting-place-several-central-american-mammals>

Mongabay:

<https://news.mongabay.com/2016/11/over-fertilization-diminishes-the-biodiversity-of-global-grasslands/>

San Jose Mercury News:

<http://www.mercurynews.com/2016/12/07/marina-nations-last-coastal-sand-mine-might-be-shut-down-by-coastal-commission/>

Monterey County Herald:

<http://www.montereyherald.com/environment-and-nature/20161130/traffic-protection-for-sea-otters>

<http://www.montereyherald.com/environment-and-nature/20161126/stresses-rise-for-monterey-peninsulas-parched-trees>

<http://www.montereyherald.com/environment-and-nature/20161118/castroville-wetland-restoration-project-to-help-clean-agricultural-water>

<http://www.montereyherald.com/general-news/20161116/stolen-hazmat-equipment-could-be-dangerous>

<http://www.montereyherald.com/business/20161114/poised-for-crab-fishermen-still-hope-for-relief-from-previous-season>

<http://www.montereyherald.com/environment-and-nature/20161107/watch-out-male-deer-in-search-of-romance-on-the-roads>

<http://www.montereyherald.com/environment-and-nature/20161012/want-to-recycle-get-in-line>

<http://www.montereyherald.com/environment-and-nature/20160928/coyotes-on-the-move-in-monterey-county>

These publications should amply demonstrate my qualifications for extraction of the records, analysis, or production of a unique work.

I have a solid basis to expect publication. I intend to pitch articles resulting from the research facilitated by this request to Mongabay and BuzzFeed News.

Mongabay is an environmental science and conservation news and information site committed to credible and accurate coverage of conservation and environmental issues. In 2016 its readership was 22 million.

BuzzFeed is the leading independent digital media company delivering news and entertainment to hundreds of millions of people around the world. My investigative journalism instructor at UC Santa Cruz, Peter Aldhous, is a senior reporter on the science desk at BuzzFeed News. He will shepherd my pitches to his editors.

Whether or not NOAA grants a full fee waiver, I am entitled to a fee benefit as a member of the news media. Therefore, search fees should be removed from any fee estimate provided. As a representative of the news media I am also only required to pay for the direct cost of duplication after the first 100 pages.

The requested records clearly concern identifiable operations or activities of the Federal Government, specifically how DOC/NOAA responds to a request from a state governor to declare a federal fisheries disaster. The requested documents are likely to contribute significantly to public understanding of these operations, which is of clear public interest given

the implications for the California economy, particularly the fisheries sector, the protection of crab stocks, and marine wildlife conservation more generally.

I have no commercial interest in this request, which is made solely for the purpose of newsgathering.

For the foregoing reasons, I ask that you reverse the denial of a fee waiver. Even if you deny this appeal, I should in any case be granted the fee benefit due to members of the news media.

Because this information is on a matter of great public interest, I request expedited treatment of this appeal pursuant to 15 CFR § 2004.6(c)(2)(i). In any event, I trust that I will receive your decision within 20 business days as required by 15 CFR § 2004.6(c)(1) and 5 U.S.C § 552(a)(6)(A)(ii).

Thank you for your prompt attention to this matter. Please feel free to reach out to me at any time.

Very sincerely yours,



1/18/17

Emma Hiolski



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of the Chief Information Officer
High Performance Computing and Communications

Via FOIAonline

January 18, 2017

Attn: Emma Hiolski
1156 High St.
Santa Cruz, CA 95064

Re: FOIA Request No. DOC-NOAA-2017-000226

Dear Mr./Ms. Hiolski:

This letter responds to your Freedom of Information Act (FOIA) request entered into FOIAonline on November 28, 2016, in which you requested records as follows:

I request access to and copies of any and all documents pertaining to California Governor Jerry Brown's request (February 09, 2016 letter to Secretary of Commerce Penny Pritzker) that a federal fishery disaster be declared following extended closure of West Coast Dungeness crab fisheries. This includes but is not limited to communications, reports and records about the fishery disaster, both within the Department of Commerce and between the DOC and external agencies.

Pursuant to procedures established in 15 CFR, Part 4.11(k), we rely on the following factors in determining whether the statutory standard for granting a fee waiver has been met:

1. The subject of the requested records must concern identifiable operations or activities of the Federal Government.
2. The disclosable portions of the requested records must be meaningfully informative about Government operations or activities in order to be "likely to contribute" to and increase public understanding of those operations or activities.
3. The disclosure of the requested information must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester.
4. The disclosure of the requested information is likely to contribute "significantly" to the public's understanding of Government operations or activities.
5. Whether the requester has a commercial interest that would be furthered by the requester.
6. Whether any identified commercial interest of the requester is sufficiently great, in comparison with the public interest in disclosure, such that the disclosure is not primarily in the commercial interest of the requester.

Your fee waiver justification does not satisfy the 6 factors contemplated in 15 CFR 4.11. In this instance, you have not identified any basis to satisfy any of the 6 factors. You have only indicated that you are a student, and a reporter. No indication of qualifications for extraction of the records, analysis, or production of a unique work is given, and no mention of the

dissemination of the records to a segment of interested individuals is provided. As such, you have failed to adequately address the six factors necessary for a fee waiver. Therefore this constitutes a denial of your fee waiver request. Your request will be processed under the "Other" fee category and if applicable, a fee estimate will be sent to you. You have the right to appeal this denial of the FOIA Fee Waiver request. An appeal must be received within 90 calendar days of the date of this response letter by the Assistant General Counsel for Administration (Office), Room 5898-C, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230. An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to 202-482-2552, or by FOIAonline, if you have an account in FOIAonline, at <https://foiaonline.regulations.gov/foia/action/public/home#>. The appeal should include a copy of the original request and initial denial, if any. The appeal should include a statement of the reasons why the Fee Waiver request should not be denied and why the adverse determination was in error. The appeal letter, the envelope, the e-mail subject line, and the fax cover sheet should be clearly marked "Freedom of Information Act Appeal." The e-mail, fax machine, FOIAonline, and Office are monitored only on working days during normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday). FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next normal business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

You also may contact the NOAA FOIA Public Liaison, Robert Swisher, at (301)-628-5755.

Eastern Time, the next business day will be deemed timely.

Sincerely,

/S/

Mr. Mark Graff
NOAA FOIA Officer

Emma Hiolski
Science journalist
Science Communication Program, UC Santa Cruz
1156 High St
Santa Cruz, CA 95064
773-742-1104

November 28, 2016

FOIA Officer
Department of Commerce
14th Street and Constitution Avenue, NW
Mail Stop H6204
Washington, DC 20230
(202) 482-3258
Efoia@doc.gov

FOIA REQUEST

Fee waiver requested

Fee benefit requested

Dear FOIA Officer:

Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request access to and copies of any and all documents pertaining to California Governor Jerry Brown's request (February 09, 2016 letter to Secretary of Commerce Penny Pritzker) that a federal fishery disaster be declared following extended closure of West Coast Dungeness crab fisheries. This includes but is not limited to communications, reports and records about the fishery disaster, both within the Department of Commerce and between the DOC and external agencies.

I would like to receive the information in a digital format. Please send these files via email or FTP upload.

I agree to pay reasonable duplication fees for the processing of this request in an amount not to exceed \$25. However, please notify me prior to your incurring any expenses in excess of that amount. As a representative of the news media I am only required to pay for the direct cost of duplication after the first 100 pages. I am a freelance journalist whose work has been published in the Monterey County Herald and Mongabay Environmental News.

Please waive any applicable fees. Release of the information is in the public interest because it will contribute significantly to public understanding of government operations and activities. The information will contribute significantly to knowledge of how the federal government is responding to the state of California's request for assistance for its fishermen. I am making this request as a reporter and student currently studying at UC Santa Cruz Science Communication Program and this request is made as part of newsgathering and not for commercial use.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

I would appreciate your communicating with me by email or telephone, rather than by mail.

I look forward to your determination regarding my request within 20 business days, as the statute requires.

Thank you for your assistance.

Sincerely,

Emma Hiolski

From: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>
Sent: Thursday, January 26, 2017 2:42 PM
To: Susan Beresford - NOAA Federal
Cc: Mark Graff - NOAA Federal; Joe H; Charles Green
Subject: Re: Request to log in a FOIA request from Paul Muniz.

Will do.

Lola

On Thu, Jan 26, 2017 at 2:36 PM, Susan Beresford - NOAA Federal <susan.s.beresford@noaa.gov> wrote:
Hi Lola,

(b)(5)

? Thanks.

