

Anne Visser Ney
5300 27th Avenue North
St. Petersburg FL 33710

ANNE VISSER NEY
Appellant,
v.

DOCKET NUMBER
AT-3330-11-0180-I-1
AT-4324-11-0181-I-1

DEPARTMENT OF COMMERCE
Agency

Date: January 1, 2011

APPELLANT'S RESPONSE TO AGENCY INTERROGATORY

Appellant has responded to the best of her knowledge and belief to the Agency's interrogatories using the Agency's documents provided in response to the Appellant's discovery request and the Appellant's own documents. (note: Agency has not provided Appellant with documents contained on Appellant's Agency laptop computer, including e-mails, oracle scheduling calendar and other word/excel/powerpoint files critical to further support Appellant's USSERA, VEOA, age discrimination, and marital status discrimination claims against the Agency and its employees). The Appellant reserves the right to add any and all supplements to her response when Agency complies with discovery requests. The Appellant has provided all available documents in her possession to the Agency as per the Agency's discovery request.

The Agency may contact the Appellant's representative by telephone or other means for any clarifications or questions.

Definitions:

Employer means any Agency representative.

RA means Regional Administrator, Dr. Roy Crabtree for the SERO

SERO/ SER means Southeast Regional Office/ Southeast Region of the National Marine

Fisheries Service, located at 263 13th Ave S, St. Petersburg FL

NMFS means the National Marine Fisheries Service

BDTRT/ BDTRP means the Bottlenose Dolphin Take Reduction Team/ Plan

ALWTRT/ ALWTRP means the Atlantic Large Whale Take Reduction Team/ Plan

HMS means Highly Migratory Species and/or the NMFS Headquarters Highly Migratory Species Division

TRT means Take Reduction Team, jointly managed teams of NMFS biologists, conservation managers and scientists, non-governmental organizations, commercial fishery representatives, academics with a background in marine mammals and/or fisheries, or other; TRT's function to make recommended regulatory and non-regulatory changes to existing law and policy in an effort to reduce the incidental take of marine mammals in commercial fisheries.

ESA means the Endangered Species Act

SER PRD ES means the Protected Resources Division of the Southeast Region Endangered Species Branch. The SER PRD is divided unequally into two branches. The Endangered Species branch manages protection of species listed under the ESA; the Marine Mammal Branch manages protection of species protected by the Marine Mammal Protection Act

VMS means Vessel Monitoring System, an electronic monitor placed on certain commercial fishing vessels to monitor their movements pursuant to regulating their presence in restricted areas for either fishing or marine mammal protection

SEFSC means the Southeast Fisheries Science Center located at Miami Florida with labs located at Panama City, Florida; Beaufort, North Carolina; Pascagoula, Mississippi and Galveston, Texas among others

MMAP means the Marine Mammal Authorization Program, a program where commercial fisheries are categorized by the rate of incidental take of a given marine mammal stock; and, once so categorized, are issued Authorization Certificates that allow them to report incidental take of those mammals without fear of prosecution

KSA means Knowledge, Skills and Abilities required to perform a job

PLLTRT/ PLLTRP means the Pelagic Longline Take Reduction Team/ Plan

1. N/A.
2. The following persons are assigned to the NMFS SER Protected Resource Division, 263 13th Ave S, St. Petersburg FL 33701, 727-824-5312 and may have discoverable information to include facts concerning a) termination justifications, b) termination and work project timelines, c) Appellant defenses, d) USERRA/VEOA violations, e) hostile or discriminatory behaviors toward Appellant, f) prohibited personnel practices, and f) preferential treatment of Marine Mammal Branch employees based on non-performance related biases:
 - 2.1. Frederick Sutter, Assistant Regional Administrator for the Southeast Region (all)
 - 2.2. David M. Bernhardt, Division Supervisor, Protected Resources, NMFS SER (all)
 - 2.3. Laura Engleby, Supervisor, Marine Mammal Branch (all)
 - 2.4. Barb Zoodsma, Atlantic Large Whale Take Reduction Team SE Region Coordinator, Marine Mammal Branch (all)
 - 2.5. Stacey Horstman, Bottlenose Dolphin Take Reduction Team Coordinator, Marine Mammal Branch (all)

- 2.6. Joyce Mochrie (unknown contact information; Regional Administrator's retired Administrative Assistant) (all)
 - 2.7. Cheryl Bonnes, Outreach Coordinator, Marine Mammal Branch (non-federal employee) (all)
 - 2.8. Diane Borrggard (a, b, e, f)
 - 2.9. Erin Fougères, Pelagic Longline Take Reduction Team Coordinator, Marine Mammal Branch (a, b, e, f)
 - 2.10. Jessica Powell, Biologist, Marine Mammal Branch non-federal employee (d, e, f)
 - 2.11. Kelly Schotts, Biologist, Endangered Species Branch (d, e, f)
 - 2.12. Eric Hawk, Biologist, Endangered Species Branch (a, b)
 - 2.13. Jenny Lee, Biologist, Endangered Species Branch (e, f)
 - 2.14. Amanda Frick, Geographic Information Systems Specialist, PRD (d)
 - 2.15. Sarah Heiberling, Biologist, Endangered Species Branch (e, f)
 - 2.16. Calusa Horn, Biologist, Endangered Species Branch (e, f)
 - 2.17. Kelly Meeks (a, b, d)
3. Affirmative defenses to be raised by Appellant include:
- 3.1. Veterans' Employment Opportunity Act violations:
 - 3.1.1. Employer knowingly recommended hire of a non-veteran applicant
 - 3.1.2. Employer willfully and using false statements denied a veteran employment based on military affiliation in October, 2009

3.1.3. Employer changed existing job description to exclude Appellant or other veterans from qualifying for the Appellant's former position in favor of the originally-recommended non-veteran applicant

3.2. USERRA violations:

3.2.1. Employer knew that Appellant had military affiliation in the United States Coast Guard Reserve

3.2.2. Appellant notified Employer as soon as she knew of assigned military duty days

3.2.3. Employer created a hostile work environment based on Appellant's military affiliation. Employer representatives (Frederick Sutter and David Bernhart) did not respond to Appellant's informal appeal to resolve her questions about her termination and protect employee from Laura Engleby's prohibited personnel practices.

