

Congress of the United States
Washington, DC 20515

September 22, 2020

Dr. Neil Jacobs
Assistant Secretary of Commerce for Environmental Observation and Prediction
Acting Under Secretary of Commerce for Oceans and Atmosphere
National Oceanic and Atmospheric Administration
1401 Constitution Ave. NW, Rm. 5128
Washington, D.C. 20230

Dear Dr. Jacobs:

We are writing to you today out of utmost concern for scientific integrity at the National Oceanic and Atmospheric Administration (NOAA). In March, significant concerns were raised about potential political interference regarding a biological opinion that included conservation measures for the North Atlantic right whale in areas of the Atlantic Ocean where seismic airgun surveys have been proposed. Documents obtained by CQ Roll Call found evidence that expert scientific opinions on the conservation measures were watered down by political appointees in order to allow more seismic testing in the habitat of this critically endangered whale, which numbers at only 400 individuals.¹ Seismic testing could have profound impacts on this endangered whale species that relies upon sound for communication (particularly between mothers and calves), navigation, and locating food.

Specifically, NOAA had previously proposed a seasonal restriction on seismic testing 47 km from shore during the whales' migratory season.² Documents obtained by CQ Roll Call show that biologists had prepared a draft biological opinion restricting surveys out to 90 km from shore, based on peer-reviewed research showing that right whales are traveling further from shore than ever before.^{3,4} The final biological opinion, after political review and input from two of the five companies seeking seismic permits, used the riskier 47 km number, provided the seismic companies submitted plans "sufficient to achieve comparable protection for North Atlantic right whales."⁵ The former New England Aquarium chief scientist, and whale and dolphin researcher Dr. Scott Kraus contends there is "no way in hell"

¹ Holzman, Jacob. "Playing politics with science spawns new threat to endangered whales." CQ Roll Call. 5 March 2020. <https://www.rollcall.com/2020/03/05/noaa-fisheries-hed/>

² 82 FR 26244 <https://www.federalregister.gov/documents/2017/06/06/2017-11542/takes-of-marine-mammals-incident-to-specified-activities-taking-marine-mammals-incident-to>

³ Holzman, Jacob. "Playing politics with science spawns new threat to endangered whales." CQ Roll Call. 5 March 2020. <https://www.rollcall.com/2020/03/05/noaa-fisheries-hed/>

⁴ Davis, G.E. et al. "Long-term passive acoustic recordings track the changing distribution of North Atlantic right whales (*Eubaleana glacialis*) from 2004 to 2014." *Nature*. 18 October 2017. DOI:10.1038/s41598-017-13359-3 <https://www.documentcloud.org/documents/6783189-Davis-et-al-2017.html>

⁵ Biological Opinion on the Bureau of Ocean Energy Management's Issuance of Five Oil and Gas Permits for Geological and Geophysical Seismic Surveys off the Atlantic Coast of the United States, and the National Marine Fisheries Services' Issuance of Associated Incidental Harassment Authorizations <https://repository.library.noaa.gov/view/noaa/19552>

such comparable protection can be achieved due to the extreme noise produced by the blasts. Scientific recommendations should not be altered after political review. This alleged interference by political appointees threatens the integrity, reliability, and trustworthiness of science from NOAA, which had been long considered to be one of the most apolitical agencies in the United States government.

On March 26, 2020, following the CQ Roll Call report, the nonprofit Democracy Forward wrote letters to the Inspector General of the Department of Commerce and the Scientific Integrity Officer of NOAA, requesting investigations into these allegations of political interference.⁶

On April 27, 2020 NOAA's Scientific Integrity Committee opened an inquiry into Democracy Forward's investigatory complaint. Within 90 days, the Scientific Integrity Committee was to collect and evaluate evidence and produce a final inquiry report.