Susie.

~~~~~

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**From:** Paul Muniz [mailto:[pmuniz@donovanhatem.com](mailto:pmuniz@donovanhatem.com)]  
**Sent:** Friday, January 20, 2017 5:38 PM  
**To:** 'Joseph Heckwolf - NOAA Federal'; 'Charles Green - NOAA Federal'  
**Cc:** Paul Muniz  
**Subject:** RE: Anthony & Enzo Inc. and Princess Elena Inc.

Attorneys Heckwolf and Green,

Please consider this to be a request pursuant to the Freedom of Information Act for all correspondence, including emails and faxes, dated after January 1, 2014, between the Agency (including but not limited to NOAA Finance), and/or either Robert Roberge and/or Jesse Drinkwater concerning, referring and/or related to the civil penalties for which they are jointly and severally liable and which are referenced in Attorney Heckwolf's email below. For clarification, I am seeking any and all documents evidencing any effort whatsoever by the Agency to collect amounts owed to the government by Mr. Roberge and/or Mr. Drinkwater.

The Agency may redact all personal financial information.



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If you have any questions about the scope of this request or processing this request, you may telephone me during business hours at any of the telephone numbers listed below (or contact me by email).

Thank you for your anticipated cooperation.

If I can be of any further assistance, please let me know.

Please acknowledge receipt of this request by return email.

Have a nice weekend,

**Paul Muniz, Esq.**

*Partner*

Donovan Hatem LLP

53 State St | 8<sup>th</sup> Floor | Boston, MA | 02109

Tel [\(617\) 406-4610](tel:(617)406-4610) | Cell [\(978\) 729-5052](tel:(978)729-5052) | Fax [\(617\) 406-4501](tel:(617)406-4501)



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---

**From:** Joseph Heckwolf - NOAA Federal [<mailto:joseph.heckwolf@noaa.gov>]

**Sent:** Friday, January 20, 2017 5:04 PM

**To:** Paul Muniz

**Subject:** RE: Anthony & Enzo Inc. and Princess Elena Inc.

Paul,

I have not received a decision from the Tribunal in the Pasquale DiMaio case.

NOAA Finance has several addresses on file for Mr. DiMaio's companies: 108 Commercial St., 14 Parker St. Middle Unit, and 29 Lawndale Circle. NOAA Finance informs me they have been billing these addresses. If Mr. DiMaio could provide an email address and a single physical address for billing it would probably streamline things. A bill sent to Commercial St. was returned by the Post Office, and some of the payments are late, which is probably why NOAA Finance contacted you. Here is what NOAA Finance has received from Mr. DiMaio's companies as of yesterday:

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NE1305018 Payment received for January

NE1202710 No payment received

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Have a nice weekend,

Joe Heckwolf

---

**From:** Paul Muniz [<mailto:pmuniz@donovanhatem.com>]

**Sent:** Tuesday, January 17, 2017 3:23 PM

**To:** Joseph L. Heckwolf ([joseph.heckwolf@noaa.gov](mailto:joseph.heckwolf@noaa.gov))

**Cc:** Paul Muniz

**Subject:** FW: Anthony & Enzo Inc. and Princess Elena Inc.

*Resending complete version:*

Joe,

1. Please instruct the Agency to send all invoices directly to the Respondents in each of the matters that were resolved. For some reason copies of the Anthony & Enzo Inc. invoices were sent to me.
2. Please advise me as to the status of the case against Pasquale DiMaio.
3. Please keep me advised of all efforts to collect from the Respondents, Jesse Drinkwater and Robert Roberge and Pasquale DiMaio . Thank you.

**Paul Muniz, Esq.**

*Partner*

Donovan Hatem LLP

53 State St | 8<sup>th</sup> Floor | Boston, MA | 02109

Tel [\(617\) 406-4610](tel:(617)406-4610) | Cell [\(978\) 729-5052](tel:(978)729-5052) | Fax [\(617\) 406-4501](tel:(617)406-4501)

--

Susan S. Beresford

Paralegal

Enforcement Section

NOAA Office of the General Counsel

U.S. Department of Commerce

1315 East-West Highway

SSMC3, Room 15829

Silver Spring, MD 20910

[\(301\) 427-8285](tel:(301)427-8285) Office

[\(301\) 427-2211](tel:(301)427-2211) Fax

--

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--

Lola Stith

Contractor - The Ambit Group, LLC

NOAA Office of the Chief Information Officer (OCIO)

(c) **(b)(6)**

[lola.m.stith@noaa.gov](mailto:lola.m.stith@noaa.gov)

**DONOVAN**

**HATEM LLP**

*Construction and Real Estate*











Jonelle Dilley  
Attorney-Advisor  
Oceans and Coasts Section  
NOAA, Office of General Counsel  
1305 East-West Highway  
SSMC-4, Room 6111  
Silver Spring, MD 20910  
Tel: [\(301\) 713-7383](tel:3017137383) (direct line)  
Cell **(b)(6)**  
Fax: [\(301\) 713-4408](tel:3017134408)

On Wed, Jan 25, 2017 at 3:35 PM, Mark Graff - NOAA Federal <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)> wrote:  
Will do--thanks Jackie

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
[\(301\) 628-5658](tel:3016285658) (O)  
**(b)(6)** (C)

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On Wed, Jan 25, 2017 at 3:34 PM, Jackie Rolleri - NOAA Federal <[jackie.rolleri@noaa.gov](mailto:jackie.rolleri@noaa.gov)> wrote:  
Excellent, thanks. **(b)(5)**

Jackie

On Wed, Jan 25, 2017 at 3:32 PM, Mark Graff - NOAA Federal <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)> wrote:  
Hi Jackie--

**(b)(5)**

?

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
[\(301\) 628-5658](tel:3016285658) (O)

(b)(6) (C)

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On Wed, Jan 25, 2017 at 3:29 PM, Jackie Rolleri - NOAA Federal <[jackie.rolleri@noaa.gov](mailto:jackie.rolleri@noaa.gov)> wrote:  
Hi Mark-

We are working on the attached FOIA request. (b)(5)

Thanks,  
Jackie

----- Forwarded message -----

From: **Karen Grimmer** <[karen.grimmer@noaa.gov](mailto:karen.grimmer@noaa.gov)>  
Date: Tue, Jan 17, 2017 at 8:07 PM  
Subject: Fwd: ACTION: New Freedom of Information Act Request - Monterey Peninsula Water Supply Project  
To: Bridget Hoover - NOAA Federal <[bridget.hoover@noaa.gov](mailto:bridget.hoover@noaa.gov)>, "Kathey, Scott" <[Scott.Kathey@noaa.gov](mailto:Scott.Kathey@noaa.gov)>, Sophie De Beukelaer - NOAA Affiliate <[sophie.debeukelaer@noaa.gov](mailto:sophie.debeukelaer@noaa.gov)>, Steve Lonhart - NOAA Federal <[Steve.Lonhart@noaa.gov](mailto:Steve.Lonhart@noaa.gov)>  
Cc: Dawn Hayes <[Dawn.Hayes@noaa.gov](mailto:Dawn.Hayes@noaa.gov)>, Paul Michel - NOAA Federal <[Paul.Michel@noaa.gov](mailto:Paul.Michel@noaa.gov)>, Jackie Rolleri - NOAA Federal <[jackie.rolleri@noaa.gov](mailto:jackie.rolleri@noaa.gov)>, Aida Pettegrue <[aida.pettegrue@noaa.gov](mailto:aida.pettegrue@noaa.gov)>

Bridget/Scott/Sophie/Steve (b)(5)

(b)(5)

. Why is this?

Thanks.

Begin forwarded message:

**From:** Paul Michel - NOAA Federal <[paul.michel@noaa.gov](mailto:paul.michel@noaa.gov)>  
**Subject:** Fwd: ACTION: New Freedom of Information Act Request - Monterey Peninsula Water Supply Project

**Date:** January 12, 2017 at 3:53:43 PM PST  
**To:** Karen Grimmer <[karen.grimmer@noaa.gov](mailto:karen.grimmer@noaa.gov)>

----- Forwarded message -----

**From:** Aida Pettegrue <[aida.pettegrue@noaa.gov](mailto:aida.pettegrue@noaa.gov)>  
**Date:** Fri, Jan 6, 2017 at 1:37 PM  
**Subject:** ACTION: New Freedom of Information Act Request - Monterey Peninsula Water Supply Project  
**To:** Paul Michel <[paul.michel@noaa.gov](mailto:paul.michel@noaa.gov)>, Jackie Rolleri - NOAA Federal <[jackie.rolleri@noaa.gov](mailto:jackie.rolleri@noaa.gov)>  
**Cc:** Michelle Mills <[Michelle.Mills@noaa.gov](mailto:Michelle.Mills@noaa.gov)>

Hi Paul:

NOS has requested to officially have the attached FOIA logged in. The requester has asked for a fee waiver. The NOAA FOIA Officer is responsible for determining whether or not to grant this request. If the fee waiver is granted, we will begin to process this action. If it is not granted, we will need to send a fee estimate letter to the requester. For this letter you will need to provide me with names, salaries, and hours for the staff who will conduct the search. For now, there is no action required. In the meantime, you can give your staff who will be responsible for this action a heads up.

In the attached request, Mr. Elliott (the requester) has referenced his July 2015 request. This **was not** an official FOIA request (see the 2015 e-mail chain below).

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----- Forwarded message -----

**From:** Cody Elliott <[celliot@adamsbroadwell.com](mailto:celliot@adamsbroadwell.com)>  
**Date:** Wed, Sep 16, 2015 at 1:21 PM  
**Subject:** FOIA Requests  
**To:** "[paul.michel@noaa.gov](mailto:paul.michel@noaa.gov)" <[paul.michel@noaa.gov](mailto:paul.michel@noaa.gov)>  
**Cc:** "[dawn.hayes@noaa.gov](mailto:dawn.hayes@noaa.gov)" <[dawn.hayes@noaa.gov](mailto:dawn.hayes@noaa.gov)>

Hi Paul,

I am in the process of preparing a FOIA request to your agency in regards to DeepWater Desal LLC's Monterey Bay Regional Water Project, and I was advised by one of my attorneys to confirm the appropriate addressees with you. Should I send the request directly to yourself and/or other individuals in your office, or do I need to include the NOAA in the request? Please advise as to how you would prefer we submit our inquiry.

Thanks in advance for your help,