3.2.4. Employer withheld critical information and guidance on major projects until Appellant was placed on duty, and then effectively required Appellant to complete projects while in a duty status

3.2.5. Employer assigned excessive workload to Appellant immediately prior to and during military reserve obligation periods to include artificially compressed deadlines, unusually complex assignments, and directly conflicting guidance from project co-sponsors

3.2.6. Employer scheduled Appellant for meetings and conferences during military reserve obligation periods

- 3.2.7. Employer reassigned Appellant's usual duties to non-protected employees during military reserve absence and never reassigned them after her return
- 3.2.8. Employer initiated termination within ten days of Appellant's newly-incurred future military reserve obligation

3.3. Marital status discrimination:

- 3.3.1. Appellant is married
- 3.3.2. Employer desired to hire a single applicant
- 3.3.3. Employer made direct comments on Appellant's marital status, implying it reduced her motivation to perform job assignments
- 3.3.4. Employer directed, recommended and approved personnel actions that harmed Appellant on the basis of marital status
- 3.3.5. Employer granted preference and advantage to an unmarried applicant during an internship period, with the purpose of injuring Appellant's prospect for continued employment
- 3.3.6. Employer directed, recommended and approved assignments of Appellant duties to unmarried employees
- 3.3.7. Employer assigned Appellant duties to an unmarried employee immediately following Appellant's termination
- 3.3.8. Employer hired an unmarried employee as permanent replacement

3.4. Age discrimination:

- 3.4.1. Appellant was 50 years old at the time of hire
- 3.4.2. Employer desired to hire an applicant in her mid-20's

- 3.4.3. Employer directed, recommended and approved reassignment of duties and termination on the basis of age
- 3.4.4. Employer granted preference and advantage to non-age class applicant and other employees
- 3.4.5. Employer granted preference and advantage to non-age class applicant with the purpose of injuring Appellant's prospect for continued employment
- 3.4.6. Employer reassigned Appellant duties to non-age class employee
- 3.4.7. Employer replaced Appellant with non-age class employee immediately following Appellant's termination
- 3.4.8. Employer hired non-age class employee as Appellant's permanent replacement
- 3.5. Affirmative defenses against Employer's termination justification (Laura Engleby to Ceil Collins on or about 29 September 2009)
 - 3.5.1. Employer supplied false, misleading, incomplete and out-of-context information to NOAA Workforce Management Office to justify Appellant's termination
 - 3.5.2. Employer assigned work outside of the scope of CD-430 and job expectations
 - 3.5.3. Employer refused basic guidance on projects
 - 3.5.4. Employer supplied conflicting guidance on projects
 - 3.5.5. Employer artificially compressed Appellant deadlines by;
 - 3.5.5.1. assigning higher-priority projects in favor of one Take Reduction Team Coordinator over the other
 - 3.5.5.2. reassigning Appellant priorities without adjusting existing deadlines

- 3.5.5.3. requiring intermediate draft approvals and/or specific data inputs that delayed final production as projects were held up in approval chains and/or awaiting required data
- 3.5.6. Employer falsely cited that she expressed concern about performance during 6-month performance review. Employer falsely claimed to have held a mid-term review with Appellant. Employer assigned 460 of 500 points to Appellant on her mid term CD-430. Employer cancelled Appellant's mid-term performance review and never addressed any concerns on work quality, deadlines or performance; never acknowledged or incorporated feedback on Appellant's performance review list of accomplishments
- 3.5.7. Employer used different supervisory standards for Appellant than for other employees, including significant differentials on:
 - 3.5.7.1. Timely and accurate feedback on assigned work
 - 3.5.7.2. Level and type of guidance on assigned work
 - 3.5.7.3. Flexibility on telework hours
 - 3.5.7.4. Level and type of personnel actions based on quality of work
 - 3.5.7.5. Level and type of personnel actions based on timeliness of work
- 3.5.8. Employer created and tolerated a hostile work environment for Appellant
- 3.5.9. Employer accelerated workplace hostility following Appellant's verbal grievance about hostility

4. Factual bases for affirmative defenses concerning Ney v. Department of Commerce, MSPB

Docket # AT-3330-11-0180-I-1 & AT-4324-11-0181-I-1 :

4.1. General/ all:

4.1.1. Documents contained in Agency's Response to Appellant's First Request for Production of Documents, 22 Dec 2010

4.1.2. Documents contained in Appellant's First Request for Production of Documents dated 10 Dec 2010 but which Agency has not yet supplied

4.1.3. Appellant's planner and personal notes taken during her period of employment

4.1.4. Appellant's NOAA statements of leave and earnings

4.1.5. Appellant's US Coast Guard Leave and Earnings Statements

4.1.6. Appellant's personal recollections

4.1.7. Statements made by other NOAA employees before, during and after Appellant's period of employment at the NMFS SER

4.2. These answers supplement and provide additional detail to statements contained in all other documents previously submitted by Appellant to the NMFS SER, the NOAA Workforce Management Office, the NOAA Equal Employment Opportunity Office, and the Merit Systems Protection Board; including the particulars of Ms. Powell's hire, the behavior of Ms Engleby and Ms. Horstman toward Appellant after her hire, her preferential treatment with respect to supervisor access and guidance, assignments to her that fell under Appellant's job description and Ms. Engleby and Ms. Horstman's systematic preparation of Ms. Powell to be ready to take over Appellant's job during Appellant's tenure.