On July 29, 2020, three days past the deadline to have produced a final inquiry report, NOAA's Scientific Integrity Committee, in consultation with NOAA's Office of the General Counsel, responded to Democracy Forward not with the results of the inquiry, but with a meritless excuse to delay this inquiry due to ongoing litigation at NOAA over the weakening of protections for the North Atlantic right whale. Nothing within the Procedural Handbook for NAO 202- 735D: Scientific Integrity allows for the delay of an inquiry report due to ongoing litigation. This litigation began in December 2018 and was never mentioned to Democracy Forward as a potential reason for delay. The Scientific Integrity Committee stated that the inquiry would remain on hold until those "legal matters are settled."

Making matters more concerning, NOAA's Office of the General Counsel (OGC) has already been criticized for interfering in an investigation into a scientific integrity matter. Most recently, the Commerce Department's Inspector General, Peggy E. Gustafson, publicly issued a memorandum outlining NOAA OGC's withholding of privilege markings in an attempt to prevent the OIG from issuing a report critical of senior political appointees.⁷

The fact that your agency has responded to this allegation of political interference with stonewalling and non-answers concerns us. Any continuing postponement of this inquiry risks further undermining public confidence in the scientific integrity of NOAA. We urge the Scientific Integrity Committee to resume its inquiry and release a final inquiry report to Democracy Forward in the manner set forth by the Procedural Handbook for NAO 202- 735D: Scientific Integrity. Seeing as this inquiry should have been completed by July 26, 2020, we ask for your response to Democracy Forward no later than two weeks from today, and we ask that you please notify the Committee on Natural Resources and the Committee on Science, Space, and Technology ("the Committees") when this request has been completed.

Additionally, we require further explanation regarding NOAA's rationale for placing the Scientific Integrity Committee's inquiry on hold. NOAA's reliance on the existence of ongoing litigation – which predated the scientific integrity complaint and has only an indirect connection to the substantive focus of the inquiry – as the pretext for suspending the inquiry is troubling. If allowed to stand, this policy could set a damaging precedent for the enforcement of scientific integrity policies throughout the

⁶ Harkavy, Anne and Martinez, Michael, Democracy Forward. Letter to Dr. Cynthia Decker. 26 March, 2020. <https://democracyforward.org/wp-content/uploads/2020/03/NOAA-Scientific-Integrity-Letter.pdf>

⁷ Memorandum from Inspector General Peggy E. Gustafson to Secretary Wilbur Ross. 1 July, 2020. https://www.oig.doc.gov/OIGPublications/2020-07-01_IG_Memorandum_to_Secretary_Ross_re_OIG-20-031-I_%28SECURED%29.pdf

executive branch. NOAA must provide a legal basis for its policy and explain how the policy is consistent with the well-established precepts governing the agency's scientific integrity procedures. To facilitate NOAA's engagement and ensure that our questions are answered, we request that NOAA's Scientific Integrity Committee and Office of the General Counsel provide a joint briefing to the Committees concerning the decision to place this inquiry on hold. Please direct your staff to coordinate with the Committees so that the briefing takes place no later than three weeks from your receipt of this letter.

Should you have any questions or concerns regarding this request, please contact Lora Snyder, Staff Director of the Subcommittee on Water, Oceans, and Wildlife for the Committee on Natural Resources, at Lora.Snyder@mail.house.gov, or Janie Thompson, Staff Director for the Subcommittee on Investigations & Oversight for the Committee on Science, Space, and Technology, at Janie.Thompson@mail.house.gov.

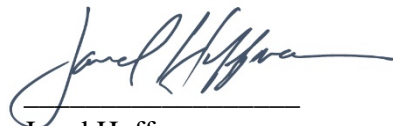
Sincerely,



Raúl M. Grijalva
Chair
Committee on Natural Resources



Eddie Bernice Johnson
Chairwoman
Committee on Science, Space, and
Technology



Jared Huffman
Chair
Subcommittee on Water, Oceans, and Wildlife



Mikie Sherrill
Chairwoman
Subcommittee on Environment



Joe Cunningham
Member of Congress