Cody Elliott

Legal Assistant

Adams Broadwell Joseph & Cardozo  
601 Gateway Boulevard, Suite 1000  
South San Francisco, CA 94080  
Phone [\(650\) 589-1660](tel:(650)589-1660)  
Fax [\(650\) 589-5062](tel:(650)589-5062)

[celliot@adamsbroadwell.com](mailto:celliot@adamsbroadwell.com)

\*\*\*\*\*  
\*\*\*\*\*  
\*\*\*\*\*  
\*\*

Hi Cody:

You're welcome.

aida

On 9/18/2015 12:17 PM, Cody Elliott wrote:  
Hi Aida,

Thank you for the response. I'll submit our FOIA as soon as I can.

Thanks,

Cody Elliott  
Legal Assistant  
Adams Broadwell Joseph & Cardozo  
601 Gateway Boulevard, Suite 1000  
South San Francisco, CA 94080  
Phone [\(650\) 589-1660](tel:(650)589-1660)  
Fax [\(650\) 589-5062](tel:(650)589-5062)  
[celliot@adamsbroadwell.com](mailto:celliot@adamsbroadwell.com)

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-----Original Message-----

From: Aida Pettegrue [<mailto:aida.pettegrue@noaa.gov>]  
Sent: Thursday, September 17, 2015 2:22 PM  
To: Cody Elliott  
Cc: Karen Grimmer  
Subject: Release of Deepwater Desal Permitting Documents

Good Afternoon Mr. Cody:

Based on discussions regarding this matter, it has been determined to handle your request as an official FOIA request. We will assume that the focus of your request is on the permit application for Deepwater Desal, unless you tell us otherwise.

In response to this e-mail, can you please forward me your official FOIA request.

Thank you.

Aida Pettegrue  
FOIA Liaison  
Office of National Marine Sanctuaries  
[\(301\) 713-7263](tel:3017137263)

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX

Jackie:

Will you be our attorney on this request? If so, do you want me to set up a conference call with the MB staff?

Thanks

aida

----- Forwarded Message -----

**Subject:**Freedom of Information Act Request - Monterey Peninsula Water Supply Project  
**Date:**Mon, 2 Jan 2017 17:23:50 -0500  
**From:**Aida Pettegrue <[aida.pettegrue@noaa.gov](mailto:aida.pettegrue@noaa.gov)>  
**To:**Nkolika.Ndubisi <[nkolika.ndubisi@noaa.gov](mailto:nkolika.ndubisi@noaa.gov)>  
**CC:**Paul Michel <[paul.michel@noaa.gov](mailto:paul.michel@noaa.gov)>

Hi Nikki:

Happy New Year!

Can you please officially log in the attached new FOIA request.

Thanks much!

aida

----- Forwarded Message -----

**Subject:**Fwd: Freedom of Information Act Request - Monterey Peninsula Water Supply Project  
**Date:**Wed, 28 Dec 2016 11:49:42 -0800  
**From:**Paul Michel - NOAA Federal <[paul.michel@noaa.gov](mailto:paul.michel@noaa.gov)>  
**To:**Aida Pettegrue <[aida.pettegrue@noaa.gov](mailto:aida.pettegrue@noaa.gov)>

Hi Aida - I never heard back from anyone on my email, but now think this may need to be logged in by you? Have you seen this yet?

----- Forwarded message -----

From: **Paul Michel - NOAA Federal** <[paul.michel@noaa.gov](mailto:paul.michel@noaa.gov)>

Date: Tue, Dec 20, 2016 at 11:10 AM

Subject: Fwd: Freedom of Information Act Request - Monterey Peninsula Water Supply Project

To: Karen Grimmer <[karen.grimmer@noaa.gov](mailto:karen.grimmer@noaa.gov)>, Bridget Hoover <[bridget.hoover@noaa.gov](mailto:bridget.hoover@noaa.gov)>, Bill Douros <[william.douros@noaa.gov](mailto:william.douros@noaa.gov)>, Dawn Hayes - NOAA Federal <[dawn.hayes@noaa.gov](mailto:dawn.hayes@noaa.gov)>, Vicki Wedell <[vicki.wedell@noaa.gov](mailto:vicki.wedell@noaa.gov)>, Matt Brookhart <[matt.brookhart@noaa.gov](mailto:matt.brookhart@noaa.gov)>

Received on Sunday, but I just back-scrolled to make sure I was caught up on email and found this beauty! Do I also send to Michelle to log in?

----- Forwarded message -----

From: **Alisha C. Pember** <[apember@adamsbroadwell.com](mailto:apember@adamsbroadwell.com)>

Date: Fri, Dec 16, 2016 at 4:31 PM

Subject: Freedom of Information Act Request - Monterey Peninsula Water Supply Project

To: "[foia@noaa.gov](mailto:foia@noaa.gov)" <[foia@noaa.gov](mailto:foia@noaa.gov)>, "[paul.michel@noaa.gov](mailto:paul.michel@noaa.gov)" <[paul.michel@noaa.gov](mailto:paul.michel@noaa.gov)>

Cc: Cody Elliott <[celliott@adamsbroadwell.com](mailto:celliott@adamsbroadwell.com)>

Good afternoon,

Please see the attached.

If you have any questions, please contact Cody Elliott.

Thank you.

Alisha Pember

Alisha C. Pember  
Adams Broadwell Joseph & Cardozo  
601 Gateway Boulevard, Suite 1000  
South San Francisco, CA 94080  
[\(650\) 589-1660](tel:6505891660) voice, Ext. 24  
[apember@adamsbroadwell.com](mailto:apember@adamsbroadwell.com)

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--

Paul E. Michel  
Superintendent  
Monterey Bay National Marine Sanctuary  
99 Pacific Street, Bldg 455  
Monterey, CA 93907  
<http://montereybay.noaa.gov/>

--

Paul E. Michel  
Superintendent  
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--

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Superintendent  
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99 Pacific Street, Bldg 455  
Monterey, CA 93907  
<http://montereybay.noaa.gov/>



--

Jackie Rolleri, Attorney-Advisor  
Oceans and Coasts Section  
Office of the General Counsel  
National Oceanic and Atmospheric Administration  
1305 East-West Highway  
SSMC4, Suite 6111  
Silver Spring, MD 20910  
[301-713-7387](tel:301-713-7387) (office)  
**(b)(6)** (cell)

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--

Jackie Rolleri, Attorney-Advisor  
Oceans and Coasts Section  
Office of the General Counsel  
National Oceanic and Atmospheric Administration  
1305 East-West Highway  
SSMC4, Suite 6111  
Silver Spring, MD 20910  
[301-713-7387](tel:301-713-7387) (office)  
**(b)(6)** (cell)

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May 16, 2016

MEMORANDUM TO: Offices Potentially Holding Responsive Records

FROM: NMFS PR FOIA Liaison **Lamar Turner**  
Subject Matter Expert (SME) **Jolie Harrison**

SUBJECT: FOIA DOC-NOAA-2016-000959

Friends of Animals, Sea Shepherd Legal, and Turtle Island Restoration  
Network Request for Records Relating to Incidental Harassment  
Authorization Issued for Activities Impacting Cook Inlet Beluga Whales  
in Federal Waters Administered by the National Oceanic and Atmospheric  
Administration<sup>1</sup>

(b) (5)

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(b) (5)



If you have questions about the procedures for collecting documents, please contact the **NMFS PR FOIA Liaison-Lamar Turner** at (301) 427-8492 or [nmfs.hq.pr.foia@noaa.gov](mailto:nmfs.hq.pr.foia@noaa.gov). If you have questions regarding the scope of the request, you may contact the subject matter expert ([jolie.harrison@noaa.gov](mailto:jolie.harrison@noaa.gov)).

(b) (5)

(b) (5)

---

**From:** Maria Williams - NOAA Federal <maria.williams@noaa.gov>  
**Sent:** Tuesday, January 31, 2017 10:59 AM  
**To:** Mark Graff - NOAA Federal  
**Cc:** Lola Stith - NOAA Affiliate; Robert Swisher - NOAA Federal  
**Subject:** Re: DOC-NOAA-2016-001570  
**Attachments:** GC clear 110916.pdf; Guidance Needed.pdf; FeeWorksheet 1570.xls; Partial Denial Letter adding 2016 language.docx

Mark,

In response to your questions:

(b) (5)

Respectfully,

*Maria S. Williams*

*Property | NESDIS FOIA Liaison | Admin Officer*

NESDIS, Office of the Assistant Chief Information Officer

National Oceanic & Atmospheric Administration

Phone (b)(6)

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"Talent wins games, but teamwork and intelligence wins championship" ~ MJ

On Mon, Jan 30, 2017 at 1:00 PM, Mark Graff - NOAA Federal <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)> wrote:

Hi Maria,



(b)(5) . Thanks Maria--

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration

[\(301\) 628-5658](tel:3016285658) (O)

(b)(6) (C)

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**Subject:** Re: FOIA letter and routing slip  
**From:** Glenn Tallia <glenn.e.tallia@noaa.gov>  
**Date:** 11/9/2016 12:20 PM  
**To:** "Alan.Robinson" <alan.robinson@noaa.gov>

Al,

(b)(5) [Redacted]  
[Redacted] Glenn

On 11/8/2016 2:56 PM, Glenn Tallia wrote:

Al,

Per my msg on you voicemail. (b)(5) [Redacted]  
[Redacted] Glenn

On 11/8/2016 1:58 PM, Alan.Robinson wrote:

Glenn,

See attached:

-(b)(5) [Redacted]  
[Redacted]

- [Redacted]

[Redacted]  
[Redacted]

---

Attachments:

Partial Denial Letter 110816GETedits-2.docx

113 KB



Maria Williams - NOAA Federal <maria.williams@noaa.gov>

**FOIA Request 2016-001570 - Guidance Needed**

6 messages

**Maria Williams - NOAA Federal** <maria.williams@noaa.gov> Thu, Dec 15, 2016 at 12:02 PM  
To: Alan Robinson - NOAA Federal <alan.robinson@noaa.gov>, Tahara Dawkins <tahara.dawkins@noaa.gov>, Glenn Tallia - NOAA Federal <glenn.e.tallia@noaa.gov>

Al,

**(b)(5)**

Glen,

**(b)(5)**

*Maria S. Williams*

*Property | FOIA | Admin Officer*

NESDIS, Office of the Assistant Chief Information Officer  
National Oceanic & Atmospheric Administration

Phone: 301-713-7103 | Cell: **(b)(6)**

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"Talent wins games, but teamwork and intelligence wins championship" ~ MJ

**Alan Robinson - NOAA Federal** <alan.robinson@noaa.gov> Thu, Dec 15, 2016 at 12:54 PM  
To: Maria Williams - NOAA Federal <maria.williams@noaa.gov>  
Cc: Tahara Dawkins <tahara.dawkins@noaa.gov>, Glenn Tallia - NOAA Federal <glenn.e.tallia@noaa.gov>

Maria

**(b)(5)**

Alan Robinson  