4.3. The factual bases for Appellant dispute of Ms. Engleby's 29 Sep 2009 document to Ceil Collins of NOAA WFMO, concerning Appellant's probationary period performance include the following: (Note that Ms. Engleby's document was artificially numbered by paragraphs for ease of interpretation here.)

4.3.1. paragraph (3): Appellant did not have a six-month performance review (see Interrogatory 15 for background information on the alleged review). Appellant supplied Ms. Engleby, as requested on 25 March, with a list of accomplishments, which Ms. Engleby never acknowledged; Appellant scheduled a mid-term performance review as requested by Ms. Engleby, for 17 April 2009, which Ms. Engleby cancelled, and again on 30 April 2009, which Ms. Engleby also cancelled. On 30 April, Ms. Engleby verbally told Appellant that "our previous meeting [meaning the 25 March meeting] can serve as the 6-month review, if that's okay"; Appellant conditionally agreed, pending receipt of a completed CD-430, and stated that if she had any questions or concerns when she received her written performance evaluation, she would discuss them with Ms. Engleby. Appellant e-mailed Ms. Engleby two or three times during May to follow up, each time requesting the written evaluation. In late May or early June, Appellant received from Ms. Engleby a CD-430 filled out with Appellant's name and performance objective and a completed final mark of 460 out of 500. Appellant was surprised that such a high mark was assigned without supporting documentation; based on Appellant's military experience, high marks often required additional comments, although none were filled out on the CD-430 Ms.

Engleby had sent Appellant. Appellant then verbally checked with Ms. Engleby to ensure the high mark was correct, specifically by asking if such a high mark should have supporting narrative comments or documentation and where Appellant could find them. Ms. Engleby stated the mark was correct but that she did not need to provide additional documentation because it was an interim evaluation.

- 4.3.2. paragraph (4): See Interrogatory 13; additional documentation in Appellant's unanswered Discovery request
- 4.3.3. paragraph (5) (Example (a)): See Interrogatory 13;
- 4.3.4. paragraph (6) (Example (b)): See Interrogatory 13; additional documentation in Appellant's unanswered Discovery request
- 4.3.5. paragraph (7) (Example (c)):
 - 4.3.5.1. Appellant has no knowledge of the referenced e-mail to NERO or situation and is awaiting Ms. Engleby's Responses to Interrogatories.
 - 4.3.5.2. 2010 Final List of Fisheries Comments: Appellant received Headquarters Tasking Memo after August 10, 2009 (date comments closed) with a Headquarters due date of 14 September. The NMFS HQ contact for the LOF, Melissa Anderson, told Appellant that the SER reply to comment was normally e-mailed to HQ once the PRD (Mr. Bernhart) signed off on them. Ms. Engleby directed Appellant otherwise, specifically to prepare a memo for routing through the SER front office, a process widely known to slow the production and delivery of outgoing documents. Ms. Engleby also

directed Appellant to cut and paste responses to comments from the previous year's List of Fisheries. Appellant acknowledged both requests. However, Appellant also notified Ms. Engleby that one comment requiring a response was from the Department of Interior, which manages and prepares stock assessments for the West Indian Manatee, protected under the MMPA and as such deserving consideration for the annual LOF. Appellant notified Ms. Engleby that HQ felt the comment would likely be withdrawn prior to publication of comments and responses, but that the SER should prepare a response in case the DOI did not withdraw. Appellant recognized that it was unusual for another federal agency to reply to the LOF on a public comment and that there was a political aspect to any potential reply that Appellant felt deserved higher guidance. Appellant walked to Ms. Engleby's office and specifically requested guidance on whether she should address the manatee stock and Caribbean gillnet fishery as requested by the DOI; or, not comment on the manatee stock; or, comment in the negative. Ms. Engleby stated she was "too busy with the BDTRT" to deal with the problem as the upcoming BDTRT meeting, which had already delayed once or twice for months, and for which many key components were not yet in place. Appellant pressed Ms. Engleby over the next few weeks for an answer, to no avail. Eventually, Appellant pro-actively prepared two sets of comments -- one addressing the DOI concerns in the positive (i.e., NMFS agrees with the comment and

will take action) and one in the negative (i.e., NMFS disagrees with the comment and here is why). Appellant then e-mailed both responses to Ms. Engleby and requested Ms. Engleby pick one so that Appellant could proceed on the draft response in time for reviewers to approve before the HQ due date. Ms. Engleby replied on 03 Sep, stating that the manatee SARS was not published/current, therefore the manatee stock comments should not be included. Appellant felt obligated to let Ms. Engleby know that the manatee SARS had been finalized earlier in the summer. On Sep 03, Appellant advised Ms. Engleby that the SARS was current and requested further guidance. Ms. Engleby assumed a posture that the Appellant was being insubordinate. Ms Engleby was dismissive of the DOI SARs, which had been a sore point between NMFS and FWS for many years, including a point of debate at the ASRG meeting held in January 2009, with NMFS and others challenging the veracity of the manatee SARS data collection methods and analysis. Ms. Engleby directed Appellant to ignore DOI comments in the hopes that they would be withdrawn. Appellant submitted draft responses on 04 Sep for Ms. Engleby's approval. Appellant, Ms. Engleby and others attended the BDTRT meeting in Wilmington, NC the following week. Appellant then traveled to Silver Spring for UFish 101 training, held 14 - 18 September, 2009. On 15 Sep, the day after the HQ due date, Appellant received HQ e-mail reminder that the LOF comments were overdue. Appellant contacted

