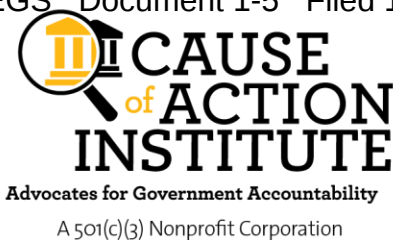


# EXHIBIT

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.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> 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.”<sup>4</sup> 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

---

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

<sup>2</sup> *Id.*

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

<sup>4</sup> 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.

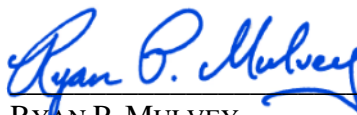
that a particular record is responsive to a disclosure request, the sole basis on which it may withhold particular information within that record is if the information falls within one of the statutory exemptions[.]”<sup>5</sup> The records at issue include an e-mail from Michael Pentony, Assistant Regional Administrator for Sustainable Fisheries at the Greater Atlantic Regional Fisheries Office<sup>6</sup>; an e-mail from Peter Christopher, Team Supervisor in the Sustainable Fisheries Division of the Greater Atlantic Regional Fisheries Office<sup>7</sup>; and a list of Congressional endorsements for appointments to the New England Fishery Management Council.<sup>8</sup>

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.”<sup>9</sup> The FOIA “does not provide for withholding responsive but non-exempt records or for redacting nonexempt information within responsive records.”<sup>10</sup> 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.”<sup>11</sup> Such an approach was not taken with respect to the records at issue.<sup>12</sup> 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

---

<sup>5</sup> *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>.

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

<sup>7</sup> 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).

<sup>8</sup> 2016 Regional Fishery Management Councils Congressional Endorsements (attached as Exhibit 6).

<sup>9</sup> *Am. Immigration Lawyers Ass’n*, 2016 WL 4056405 at \*1.

<sup>10</sup> *Id.* at 8.

<sup>11</sup> *Id.*

<sup>12</sup> 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](mailto: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.<sup>1</sup> 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:

---

<sup>1</sup> *See* CAUSE OF ACTION INSTITUTE, [www.causeofaction.org](http://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.<sup>2</sup> 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.”<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> CoA Institute satisfies this test because it gathers information of potential interest to a segment of the public,

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

<sup>3</sup> 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).

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

<sup>5</sup> *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.<sup>6</sup> 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.<sup>7</sup> 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."<sup>8</sup> In light of the foregoing, numerous federal agencies have appropriately recognized CoA Institute's news media status in connection with its FOIA requests.<sup>9</sup>

<sup>6</sup> 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.

<sup>7</sup> *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>.

<sup>8</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II).

<sup>9</sup> *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. Commc'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,<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup>

#### **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).

<sup>10</sup> 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).

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

<sup>12</sup> 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](mailto:stephen.schwartz@causeofaction.org). Thank you for your attention to this matter.

Sincerely,

  
\_\_\_\_\_  
STEPHEN S. SCHWARTZ  
COUNSEL

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

# 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](mailto: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  
14<sup>th</sup> and Constitution Avenue, N.W.  
Washington, D.C. 20230



An appeal may also be sent by e-mail to [FOIAAppeals@doc.gov](mailto: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](mailto: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](mailto: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]

[Redacted] *Non-responsive*

[Redacted] *Non-responsive*

[Redacted] *Non-responsive*

[Redacted] *Non-responsive* [Redacted]

[Redacted] *Non-responsive*

[Redacted] *Non-responsive*

[Redacted] *Non-responsive*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

*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](http://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...*

[Redacted]  
*non responsive*  
[Redacted]

Pete

On Fri, Apr 8, 2016 at 2:31 PM, Michael Pentony - NOAA Federal <[michael.pentony@noaa.gov](mailto: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.

[Redacted]  
*non responsive*

[Redacted]

[Redacted]



# EXHIBIT

6



*Non-responsive*