NOAA/NESDIS/Commercial Remote Sensing Regulatory Affairs  
SSMC1, Room 8137, 1335 East-West Highway  
Silver Spring, MD 20910  
301-713-3387, [alan.robinson@noaa.gov](mailto:alan.robinson@noaa.gov)

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\*\*\*\*\*

[Quoted text hidden]

**Maria Williams - NOAA Federal** <maria.williams@noaa.gov>  
To: Alan Robinson - NOAA Federal <alan.robinson@noaa.gov>  
Cc: Tahara Dawkins <tahara.dawkins@noaa.gov>, Glenn Tallia - NOAA Federal <glenn.e.tallia@noaa.gov>

Thu, Dec 15, 2016 at 1:20 PM

Glenn,

(b)(5)

*Maria S. Williams*

**Property | FOIA | Admin Officer**

NESDIS, Office of the Assistant Chief Information Officer

National Oceanic & Atmospheric Administration

**Phone:** 301-713-7103 | **Cell:** 202-308-4959

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"Talent wins games, but teamwork and intelligence wins championship" ~ MJ

[Quoted text hidden]

**Glenn Tallia** <glenn.e.tallia@noaa.gov>  
To: Maria Williams - NOAA Federal <maria.williams@noaa.gov>, Alan Robinson - NOAA Federal <alan.robinson@noaa.gov>  
Cc: Tahara Dawkins <tahara.dawkins@noaa.gov>

Mon, Dec 19, 2016 at 10:29 AM

Maria,

(b)(5)  
(b)(5) Glenn

[Quoted text hidden]

**Glenn Tallia** <glenn.e.tallia@noaa.gov>  
To: Maria Williams - NOAA Federal <maria.williams@noaa.gov>, Alan Robinson - NOAA Federal <alan.robinson@noaa.gov>  
Cc: Tahara Dawkins <tahara.dawkins@noaa.gov>

Mon, Dec 19, 2016 at 10:29 AM

(b)(5) Glenn

[Quoted text hidden]

**Maria Williams - NOAA Federal** <maria.williams@noaa.gov>  
To: Glenn Tallia <glenn.e.tallia@noaa.gov>  
Cc: Alan Robinson - NOAA Federal <alan.robinson@noaa.gov>, Tahara Dawkins <tahara.dawkins@noaa.gov>

Mon, Dec 19, 2016 at 10:30 AM

Roger that!

*Maria S. Williams*

**Property | FOIA | Admin Officer**

NESDIS, Office of the Assistant Chief Information Officer

National Oceanic & Atmospheric Administration

**Phone:** 301-713-7103 | **Cell:** 202-308-4959

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1/31/2017

National Oceanic and Atmospheric Administration Mail - FOIA Request 2016-001570 - Guidance Needed

"Talent wins games, but teamwork and intelligence wins championship" ~ MJ

[Quoted text hidden]

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**From:** Mark Graff - NOAA Federal <mark.graff@noaa.gov>  
**Sent:** Wednesday, February 1, 2017 9:51 AM  
**To:** Lola Stith - NOAA Affiliate  
**Subject:** Fwd: PEER FOIA request - threats and violence against employees in calendar year 2016

Another request from PEER for input and routing.

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628-5658 (O)  
(b)(6) (C)

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----- Forwarded message -----

**From:** **Laura Dumais** <[ldumais@peer.org](mailto:ldumais@peer.org)>  
**Date:** Wed, Feb 1, 2017 at 9:43 AM  
**Subject:** PEER FOIA request - threats and violence against employees in calendar year 2016  
**To:** "[FOIA@noaa.gov](mailto:FOIA@noaa.gov)" <[FOIA@noaa.gov](mailto:FOIA@noaa.gov)>, "[Mark.Graff@noaa.gov](mailto:Mark.Graff@noaa.gov)" <[Mark.Graff@noaa.gov](mailto:Mark.Graff@noaa.gov)>

Dear NOAA and DOC FOIA Officers:

Each year, my organization submits requests under the Freedom of Information Act (5 U.S.C. 552, as amended) seeking information from major federal agencies about the incidence of violence and threats against their employees.

Accordingly, Public Employees for Environmental Responsibility (PEER) now asks that, as you have done in years past, you provide information for **calendar year 2016**. Specifically, we request the following records and/or documents concerning acts of violence or threats against National Oceanic and Atmospheric Administration (NOAA) employees and professional observer contractor employees as follows:

A summary of all incidents of violence, threats, or harassment against **NOAA employees** that occurred in **calendar year 2016**. The summary should include the date, location, and nature of the incident or threat together with a summary of what, if any, outcomes stemmed from the incident or threat (e.g., arrest, conviction, ongoing investigation).

A summary of all incidents of violence, threats, or harassment against **professional observers**, including government contractors, that occurred in **calendar year 2015**. The summary should include incidents against observers aboard NOAA vessels or while otherwise carrying out their duties as NOAA contractors, and include the date, location, and nature of the incident or threat together with a summary of what, if any, outcomes stemmed from the incident or threat (e.g., arrest, conviction, ongoing investigation).

In the past, there was some confusion over whether NOAA or the Department of Commerce should handle our request as to *professional observers*. Thus, I am sending this request to both NOAA and DOC, and I trust that the respective FOIA officers will work out amongst themselves the most expeditious way of responding, involving NMFS if necessary.

**Please note** that your past responses have indicated severe inaccuracies. For example, for our calendar year 2013 request pertaining to violence against professional observers, DOC's Office of Security reported only once responsive incident, yet a report by the NMFS Office for Law Enforcement's Alaska Enforcement Division stated that observers had reported 38 incidents of violence, threats, or harassment in the first two quarters of 2013 in *Alaska alone*. We do not know who within NOAA or DOC keeps track of these numbers, but we ask your assistance and cooperation in ensuring that the appropriate people respond to our request to provide a **complete and accurate response**.

We greatly appreciate your efforts in providing this important information, which will contribute to our ongoing study of the extent of violence and intimidation directed against public resource employees. Release of the requested information is in the interest of the general public, in order for the public to understand the true dimensions of, and motivations for, confrontations with public resource agencies.

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If you have any questions about this FOIA request, please contact me at [\(202\) 265-7337](tel:202-265-7337). I look forward to receiving the agency’s final response within twenty working days.

Cordially,

Laura Dumais, Staff Counsel

Public Employees for Environmental Responsibility (PEER)

962 Wayne Ave, Suite 610

Silver Spring, MD 20910

Direct: [\(202\) 265-4189](tel:202-265-4189) / PEER: [\(202\) 265-7337](tel:202-265-7337)

[www.peer.org](http://www.peer.org)

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**From:** Laura Dumais <ldumais@peer.org>  
**Sent:** Wednesday, February 1, 2017 9:44 AM  
**To:** FOIA@noaa.gov; Mark.Graff@noaa.gov  
**Subject:** PEER FOIA request - threats and violence against employees in calendar year 2016

Dear NOAA and DOC FOIA Officers:

Each year, my organization submits requests under the Freedom of Information Act (5 U.S.C. 552, as amended) seeking information from major federal agencies about the incidence of violence and threats against their employees.

Accordingly, Public Employees for Environmental Responsibility (PEER) now asks that, as you have done in years past, you provide information for **calendar year 2016**. Specifically, we request the following records and/or documents concerning acts of violence or threats against National Oceanic and Atmospheric Administration (NOAA) employees and professional observer contractor employees as follows:

A summary of all incidents of violence, threats, or harassment against **NOAA employees** that occurred in **calendar year 2016**. The summary should include the date, location, and nature of the incident or threat together with a summary of what, if any, outcomes stemmed from the incident or threat (e.g., arrest, conviction, ongoing investigation).

A summary of all incidents of violence, threats, or harassment against **professional observers**, including government contractors, that occurred in **calendar year 2015**. The summary should include incidents against observers aboard NOAA vessels or while otherwise carrying out their duties as NOAA contractors, and include the date, location, and nature of the incident or threat together with a summary of what, if any, outcomes stemmed from the incident or threat (e.g., arrest, conviction, ongoing investigation).

In the past, there was some confusion over whether NOAA or the Department of Commerce should handle our request as to *professional observers*. Thus, I am sending this request to both NOAA and DOC, and I trust that the respective FOIA officers will work out amongst themselves the most expeditious way of responding, involving NMFS if necessary.

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Silver Spring, MD 20910  
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**From:** Mark Graff - NOAA Federal <mark.graff@noaa.gov>  
**Sent:** Wednesday, February 1, 2017 9:53 AM  
**To:** John Almeida - NOAA Federal; Samuel Dixon - NOAA Affiliate; Robert Moller - NOAA Federal  
**Subject:** Fwd: PEER FOIA request - threats and violence against employees in calendar year 2016

FYI, this request just received from PEER, one of our current litigants. It likely won't be in this week's report, so I wanted to send it separately to you folks.