Ms. Engleby from Silver Spring and was told to submit the comments as-is (i.e., how Appellant had prepared them on 03 Sep) to HQ via e-mail and to follow up on her return to SERO with formal draft memo to HQ containing RA's signature, although HQ did not require a memo. On 21 Sept, Appellant returned to SERO and e-mailed Ms. Engleby, again requesting LOF comments status. On 28 Sep, Ms. Engleby e-mailed Appellant stating she "finally had a chance to work on this" and her comments were on the hard drive. On 29 September, Ms. Engleby requested verbally of Appellant that she (Appellant) locate Prescott funds priorities for Ms. Engleby, which she did by e-mail that day, indicating priorities by current levels of funding. (all supporting documents in Agency's Responses to Appellant's First Request for Production of Documents). In summary, Ms. Engleby's statements to Ms. Collins concerning the preparation of responses to comments for the 2010 LOF are false and misleading. Again, Agency representatives (Frederick Sutter and David Bernhart) failed to protect the Appellant from Ms. Engleby's repeated use of prohibited personnel practices.

- 4.3.6. paragraph (8): Appellant disputes that Ms. Engleby provided even minimal levels of on-the-job training. To the contrary, Ms. Engleby required the Appellant to perform tasks far above the requirement for the assigned position of a GS-9 Fisheries Biologist. For example: 1) Ms. Engleby required Appellant revamp the process for commercial fishery placement on the LOF, by creating a

formal way to conduct Tier Analysis as required by the MMPA prior to placement, removal or upgrade of a fishery in the listing process. Appellant received no guidance from Ms. Engleby or any other person for this, including the most basic input from Appellant's NER counterpart, who scoffed at the project, stating that it wasn't her job to do in her region. Appellant worked many hours to this end, continuously updating Ms. Engleby and to include the eventual incorporation of 17 new Tursiops stocks and their intersection with the complicated NC gillnet and other fisheries. However, when Appellant communicated her project scope to the NEFSC scientific staff, she was ridiculed and put off because she was doing things that "are not your job". 2) Appellant was assigned by Ms. Engleby to record and write up the minutes for the 3-day Atlantic Scientific Review Group meeting, held at the SER in Jan 2009. Approximately 30 scientists and NGO representatives were present. Ms. Engleby did not introduce Appellant to one person; nametags were not present nor any other method of establishing who was whom; and the scope of the meeting was neither explained nor context given to Appellant for the end product. Appellant was told to use the previous year's ASRG minutes as a guideline for style and content, and was given no timeline for completing the minutes of the meeting after its conclusion, although Ms. Engleby communicated verbally and in writing that she was anxious to have them done. Appellant completed the project completely and correctly, but when she forwarded a copy to a Beaufort Lab NMFS scientist to request verification of the

contact information Appendix, she was curtly told that the project was “not your job”. Ms. Engleby then stated to Appellant that Appellant had misunderstood her role, although Appellant regularly updated the project with Ms. Engleby. 3) Although the job KSA’s do not include the ability to write regulatory text, Appellant was assigned to review, write and submit to HQ regulatory text in support of the HMS Amendment 3, a major piece of proposed regulatory change. Ms. Zoodsma, when asked by Appellant for assistance on formatting, stated to Appellant that she “had a book around the office somewhere that explains it”. Appellant completed the project in a timely fashion and correctly, in spite of being given virtually no guidance. Ms. Engleby’s claim that, as Appellant’s supervisor, she pursued all manner of leadership techniques implies that Ms. Engleby provided constructive feedback to the Appellant, when in fact there is no evidence to support her claim and the Appellant has shown throughout these responses to interrogatories that the opposite was true. Furthermore, Ms. Engleby essentially admits that she allowed a GS-9 to bring her division to standstill and that she waited 300 days to correct the performance problem by abruptly terminating the Appellant. Again, Agency representatives (Frederick Sutter and David Bernhart) failed to protect the Appellant from Ms. Engleby’s repeated use of prohibited personnel practices.

- 4.3.7. paragraph (9): The BDTRT Coordinator (Ms. Horstman) requested that Appellant prepare an updated gillnet characterization on March 3, 2009. Appellant supplied the requested information on March 12, 2009. Ms.

Horstman then requested on May 28 that Appellant prepare an updated characterization of the NC gillnet fisheries. On 14 June, Ms. Horstman directed Appellant to include all inshore NC fisheries, including the NC inshore blue crab trap/pot fishery, and to identify which of the several dozen NC inshore fisheries interact with which of the newly-defined bottlenose dolphin stocks. (Appellant notes that the geographic limits of the new stocks had not yet been finalized; and that higher-priority work, e.g. the HMS Amendment 3 regulatory text writing/ revisions, were being done simultaneous to Ms. Horstman's project, among several others, including a half day spent clearing trash out of the PRD hallway, alone on Ms. Engleby's direction.) During this time period, Ms. Horstman rejected Appellant's use of existing, public-access data from the NCDMF for the NC fisheries and directed Appellant, including on direct, specific questioning for guidance, to fully update the industry go-to paper (Steve, et. al, 2001, "Characterization of North Carolina Commercial Fisheries with Occasional Interactions with Marine Mammals, a NC Inshore Gillnet Fisheries), a 57-page NOAA Technical Memo with five scientist co-authors prepared by the NMFS SE Fisheries Science Center and which describes in exacting detail all of the NC inshore and near-shore gillnet fisheries including gear characteristics, targeted fish stocks, areas of effort and landings data with tables and graphs. I.e., Appellant was assigned to do a project normally reserved for PhD scientists working in a venue where current data was accessible, and with the technical expertise to complete over a long period of time. Ms.

Horstman's due date was 17 August 2009. To complete this project, Appellant had to gain access to NC Department of Marine Fisheries databases, which required permissions that Appellant did not yet have. She discussed the access question with the NCDMF; the person Appellant needed to talk with was on leave. Appellant submitted a request for access to the NCDMF on 20 July. Without documents requested in her initial Discovery request, she is unsure when the data arrived from the NCDMF. When it arrived, Appellant then had to manipulate large data sets whose parameters did not mesh with the dolphin stocks in the area, to the desired end product. Appellant kept Ms. Horstman updated on the project status and all delays. The project was completed and on Ms. Horstman's desk including citations and reviews from her requested reviewers, on 24 August 2009. Although it was turned in 7 days late, Appellant notes that it was ready more than two weeks before the BDTRT Conference on 9-10 September. Appellant notes that several other data sets and presentations (e.g., those in preparation by the Science Centers) were not yet ready the night before the conference began. Appellant notes that during the time she was working with large data sets per Ms. Horstman's request, Ms. Powell and Ms. Horstman were working together on a paper/ presentation that is now in publication. Once Appellant realized the nature and scope of her own assignment, she requested guidance from Ms. Horstman and Ms. Engleby, by e-mail, on possible publication of the characterization she was preparing, but never heard back from either of them. Appellant highly doubts that her paper

held up the success of the BDTRT conference. She also rigorously defends the product she researched and wrote, against the standard, Steve et.al., given the constraints in time, data and availability of interim reviewers, who were busy preparing their own work for the TRT meeting.

- 4.3.8. para (9) Appellant requested any logistics support issues be forwarded to her by Ms. Horstman well ahead of the TRT conference (she believes not later than early May). Ms. Horstman replied to her via e-mail that the contractors, Keystone, was solely responsible for logistics support, although it was apparent to Appellant that logistics support work was also being assigned to Ms. Powell.
- 4.3.9. para (10) Appellant was asked to “talk sometime this week” about HMS regulations change, by e-mail while on military reserve duty on 21 April 2009, to which she responded . Appellant was asked to consolidate SER responses across both TRT’s (bottlenose and large whale) and to review ESA (sea turtle) regulations for additional input. She drafted a reply to Ms. Zoodsma, Ms. Engleby, Ms. Horstman and Mr. Barnett (PRD SER ES branch biologist), and submitted it on 15 May 2010. On 19 May, Mr. Bernhart gave Appellant additional feedback. On 20 May, Headquarters HMS Division requested a phone conference briefing on 21 May, to include several SER PR reps, including Ms. Zoodsma and others. Appellant was departing on pre-approved leave to travel to Arizona on 21 May; in lieu of attending the conference, she forwarded SER input to the consolidated HMS Amendment. On 26 May, Ms. Zoodsma reprimanded Appellant on e-mail for not coordinating with her prior to the HMS

call; that she wanted to have full review and control on the project, which was due to HQ for DEIS and regulatory text review on 11 June. The next time Ms. Zoodsma discussed the project with Appellant was on 01 June as Ms. Zoodsma was departing for a week of leave. She then stated that Appellant was to read the 117-page draft rule so Appellant could review, write, get approved and return to HQ HMS all regulatory language to bring ALWTRP and HMS regulations concerning gillnet closure areas and VMS usage in the shark gillnet fleet into agreement, a longstanding difficulty between 229 and 635 regulations that resulted in uncertainties for commercial fishers operating in right whale restricted areas in the SEUS. When Appellant asked Ms. Zoodsma for specific guidance on writing and routing regulatory text, Ms. Zoodsma referred Appellant to a guide to writing regulations that is “somewhere in [Appellant’s] office”. Appellant did as she was told and forwarded suggested changes in the draft HMS rule to Mr. Bernhart for review. Mr. Bernhart gave Appellant handwritten notes on the draft language and directed her to change what Appellant had written (per Ms. Zoodsma’s guidance before she went on leave). Appellant advised Mr. Bernhart that Ms. Zoodsma had provided specific instructions and would most likely disapprove of any changes. Appellant made changes for Mr. Bernhart and returned the draft with his corrections the next day. Mr. Bernhart approved the package for release on 11 June, one day late. Appellant recalls that Ms. Engleby directed specifically to not release the SER ALWTRP regulation text changes to the NER until it went to HQ on June 12. Therefore, they did not

have an opportunity to review the text prior to its incorporation with the HMS Amendment 3 rules. When Ms. Zoodsma returned from annual leave, she spoke to Appellant in agitated, derogatory and accusatory raised verbal tones about the final draft language that had been worded against her guidance. Appellant told Ms. Zoodsma that Appellant had been directed by Mr. Bernhart to makes the changes and Appellant sent Ms. Zoodsma with the specific text Mr. Bernhart had directed her to remove and include, from the pen and ink changed draft copy she had retained that he had given her by him. When the HMS rule came back for final review, Ms. Zoodsma asked Appellant to review. Appellant review was completed the same day (25 June); Appellant noted significant errors that Ms. Zoodsma had overlooked. The final draft was completed by Ms. Zoodsma per her request and forwarded to HQ on 08 July, on time.