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628-5658 (O)  
(b)(6) (C)

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----- Forwarded message -----

**From:** **Laura Dumais** <[ldumais@peer.org](mailto:ldumais@peer.org)>  
**Date:** Wed, Feb 1, 2017 at 9:43 AM  
**Subject:** PEER FOIA request - threats and violence against employees in calendar year 2016  
**To:** "[FOIA@noaa.gov](mailto:FOIA@noaa.gov)" <[FOIA@noaa.gov](mailto:FOIA@noaa.gov)>, "[Mark.Graff@noaa.gov](mailto:Mark.Graff@noaa.gov)" <[Mark.Graff@noaa.gov](mailto:Mark.Graff@noaa.gov)>

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Cordially,

Laura Dumais, Staff Counsel

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**From:** Mark Graff - NOAA Federal <mark.graff@noaa.gov>  
**Sent:** Wednesday, February 1, 2017 10:01 AM  
**To:** John Almeida - NOAA Federal  
**Subject:** Re: PEER FOIA request - threats and violence against employees in calendar year 2016

(b)(5)

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628-5658 (O)

(b)(6) (C)

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On Wed, Feb 1, 2017 at 9:58 AM, John Almeida - NOAA Federal <[john.almeida@noaa.gov](mailto:john.almeida@noaa.gov)> wrote:

(b)(5)

On Wed, Feb 1, 2017 at 9:53 AM, Mark Graff - NOAA Federal <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)> wrote:

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National Oceanic and Atmospheric Administration  
[\(301\) 628-5658](tel:3016285658) (O)

(b)(6) (C)

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Date: Wed, Feb 1, 2017 at 9:43 AM

Subject: PEER FOIA request - threats and violence against employees in calendar year 2016  
To: "[FOIA@noaa.gov](mailto:FOIA@noaa.gov)" <[FOIA@noaa.gov](mailto:FOIA@noaa.gov)>, "[Mark.Graff@noaa.gov](mailto:Mark.Graff@noaa.gov)" <[Mark.Graff@noaa.gov](mailto:Mark.Graff@noaa.gov)>

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| Tracking Number      | Type     | Requester          |
|----------------------|----------|--------------------|
| DOC-NOAA-2017-000539 | Referral | Jamie Pang         |
| DOC-NOAA-2017-000492 | Request  | Michael Ravnitzky  |
| DOC-NOAA-2017-000536 | Request  | Peter R. Ehrhardt  |
| DOC-NOAA-2017-000530 | Request  | Raymond Tubb       |
| DOC-NOAA-2017-000534 | Request  | Robert C. Stober   |
| DOC-NOAA-2017-000533 | Request  | Lynn Manolopoulos  |
| DOC-NOAA-2017-000532 | Request  | Corin Hoggard      |
| DOC-NOAA-2017-000510 | Request  | Russ Rector        |
| DOC-NOAA-2017-000497 | Request  | Rachel Clattenburg |

|                      |                |                  |
|----------------------|----------------|------------------|
| DOC-NOAA-2017-000499 | Request        | Zeenat Mian      |
| DOC-OS-2017-000428   | Other          | Robert Faturechi |
| DOC-OS-2017-000308   | Other          | Michael Best     |
| DOC-OS-2017-000489   | Search Pending | Jimmy Metcalf    |

| Requester Organization          | Submitted  | Assigned To        |
|---------------------------------|------------|--------------------|
|                                 |            |                    |
| CENTER FOR BIOLOGICAL DIVERSITY | 01/30/2017 | Tawand Hodge Tonic |
|                                 | 01/24/2017 | Lola Stith         |
| Atty at Law                     | 01/30/2017 | NMFS               |
| WGXA ABC16/FOX24                | 01/27/2017 | NWS                |
| Hershoff, Lupino & Yagel, LLP   | 01/27/2017 | NOS                |
| Davis Wr.ght Tremain LLP        | 01/27/2017 | NOS                |
| ABC30 Action News               | 01/27/2017 | NWS                |
|                                 | 01/26/2017 | Tawand Hodge Tonic |
| Public Citizen                  | 01/25/2017 | USEC               |

|                                         |            |                     |
|-----------------------------------------|------------|---------------------|
|                                         | 01/25/2017 | Kehaupuaokal Kamaka |
| ProPublica                              | 01/25/2017 | NOAA                |
|                                         | 01/26/2017 | NOAA                |
| The Humane Society of the United States | 02/01/2017 | NOAA                |

| Case File Assigned To | Perfected? | Due        | Closed Date | Status                   |
|-----------------------|------------|------------|-------------|--------------------------|
| Tawand Hodge Tonic    | Yes        | 03/01/2017 | TBD         | Research Records         |
| Lola Stith            | No         | TBD        | 01/31/2017  | Closed                   |
| NMFS                  | Yes        | 03/02/2017 | TBD         | Assignment Determination |
| NWS                   | Yes        | 03/02/2017 | TBD         | Assignment Determination |
| NOS                   | Yes        | 02/27/2017 | TBD         | Assignment Determination |
| NOS                   | Yes        | 02/28/2017 | TBD         | Assignment Determination |
| NWS                   | Yes        | 03/02/2017 | TBD         | Assignment Determination |
| Tawand Hodge Tonic    | Yes        | 02/28/2017 | TBD         | Assignment Determination |
| USEC                  | Yes        | 03/02/2017 | TBD         | Assignment Determination |



|                     |     |            |     |                          |
|---------------------|-----|------------|-----|--------------------------|
| Kehaupuaokal Kamaka | Yes | 02/23/2017 | TBD | Assignment Determination |
| James Davis         | Yes | 02/27/2017 | TBD | Open                     |
| James Davis         | Yes | 02/27/2017 | TBD | Open                     |
| Harriette Boyd      | Yes | 02/10/2017 | TBD | Open                     |

**Dispositions**

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Not an agency record

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**Detail**

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Clean Water Act, 33 U.S.C. § 1344, is/was sought pursuant to nationwide permits ("NWP"), generated since February 21, 2012 through the date of the agency's search for responsive records, in the following divisions of the U.S. Army Corps of Engineers ("ACOE"): North Atlantic; South Atlantic; South Pacific; Northwestern, Pacific Ocean; Headquarters;

2. All verification letters for NWPs, generated since February 21, 2012 through the date of the agency's search for responsive records, in the following divisions of the ACOE: North Atlantic; South Atlantic; South Pacific; Northwestern; Pacific Ocean; Headquarters;

3. All NWPs issued, approved, authorized, verified, and/or relied upon for specific activities or discharges by the North Atlantic, South Atlantic, South Pacific, Pacific Ocean; and Northwestern ACOE Divisions, and/or by ACOE Headquarters, in calendar years 2011 and 2012 through the date of the agency's search for responsive records;

4. All notices of intent to sue ACOE, dated within four years of the date of the agency's search for records, alleging violations of the Endangered Species Act and/or Clean Water Act in connection with the ACOE's NWP program;

5. All requests for reauthorization of activities pursuant to 2007 NWP 21 received by any ACOE division from Feb. 21, 2012 through the date of the agency's search for responsive records1

;

6. All biological opinions, biological assessments, letters of concurrence, and letters reflecting determinations of "no effect", pursuant to Section 7(a)(2) of the Endangered Species Act, 16 U.S.C. § 1536(a)(2), for any projects covered under any NWPs, dated from February 21, 2012 through the date of the agency's search for responsive records;

**\*\*SEE SUPPORTING FILE FOR ADDTL DETAIL\*\***

A copy of the home page for <http://intranet.mcmurdo.usap.gov> A copy of each page connected to that home page

All documents in the possession or control of NOAA related or pertaining in any way to Charter Halibut Permit CHP permit No.4751C issued to Tom Floyd et al and Crooked Creek Guide and RV Park

to me: We would like a list of documents reflecting or showing the days that the Department of Defense Doppler Radar sites operated by the WFO at Atlanta/Peachtree City, GA and located in Jeffersonville, Georgia and covering Robins Air Force Base, and the site operated by the WFO at Jacksonville, FL, located in South

UTV LITTLE BULLY. A copy of the Captain of the Port Order 15-002 is attached. The undersigned attorney has been retained by SeaTow Islamorada SeaTow Islamorada was contracted to provide services to LITTLE BULLY

Information Act (FOIA) for copies of any documents relevant to the natural resource damages assessment referenced in paragraph 116 (concerning Quendall Terminals, located at 4503 Lake Washington Boulevard North, Renton, WA (&quot;Quendall Site&quot;)) of the enclosed Proof of Claim of the United States of America.

request includes but is not limited to a request for the habitat equivalency analysis (HEA) referenced in Service from a whitehouse.gov email address between Jan. 20, 2017, and Jan. 23, 2017. I prefer to receive records in electronic form both for convenience and cost concerns.