4.3.10. para (12)

4.3.10.1. See Interrogatory 4.c.v.2. Appellant denies further allegations of poor organization, unsound thinking, etc. as shown in draft and final comments. (contained in requested Discovery documents)

4.3.10.2. Appellant's "fundamental misunderstanding about a five-year rule" was a commonly-asked question that generated a response from HQ (Melissa Anderson) on 23 Feb 2009, to all persons in NMFS writing proposed LOFs for 2010. Appellant understood Ms. Anderson's response, but questioned additional guidance from Ms. Engleby on whether a whale take attributed to the Atlantic menhaden fishery in 1989 or 1990, for which

there was no documentation, should be retained on the list. Appellant noted that the fishery had changed significantly in terms of effort since that time and all efforts to locate the report ended in a SEFSC employee (Lance Garrison, who made the original written report) stating that he had no idea where the original (e.g. hearsay) report came from. Appellant suspects Ms. Engleby did not understand the nature of the question, and why the Appellant had discussed with HQ what justification was required to cite a whale take outside the five-year rule, that was not supported by documented evidence and Ms. Engleby wanted to be included in the LOF. Appellant was essentially questioning Ms. Engleby's use of non-existent data to support Ms. Engleby's desired outcome to raise the categorization of the fisheries in question.

4.3.11. Appellant believes that work assignments, guidelines, timelines and products fully support that she has flexible, analytical thinking; that her work met or exceeded the standards of her position and the Protected Resources Division at the SER; that deadlines she missed were consistent with the deadlines missed by many other employees within the division, because of the many layers of review required by many supervisors and Ms. Engleby's refusal to respond to requests for guidance, and that close scrutiny of her NOAA-held laptop files (twice-requested through Discovery) and detailed hand written notes will support her position.

5. Deny pending full Agency responses to Appellant's First Request for Documents

6. Agency employees who have discriminated against Appellant because of her military service include Stacey Horstman (Bottlenose Dolphin Take Reduction Team Coordinator), Barb Zoodsma (Atlantic Large Whale Take Reduction Team Coordinator, Southeast Region), and Laura Engleby (Marine Mammal Branch Supervisor). Agency employees who have violated my veteran's preference rights include Laura Engleby and David Bernhart (Protected Resources Division Supervisor).
7. Acts and/or omissions committed by specific employees alleged because of my military service include:
 - 7.1. Veterans' Employment Opportunity Act violations:
 - 7.1.1. Employer (Laura Engleby) knowingly recommended/certified hire of a non-veteran applicant, passing over the Appellant, who was a veteran's preference eligible candidate. Agency response to discovery provided documentation that Employer selected Jessica Powell for the position in question, on 8/29/08, when in fact Appellant was the higher ranked and the only applicant on the list of three that had veterans preference. The Agency's own documents clearly state that the candidate with veteran's preference may not be passed over for a lower ranking non-preference eligible candidate. On 8/29/08, Laura Engleby e-mailed Marina Derksema that she had selected Jessica Powell for the position. In a subsequent e-mail on 9/3/10, Laura Engleby changed her selection to the Appellant. Laura Engleby's blatant disregard of obviously printed directions on the selection certification shows her strong desire to hire Jessica Powell.

- 7.1.2. October, 2009 the employer (Laura Engleby, David Bernhart) denied a veteran employment based on military affiliation by willfully violating existing laws and regulations in terminating the Appellant using false statements about her performance, holding her to a different standard than other employees and never providing the Appellant the opportunity to excel in her job.
- 7.1.3. Employer changed existing job description to exclude Appellant or other veteran applicants in favor of the originally-recommended (Jessica Powell) non-veteran applicant (Laura Engleby, David Bernhart). Agency response to discovery shows that on 12/1/10 the Appellant's former position was offered to and accepted by Jessica Powell. It appears from the e-mail exchange that the HR advisor, Lynn LaChance, was surprised that there were no MAP applicants and that Jessica Powell was the "stand-out" candidate. A review of the KSA's shows the "KSA's required" were specifically written to match Jessica Powell's duties as a contractor working for Laura Engleby, her experience at the PRD in St Petersburg, FL and her masters thesis research topic. When compared to the position description posted on the Agency's Human Resources website (position description library) for a Fisheries Biologist (0482-09), the position advertised to fill the Appellant's former position is clearly is designed/written to exclude many if not all applicants, including veterans preference candidates. The KSA's listed in the advertised position are so restrictive that only someone serving at the Agency and specifically involved in TRT's, dolphin and whale biology, state

and federal fisheries in the Southeast, and having specific knowledge of “Project Dolphin” and Dolphin Smart” would be able to compete fairly for the position.

7.1.4. The Agency’s provided discovery documents show that the Appellant's “term” position was changed to a FTE career service employee position and that Jessica Powell was hired as an FTE vice “term” employee. Appellant contends that Employer (Laura Engleby) knew that the position was being changed and that if the Appellant was not removed/terminated from the position she would likely apply for the position when it was converted to a FTE career service employee position.

7.2. USERRA:

7.2.1. Employer knew that Appellant had military affiliation in the United States Coast Guard Reserve (All persons in the SER Protected Resources Division and the NOAA WFMO)

7.2.2. Appellant notified Employer as soon as she knew of assigned military duty days (Laura Engleby, David Bernhart)

7.2.3. Employer created a hostile work environment based on Appellant’s military affiliation (Laura Engleby, Barb Zoodsma)

7.2.4. Employer withheld critical information and guidance on major projects until Appellant was placed on duty, and then effectively required Appellant to complete projects while in a duty status (Laura Engleby, Barb Zoodsma)

7.2.5. Employer assigned excessive workload to Appellant immediately prior to and during military reserve obligation periods to include artificially compressed

deadlines, unusually complex assignments, and directly conflicting guidance from project co-sponsors (Laura Engleby, Barb Zoodsma)

- 7.2.6. Employer scheduled Appellant for meetings and conferences during military reserve obligation periods (Laura Engleby)
 - 7.2.7. Employer reassigned Appellant's usual duties to non-protected employees during military reserve absence and never reassigned them after her return (Laura Engleby, Stacey Horstman)
 - 7.2.8. Employer initiated termination within ten days of Appellant's newly-incurred future military reserve obligation (Laura Engleby, David Bernhart)
8. Deny pending full Agency responses to Appellant's First Request for Documents.
 9. Agency employees under the supervision of employees named in Interrogatory 6 who were treated more favorably with respect to work assignments and supervisor interactions include Barb Zoodsma, Stacey Horstman, Erin Fougères, Cheryl Bonnes and Jessica Powell.
 10. To the best of my knowledge, Barb Zoodsma is under 40 years of age, single and has never had any military affiliation; Stacey Horstman is under 40 years of age, was married in November, 2008, after hire, and has never had any military affiliation; Erin Fougères is under 40, married and has never had any military affiliation; Cheryl Bonnes is under 40 years of age, single, and has never had any military affiliation; Jessica Powell is under 40 years of age, single, has never had any military affiliation.
 11. Answer is qualified pending information contained in Appellant's First Request for Production of Documents. Dates of duty taken during regular NMFS work hours included: 27 Oct, 13-14 Nov, 10-11 Dec, 2008 and 14-15 Jan, 22-23 Jan, 18-19 Feb, 26-28 Mar and

03-23 April 2009. I informed Mr. Bernhart and Ms. Engleby prior to any military service periods to be performed on by e-mail, by posting to my common-access Oracle calendar by notification through the electronic timekeeper software and, if they were not on travel, in person. I described dates of expected service and return, duty station location and contact information, type of duty to be performed and my intentions for charging leave during the affected pay period (i.e., military or annual leave). In addition, before any period of active duty, I notified Mr. Bernhart, Ms. Engleby and Kelly Meeks, the local human resources coordinator, by e-mail, to include standard USERRA notification (employer rights and responsibilities), dates ordered, expected duration of duty, duty station location and contact information.

12. Employer statements to Appellant concerning military service include the following and may be substantiated by documents found in Appellant's First Request for Production of Documents dated 10 Dec 2010:

12.1. Job interview, 21 Aug 08, David Bernhart and Laura Engleby present, discussion over the nature of Appellant's past, present and future duty obligations, including but not limited to the unique way she was used in the Coast Guard Reserve component as active duty support for ongoing law enforcement and intelligence operations at the USCG Sector St. Petersburg Response and Planning Departments; that her duty would include time periods away from work during normal working hours and would include requirements for time off during Super Bowl 2009 pre-planning and execution

12.2. Introductory phone conversation with Barb Zoodsma on 28 Oct 08, discussion over Appellant's roles and responsibilities in the Coast Guard including past duty as a

search and rescue controller at the USCG Group (now Sector) Charleston SC and my ongoing associations with law enforcement and intelligence officials in the Seventh CG District

- 12.3. Nov 2008-Nov 2009, Laura Engleby and Appellant had ongoing discussions about Ms. Engleby's feelings that CG duty was conflicting with Appellant's NMFS job, which resulted in Appellant's request to the CG to cancel a long-standing obligation to stand and/or supervise watches in both operations and intelligence operations centers during Super Bowl security operations
- 12.4. Jan 2009 phone call from Barb Zoodsma, who gave Appellant lengthy explanation on how the Coast Guard failed to launch in time to locate distressed downed NOAA observer aircraft before it sank, during her tenure as ALWTRT SER coordinator; personal friends of Ms. Zoodsma's died in the crash; she requested Appellant to arrange procedures with the Seventh CG District Rescue Coordination Center (Command Center) to prevent that in the future, which Appellant understood at the time to be setting foundations for a NMFS-USCG MOU on expedited launch of SAR assets for NMFS assets in distress; when Appellant followed up with the CG District, Ms. Zoodsma dropped the issue entirely
- 12.5. Throughout the Marine Mammal Branch, a NMFS employee, USCG LCDR Chris Smith, retired was regularly ridiculed for the Coast Guard plaques in his office and for what was perceived to be his non-contribution
- 12.6. David Bernhart and Laura Engleby criticized the USCG Sector Charleston Operations Center for not responding quickly enough to NMFS OLE requests to cite the

Charleston Pilots for refusing to comply with the so-called “ship strike” rule requiring vessels to slow to 10 knots when transiting right whale habitat (Appellant believes she has additional or corrected details in Agency files she requested in Appellant’s First Request for Production of Documents)

13. Work that Appellant was directed to or had to, in order to meet deadlines, which she felt were artificially compressed by managers, and which she ultimately completed in whole or large part while on military duty included: attendance at a Marine Mammal Branch meeting on 14 Jan (scheduled duty day); attendance at a phone conference on 15 Jan (scheduled duty day); shark gillnet exemption project conferences, work and document production throughout April 2009 (duty from 02 - 23 April); Pelagic Longline Take Reduction Team Compliance Guide in April 2009; HMS Amendment 3 conference in April 2009; List of Fisheries 2010 Proposal drafts and unnecessary background work due on 01 May 2009.