Provide all MMIR transfer information (shared/unshared) available to the present. Also, I would like the record(s) in Excel format and correlate the information by date

request:

<br />

<br /> 1. All records of communications from or on behalf of the Trump Administration and/or the Trump Transition Team to the National Oceanic and Atmospheric Administration (NOAA) providing guidance on which agency matters NOAA employees may or may not publicly discuss and/or regulating how or whether NOAA employees may speak about any agency matter with individuals or organizations outside the agency, for the period from January 20, 2017, through the date of processing this request. Background discussion of the concerns motivating this request is provided in the January 24, 2017, article in Politico by Andrew Restuccia, Alex

Please provide information of HMMA's Hawaiian monk seal duties as specified on the cooperative grant with NOAA.

All correspondence between employees at the under secretary level or above and Todd Ricketts from Jan. 1, from any member or part of the transition team, as well as any emails which include any or all of the following terms or phrases: • Trump • Transition • President-Elect • New administration • New boss

any and all records received from, sent to, or that otherwise reference Scott Falk, Nominee of the Administrator, since November 9, 2016; and any and all FOIA request responses related to the request in

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**From:** Samuel Dixon <samuel.dixon@noaa.gov>  
**Sent:** Wednesday, February 1, 2017 3:43 PM  
**To:** Stacey Nathanson - NOAA Federal; Jennifer Pralgo - NOAA Federal; Arlyn Penaranda - NOAA Federal; Mark Graff - NOAA Federal  
**Subject:** Fwd: Daily Clips Update for Wednesday, February 01, 2016  
**Attachments:** Daily Clips Update February 01 2016.docx

Samuel Dixon  
Contractor IBSS Corp  
NMFS Assistant FOIA Liaison  
(301) 427 8739  
[samuel.dixon@noaa.gov](mailto:samuel.dixon@noaa.gov)

----- Forwarded message -----

**From:** Steven Goodman - NOAA Federal <[steven.goodman@noaa.gov](mailto:steven.goodman@noaa.gov)>  
**Date:** Wed, Feb 1, 2017 at 3:17 PM  
**Subject:** Fwd: Daily Clips Update for Wednesday, February 01, 2016  
**To:** Kirk Essmyer - NOAA Affiliate <[kirk.essmyer@noaa.gov](mailto:kirk.essmyer@noaa.gov)>, "[Samuel.Dixon@noaa.gov](mailto:Samuel.Dixon@noaa.gov)" <[Samuel.Dixon@noaa.gov](mailto:Samuel.Dixon@noaa.gov)>

Observers face harassment, threats aboard ships

----- Forwarded message -----

**From:** Gene Loudon <[gene.louden@noaa.gov](mailto:gene.louden@noaa.gov)>  
**Date:** Wed, Feb 1, 2017 at 3:08 PM  
**Subject:** Daily Clips Update for Wednesday, February 01, 2016  
**To:**

NOAA DAILY CLIPS

Wednesday, February 1, 2017

DAILY CLIPS UPDATE

THESE ARTICLES ARE THE RESULT OF NOAA COMMUNICATIONS EFFORTS

Observers face harassment, threats aboard ships  
GREENWIRE

ARTICLES WITHOUT NOAA COMMUNICATIONS INPUT

Lobstermen question need for restrictions to help species  
SAN FRANCISCO CHRONICLE/ ASSOCIATED PRESS

GREENWIRE

FISHERIES

Observers face harassment, threats aboard ships

Emily Yehle, E&E News reporter

Published: Wednesday, February 1, 2017

In the summer of 2015, a fishery observer spent more than a week aboard a vessel with a captain who called her "Precious."

The observer was there to weigh and count fish, collecting data essential to setting federal fishing regulations. But when she insisted on measuring an undersized codfish, the captain turned hostile, according to a complaint she later filed with the National Oceanic and Atmospheric Administration.

"I was doing my job. During his rants about how much he hated me and he'd never have me on his boat again, he JOKINGLY said that he should just throw me over board," the observer wrote. "He was definitely JOKING and I know that but when you are stuck on a boat for 8 days getting harassed by the captian [sic], I did not take those comments lightly."

The captain confirmed to a NOAA special agent that the complaint was accurate. But, he added, "it wasn't personal."

The tension between fishermen and observers is nothing new, especially in New England, where captains face dwindling fish stocks and financial insecurity. But some say it has increased in recent years as NOAA has attempted to hand off the cost of the Northeast Fisheries At-Sea Monitoring Program to fishermen (E&E News PM, June 23, 2016).

Three complaints obtained by E&E News through the Freedom of Information Act offer a window into what observers face when they step onto a boat with a sometimes-resentful crew.

NOAA uses hundreds of observers to cover tens of thousands of days at sea nationwide. In some regions, the fishermen pay for the observers; in others, NOAA picks up the bill. All are government contractors, paid by the sea day to collect the data NOAA needs to form regulations and ensure fishermen are following the rules.

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"We have no higher priority than observer harassment cases," he said. "Observers are vital to the integrity of everything NOAA Fisheries does, and we have zero tolerance for observer harassment."

But Elizabeth Mitchell, president of the Association for Professional Observers, has accused NOAA of being secretive about "what observers face and witness in the line of duty." The case files NOAA released are examples of what can happen, she said.

"How often they happen, we'll never know until the public demands transparency," she said in an email. "But the secrecy and redacting that is completely predictable."  
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The case ended with a verbal warning, as did many observer harassment cases in 2015. Of the 35 closed cases, 12 concluded with verbal warnings or a "lack of evidence." Three more were similarly closed through constituent outreach, while others were tagged as "info only."

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That included the female observer, as well as another observer who boarded a Northeast fishing boat in the fall of 2015. He told the agent that he only wanted the captain "talked to by enforcement," and then described the crew making various warnings.

One crew member advised the observer that "self-defense training would be a good thing as he wouldn't be surprised if an observer were to get hurt on a trip." Another yelled out from the wheelhouse that since the observer was a fan of an unnamed sports team, "they should just stab him now before they started fishing."

The captain denied that he threatened the observer, though he told an agent "he might be grumpy over the new regulations." He also offered his own complaint: The observer, he said, watched him while he "went to bathroom #2 in his bucket on deck."

The captain said he felt "violated." He also said the observer seemed upset that a five-day fishing trip was decreased to 40 hours because of poor fishing.

The special agent advised the captain of the importance of observers and closed the case for lack of evidence. Brennan said NOAA gives its agents flexibility to provide verbal warnings; the aim, he said, is compliance, and that is sometimes best achieved through warnings.

A third complaint was a straightforward violation: A fisherman told an observer who showed up for a trip to "get the fuck out of here." He also was given a verbal warning.

The three redacted case files released were from complaints made on Alaskan fishing trips. Two were from the same case, and all were sexual harassment complaints, according to NOAA. One case ended with a verbal warning and one with no further action.

Asked why the documents were completely redacted, NOAA cited both the requirement to protect private information and a provision unique to fisheries observers. Under the Magnuson-Stevens Fishery Conservation



and Management Act, NOAA is required to protect observer data. The agency has interpreted that to include statements made to NOAA's Office of Law Enforcement.

The Alaska documents were entirely observer statements, according to NOAA. The Northeast cases included both notes from special agents and observer statements. An official from NOAA's FOIA office said those were "underredacted."

Email: [eyehle@eenews.net](mailto:eyehle@eenews.net)

ARTICLE HYPERLINK: <http://www.eenews.net/greenwire/stories/1060049350/print>

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SAN FRANCISCO CHRONICLE/ ASSOCIATED PRESS

Lobstermen question need for restrictions to help species

Patrick Whittle, Associated Press  
January 30, 2017 Updated: January 31, 2017 10:03pm

PORTLAND, Maine (AP) Some lobster fishermen expressed skepticism Tuesday about a plan to try to revive the dwindling southern New England lobster stock through new fishing restrictions.

Lobster fishing in the U.S. is experiencing a boom that has lasted several years, and prices have also been high. But the population of the species has diminished in the waters off southern Massachusetts, Rhode Island, Connecticut and Long Island, New York, where it was once plentiful.

The Atlantic States Marine Fisheries Commission is considering a host of options to try to rejuvenate the region's lobster stock, which scientists have said is falling victim to rising ocean temperatures. An arm of the commission voted Tuesday to send the options out for public comment.

Fishermen and fishing groups at the meeting said it might not make sense to restrict fishing when the environment itself is what's hurting the lobster population.

George Dahl, a spokesman for the Long Island Sound Lobstermen's Association, asked: "What good is it to penalize the fishermen with more restrictions if the environmental conditions are not good enough for the lobster population to survive?"

The regulators could pick new restrictions for the fishery by May.

The selection of those measures will follow public comments that will be solicited in the coming months, the commission has said. Possibilities for managing the fishery include changing the legal harvesting size limit for lobsters, reducing the number of traps in the water and enforcing seasonal closures.

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## ECOLOGICAL SOCIETY OF AMERICA

Coastal wetlands help fight climate change

Posted By Frontiers Focus on Feb 1, 2017 | 0 comments

Ariana Sutton-Grier, an ecosystem ecologist at the University of Maryland, helps lead the National Oceanic and Atmospheric Administration's Coastal Blue Carbon Team. She shares this Frontiers Focus on the long-term carbon storage capacity of coastal wetlands.

Recent scientific advances have demonstrated that coastal wetlands—mangrove forests, tidal marshes, and seagrass meadows—pull carbon out of our atmosphere and store it for hundreds to thousands of years in the plants, but more importantly in the soils below. Policy- and decision-makers are investing in this “coastal blue carbon” by utilizing wetland conservation and restoration as a natural climate solution.

The newly-recognized carbon sequestration value of coastal wetlands has sparked interest in the capacity of other coastal and marine ecosystems to provide climate mitigation benefits. In the February issue of Frontiers, my colleagues and I explore the question of whether or not coral reefs, kelp forests, marine animals, and tiny, but extremely numerous, single-celled phytoplankton store carbon for the long-term. We evaluate their potential for broader climate mitigation strategies.

We conclude that while reefs, kelp forests, phytoplankton, and marine wildlife are all vital to the health and stability of our oceans and human communities, current scientific research suggests that they are not viable climate mitigation opportunities under existing policies and mechanisms.

We recommend that national efforts to implement climate mitigation strategies and reduce emissions focus on coastal wetlands, the best option for natural climate mitigation.

In intact coastal wetlands (from left to right: mangroves, tidal marshes, and seagrasses), carbon is taken up via photosynthesis (purple arrows) where it gets sequestered long term into woody biomass and soil (red dashed arrows) or respired (black arrows). When communities drain the soil in coastal wetlands (ie deforestation and drainage, impounded wetlands for agriculture, dredging), the carbon stored in the soils is consumed by microorganisms, which respire and release CO<sub>2</sub> as a metabolic waste product, faster, which leads to greater CO<sub>2</sub> emissions. From Figure 1 of Howard et al. (2017) *Front Ecol Environ* 2017; 15(1):42–50.

Clarifying the role of coastal and marine systems in climate mitigation. (2016) Jennifer Howard, Ariana Sutton-Grier, Dorothee Herr, Joan Kleypas, Emily Landis, Elizabeth Mcleod, Emily Pidgeon1, and Stefanie Simpson. *Front Ecol Environ* 2017; 1–9, doi:10.1002/fee.1451

ARTICLE HYPERLINK: <http://www.esa.org/esablog/research/coastal-wetlands-help-fight-climate-change/>

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Stay connected with NOAA: <http://www.noaa.gov/socialmedia/>

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Steven Goodman  
*NOAA Fisheries*

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SSMC 3 Route F/MB7 Room 9515  
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# NOAA DAILY CLIPS



Produced by NOAA Office of Communications, Washington

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Wednesday, February 1, 2017

## DAILY CLIPS UPDATE

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GREENWIRE

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## GREENWIRE

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Coastal wetlands help fight climate change

Posted By Frontiers Focus on Feb 1, 2017 | 0 comments

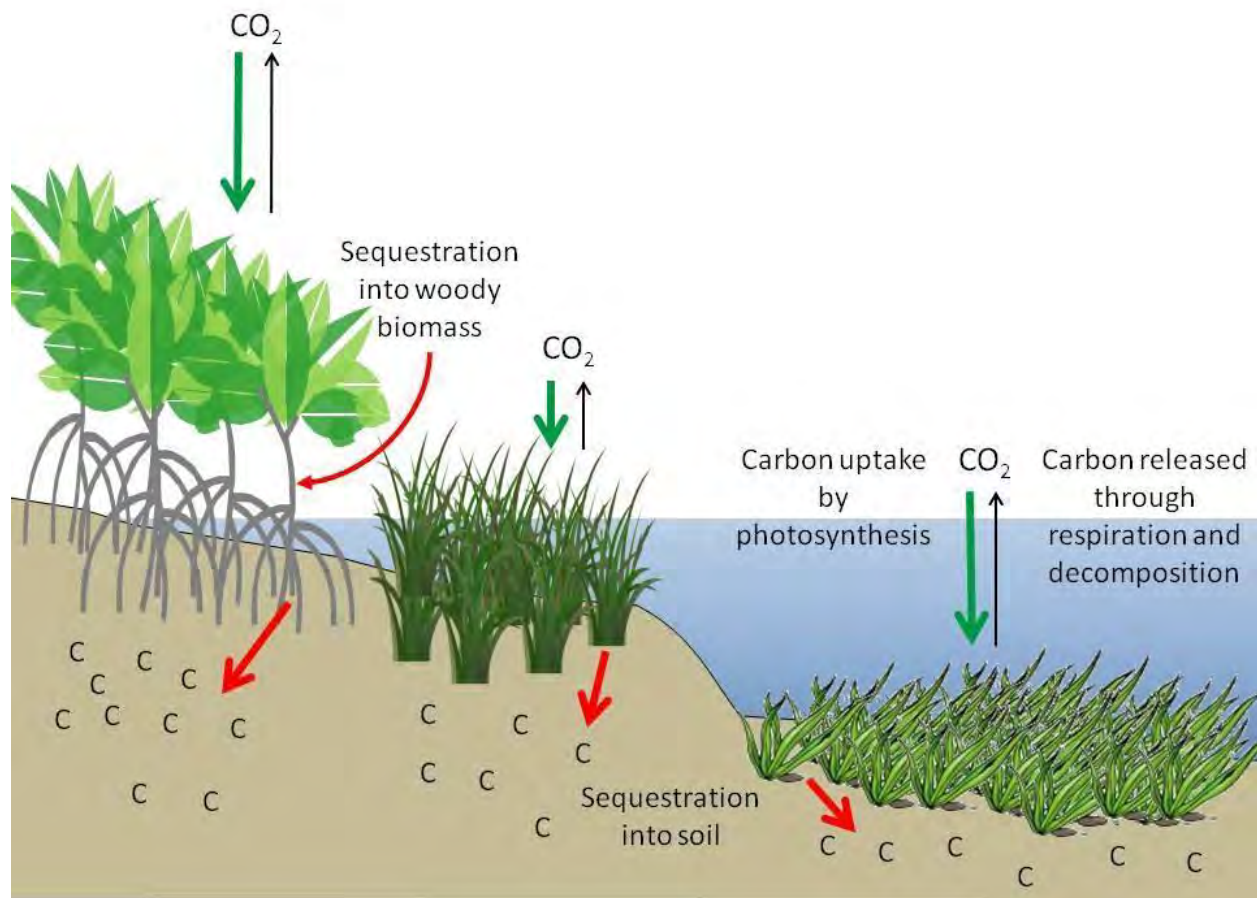
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**From:** Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov>  
**Sent:** Wednesday, February 1, 2017 5:34 PM  
**To:** Mark Graff - NOAA Federal  
**Cc:** Sheila Lynch - NOAA Federal; Alison Agness - NOAA Federal; Brittany Pugh - NOAA Federal; Shawn Martin; Doug Chow  
**Subject:** Re: Your file number : FOIA Request DOC-NOAA 2016-001214 / Our file number : AC-2016-00912

Hi Mark,

Any thoughts? Thanks in advance!

Ana Liza

On Wed, Feb 1, 2017 at 2:12 PM, Sheila Lynch - NOAA Federal <[sheila.lynch@noaa.gov](mailto:sheila.lynch@noaa.gov)> wrote:  
Hi Ana Liza and Alison,

I do not know the answer to this question and it will take some work to find out, as we do not normally deal with FOIAs involving foreign entities in this office.

Ana Liza, Mark Graff may have come across this situation before and may have some helpful advice.

In the meantime, as my workload permits I will research this question and get back to you.

Sheila

On Wed, Feb 1, 2017 at 1:15 PM, Ana Liza Malabanan - NOAA Federal <[ana.liza.malabanan@noaa.gov](mailto:ana.liza.malabanan@noaa.gov)> wrote:

Hi Sheila,

Alison Agness received a call from a contact at Fisheries and Oceans Canada (DFO) regarding the records we referred to their office. Alison's contact at DFO would like to know if they are supposed to review the records according to U.S. law or Canadian law (Alison, please correct if I have this wrong). **Please advise how Alison should follow up with her DFO contact.**

Background: I sent requester a letter on January 13, 2017, advising that we referred records to originating Federal agencies (including DFO). After I had already submitted (on January 24, 2017) a draft final action letter (FAL) to our NMFS FOIA HQ for review/AA signature, I received this email (forwarded to NMFS FOIA) on January 26, 2017. I did not receive direct advice from NMFS FOIA to my 1/26/2017 email, but did receive the signed FAL dated 1/30/2017 and a Task to review case file prior to final closeout. This FOIAonline case is now closed.

Ana Liza

----- Forwarded message -----

From: **Ana Liza Malabanan - NOAA Federal** <[ana.liza.malabanan@noaa.gov](mailto:ana.liza.malabanan@noaa.gov)>

Date: Thu, Jan 26, 2017 at 8:25 AM

Subject: Fwd: Your file number : FOIA Request DOC-NOAA 2016-001214 / Our file number : AC-2016-00912

To: Samuel Dixon - NOAA Affiliate <[samuel.dixon@noaa.gov](mailto:samuel.dixon@noaa.gov)>

Cc: Shawn Martin <[shawn.martin@noaa.gov](mailto:shawn.martin@noaa.gov)>, Doug Chow <[doug.chow@noaa.gov](mailto:doug.chow@noaa.gov)>, Brittany Pugh - NOAA Federal <[brittany.pugh@noaa.gov](mailto:brittany.pugh@noaa.gov)>

Hi Sam,

The FAL is currently pending NMFS FOIA review for AA signature. Please advise how we should proceed taking into account the Canadian government's response to our referral.

Thanks!

Ana Liza

----- Forwarded message -----

From: **Tremblay, Julie** <[Julie.Tremblay@dfo-mpo.gc.ca](mailto:Julie.Tremblay@dfo-mpo.gc.ca)>

Date: Thu, Jan 26, 2017 at 7:47 AM

Subject: Your file number : FOIA Request DOC-NOAA 2016-001214 / Our file number : AC-2016-00912

To: "[ana.liza.malabanan@noaa.gov](mailto:ana.liza.malabanan@noaa.gov)" <[ana.liza.malabanan@noaa.gov](mailto:ana.liza.malabanan@noaa.gov)>

Cc: "Generic ATIP mailbox / Courriel generique AIPRP (DFO/MPO)" <[ATIP-LAIPRP.XNCR@dfo-mpo.gc.ca](mailto:ATIP-LAIPRP.XNCR@dfo-mpo.gc.ca)>

Your file number: FOIA Request DOC NOAA 2016 001214

Our file number: AC 2016 00912 / JT

SUBJECT:

- **All communications and documents from January 1, 2015 to date that were sent to or received by any employee of NOAA/Department of Commerce and any representative of any of the Northwest United States Treaty Tribes that are subject to the US Canada Salmon Treaty.**
- **All communications and documents from January 1, 2015 to date that were sent to or received by any employee of the US Department of Justice and any representative of the US Department of Justice related to the US Canada Salmon Treaty.**

Good morning Ms. Malabanan,

This is to acknowledge that we have received your request for consultation. Please note that as per our internal procedure directive, when Fisheries and Oceans Canada (DFO) is consulted by another government / department, we do not provide a response directly to the requester. The responsibility of notifying the requester is left to the government / department that is consulting with us. In this particular case, even if your requester would have submitted his access request directly to DFO, we wouldn't be able to respond under the *Access to Information Act* as he is an American citizen. The right of access is provided to Canadian citizens and permanent residents only.

That being said, we will proceed with the review of the records and we will provide you with a response as to whether or not the information may be released per our *Access to Information Act*. Please note DFO's processing timelines for interdepartmental / governmental consultations. These timelines have been in effect since June 25, 2015.

1 50 pages: **30 days**

51 150 pages: **60 days**

151 250 pages: **90 days**

Over 250 pages: **we already estimated that it would take 180 days**

The due date will be: **July 12, 2017**

For all queries, please contact us by email at [ATIP\\_LAIPRP.XNCR@dfo.mpo.gc.ca](mailto:ATIP_LAIPRP.XNCR@dfo.mpo.gc.ca).

Thank you for your cooperation.

Julie Tremblay

Team Leader, Intake Unit

Access to Information and Privacy Secretariat  
Fisheries and Oceans Canada  
200 Kent Street, Station 4N169  
Ottawa ON K1A 0E6  
julie.tremblay@dfo.mpo.gc.ca  
Telephone: [\(613\) 993 2934](tel:6139932934) Facsimile: [\(613\) 998 1173](tel:6139981173)

***If you have received this communication by mistake, please notify the sender immediately and delete the communication without printing, copying or forwarding it. Thank you.***

--  
Ana Liza S. Malabanan  
Freedom of Information Act (FOIA) Coordinator  
Information Services and Management Branch  
Operations, Management & Information Division  
NOAA Fisheries West Coast Region  
U.S. Department of Commerce  
Office: [562-980-4008](tel:5629804008)



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Sheila Lynch, Staff Attorney  
NOAA Office of General Counsel  
Northwest Section  
7600 Sand Point Way NE  
Seattle, WA 98115  
[\(206\) 526-6533](tel:2065266533)

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Ana Liza S. Malabanan  
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Information Services and Management Branch  
Operations, Management & Information Division  
NOAA Fisheries West Coast Region  
U.S. Department of Commerce  
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**From:** Mark Graff - NOAA Federal <mark.graff@noaa.gov>  
**Sent:** Thursday, February 2, 2017 7:19 AM  
**To:** Ana Liza Malabanan - NOAA Federal  
**Cc:** Sheila Lynch - NOAA Federal; Alison Agness - NOAA Federal; Brittany Pugh - NOAA Federal; Shawn Martin; Doug Chow  
**Subject:** Re: Your file number : FOIA Request DOC-NOAA 2016-001214 / Our file number : AC-2016-00912

If these were sent to Canada, we want their recommendations for our release under US Law. Once the record comes into the possession or control of the bureau, it has to go out under U.S. FOIA law, by us, since it is our agency record at that point. The only caveat would be if it never came within our possession or control, but that would be hard to argue, where it clearly was within our systems.

Obviously as a courtesy we want Canada's input, but this question is one that is answered by the "agency record" definition, and that only Federal Executive Branch agencies have the authority to assert an exemption (Lois joined in during the last Canada record response--so she deserves the thank-you for that guidance). This is the same reason if we get State Records, which we store and rely on to make agency decisions, they become our Agency records to disclose in FOIA. We of course will reach out to the State as a courtesy before releasing, though.

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628-5658 (O)  
(b)(6) (C)

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On Wed, Feb 1, 2017 at 5:34 PM, Ana Liza Malabanan - NOAA Federal <[ana.liza.malabanan@noaa.gov](mailto:ana.liza.malabanan@noaa.gov)> wrote:

Hi Mark,

Any thoughts? Thanks in advance!

Ana Liza

On Wed, Feb 1, 2017 at 2:12 PM, Sheila Lynch - NOAA Federal <[sheila.lynch@noaa.gov](mailto:sheila.lynch@noaa.gov)> wrote:  
Hi Ana Liza and Alison,

I do not know the answer to this question and it will take some work to find out, as we do not normally deal with FOIAs involving foreign entities in this office.

Ana Liza, Mark Graff may have come across this situation before and may have some helpful advice.



In the meantime, as my workload permits I will research this question and get back to you.

Sheila

On Wed, Feb 1, 2017 at 1:15 PM, Ana Liza Malabanan - NOAA Federal <[ana.liza.malabanan@noaa.gov](mailto:ana.liza.malabanan@noaa.gov)> wrote:

Hi Sheila,

Alison Agness received a call from a contact at Fisheries and Oceans Canada (DFO) regarding the records we referred to their office. Alison's contact at DFO would like to know if they are supposed to review the records according to U.S. law or Canadian law (Alison, please correct if I have this wrong). **Please advise how Alison should follow up with her DFO contact.**

Background: I sent requester a letter on January 13, 2017, advising that we referred records to originating Federal agencies (including DFO). After I had already submitted (on January 24, 2017) a draft final action letter (FAL) to our NMFS FOIA HQ for review/AA signature, I received this email (forwarded to NMFS FOIA) on January 26, 2017. I did not receive direct advice from NMFS FOIA to my 1/26/2017 email, but did receive the signed FAL dated 1/30/2017 and a Task to review case file prior to final closeout. This FOIAonline case is now closed.

Ana Liza

----- Forwarded message -----

From: **Ana Liza Malabanan - NOAA Federal** <[ana.liza.malabanan@noaa.gov](mailto:ana.liza.malabanan@noaa.gov)>

Date: Thu, Jan 26, 2017 at 8:25 AM

Subject: Fwd: Your file number : FOIA Request DOC-NOAA 2016-001214 / Our file number : AC-2016-00912

To: Samuel Dixon - NOAA Affiliate <[samuel.dixon@noaa.gov](mailto:samuel.dixon@noaa.gov)>

Cc: Shawn Martin <[shawn.martin@noaa.gov](mailto:shawn.martin@noaa.gov)>, Doug Chow <[doug.chow@noaa.gov](mailto:doug.chow@noaa.gov)>, Brittany Pugh - NOAA Federal <[brittany.pugh@noaa.gov](mailto:brittany.pugh@noaa.gov)>

Hi Sam,

The FAL is currently pending NMFS FOIA review for AA signature. Please advise how we should proceed taking into account the Canadian government's response to our referral.

Thanks!

Ana Liza

----- Forwarded message -----

From: **Tremblay, Julie** <[Julie.Tremblay@dfo-mpo.gc.ca](mailto:Julie.Tremblay@dfo-mpo.gc.ca)>

Date: Thu, Jan 26, 2017 at 7:47 AM

Subject: Your file number : FOIA Request DOC-NOAA 2016-001214 / Our file number : AC-2016-00912

To: "[ana.liza.malabanan@noaa.gov](mailto:ana.liza.malabanan@noaa.gov)" <[ana.liza.malabanan@noaa.gov](mailto:ana.liza.malabanan@noaa.gov)>

Cc: "Generic ATIP mailbox / Courriel generique AIPRP (DFO/MPO)" <[ATIP-LAIPRP.XNCR@dfo-mpo.gc.ca](mailto:ATIP-LAIPRP.XNCR@dfo-mpo.gc.ca)>

Your file number: FOIA Request DOC NOAA 2016 001214  
Our file number: AC 2016 00912 / JT

SUBJECT:

- **All communications and documents from January 1, 2015 to date that were sent to or received by any employee of NOAA/Department of Commerce and any representative of any of the Northwest United States Treaty Tribes that are subject to the US Canada Salmon Treaty.**
- **All communications and documents from January 1, 2015 to date that were sent to or received by any employee of the US Department of Justice and any representative of the US Department of Justice related to the US Canada Salmon Treaty.**

Good morning Ms. Malabanan,

This is to acknowledge that we have received your request for consultation. Please note that as per our internal procedure directive, when Fisheries and Oceans Canada (DFO) is consulted by another government / department, we do not provide a response directly to the requester. The responsibility of notifying the requester is left to the government / department that is consulting with us. In this particular case, even if your requester would have submitted his access request directly to DFO, we wouldn't be able to respond under the *Access to Information Act* as he is an American citizen. The right of access is provided to Canadian citizens and permanent residents only.

That being said, we will proceed with the review of the records and we will provide you with a response as to whether or not the information may be released per our *Access to Information Act*. Please note DFO's processing timelines for interdepartmental / governmental consultations. These timelines have been in effect since June 25, 2015.

1 50 pages: **30 days**

51 150 pages: **60 days**

151 250 pages: **90 days**

Over 250 pages: **we already estimated that it would take 180 days**

The due date will be: **July 12, 2017**

For all queries, please contact us by email at [ATIP LAIPRP.XNCR@dfo mpo.gc.ca](mailto:ATIP LAIPRP.XNCR@dfo mpo.gc.ca).

Thank you for your cooperation.

Julie Tremblay

Team Leader, Intake Unit

Access to Information and Privacy Secretariat  
Fisheries and Oceans Canada

200 Kent Street, Station 4N169  
Ottawa ON K1A 0E6  
julie.tremblay@dfo mpo.gc.ca  
Telephone: [\(613\) 993 2934](tel:6139932934) Facsimile: [\(613\) 998 1173](tel:6139981173)

***If you have received this communication by mistake, please notify the sender immediately and delete the communication without printing, copying or forwarding it. Thank you.***

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Ana Liza S. Malabanan  
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Sheila Lynch, Staff Attorney  
NOAA Office of General Counsel  
Northwest Section  
7600 Sand Point Way NE  
Seattle, WA 98115  
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