13.1. Appellant was assigned to complete a conservation equivalency for a shark gillnet exemption request on Oct 28, 2008. She completed it according to guidance and submitted it for review on Jan 29, 2009; reviewers, including Ms. Engleby and Ms. Zoodsma, held up in review and/or required major modifications to the document, including the incorporation of key information only held by Ms. Zoodsma, until the end of March, 2009. A revised draft incorporating changes was submitted by Appellant on 20 March. The draft was returned again with major revision requests, including incorporation of Ms. Zoodsma’s information, which she did not provide until 14 April, 2009. Other than the addition of Ms. Zoodsma’s information, the final document was not substantially different than the 29 January Appellant’s submitted

draft, although the amount of work created was an undue hardship during Appellant's military service.

- 13.2. Appellant was assigned to write text for a new PLLTRP compliance guide in March, 2009, while she attended full-time NMFS training in West Virginia during the week of 16-20 March. She completed the text while on duty, returned it on 14 April and was told by project supervisor (Ms. Fougeres) that the work was completed in a timely fashion and the project would be turned over to Ms. Bonnes, who was the usual creator for compliance guides and outreach materials. (Appellant notes that her job description also included outreach materials, but when she requested additional guidance and appropriate software to do this job, in Nov-Dec 2008, she was promptly denied access and told it was now Ms. Bonnes' job.) Appellant followed up on the PLLTRT materials on or about 15 May, e-mailing Ms. Fougeres, Ms. Engleby and Ms. Bonnes to see where the project was at and what, if anything, Appellant was responsible for during the ongoing process. Ms. Engleby replied on 15 May that the project was on her desk and she provided a detailed listing of future actions and assignments for the project which did not include Appellant. Appellant recalls that the materials were to be completed for mailing to reach customers prior to 30 June when the new rule became effective. The next time Appellant recalls being involved with the project was to review Ms. Bonnes' draft guides, which Appellant routinely completed within a day. Appellant also provided a list of commercial fishers with longline endorsements as soon as requested by Ms. Bonnes, to generate a mailing list. The Appellant does recall being required to assist Ms. Fougeres with placing the

placards and compliance guides into envelopes and hand-canceling them in the NMFS SER mailroom so that they could “get in the mail immediately”. Appellant dropped everything on her desk to do so, although familiarity with the workings of the SER mailing apparatus was not in her job description.

- 13.3. The Proposed List of Fisheries was due to Headquarters by 01 May, 2009. Appellant submitted proposed changes to the TRT coordinators for review on 02 March 2009. When she reported for duty, coordinator review was pending.
- 13.4. Ms. Engleby and Ms. Horstman directed Appellant, on or about March 23, to prepare a detailed justification for inclusion of the Gulf of Mexico Shrimp Trawl Fishery in the 2010 Proposed LOF proposal. This fishery did not come close to meeting regulatory criteria for inclusion; Ms. Horstman and Engleby had known for weeks that the draft proposal was being prepared; Ms. Engleby had specifically stated that Appellant was to use her predecessor’s guidance on preparing the 2010 LOF proposal (which the shrimp trawl fishery was not on); and that Appellant was to include/ update fisheries according to a rigorous Tier Analysis prepared in accordance with procedures used by other regions and the Northeast Science Center. Appellant completed the justification but was unavailable for a briefing with the Regional Administrator due to being on active duty. (The Regional Administrator agreed that the fishery did not meet the listing criteria.) Following the meeting, Appellant completed the draft Proposed LOF for 2010 for the RA’s signature while on duty.
- 13.5. Ms. Engleby assigned Appellant to completely overhaul the Marine Mammal Authorization Program public outreach materials in Oct-Nov 2008. She submitted the

materials for review in Dec 2008. They came back from Mr. Bernhart on 30 March, 2009, requiring her to complete changes to them prior to reporting for duty on 02 April.

14. See the answer to Question 11.
15. To the best of Appellant's knowledge, the meeting in question occurred on 25 March 2009 at about 9:30 in the morning, initiated by her in response to notes she had made on 15 March, 2009 while enroute Section 7 Training in Shepherdstown, West Virginia; and, in response to Ms. Zoodsma's 24 March 2009 rebuke of Appellant's revised draft of the shark gillnet exemption request conservation equivalency (aka "shark gillnet project"). The only persons present were Ms. Engleby and the Appellant. Appellant approached Ms. Engleby in her office and requested time to talk about workplace frustrations she had experienced to that date. Ms. Engleby inquired about what and whether it could wait as she was busy. Appellant stated that she wanted to know what was going on, that she did not understand why she seemed to be getting set up for failure. Ms. Engleby then allowed Appellant to enter her office and asked her to close the door. During the discussion, Appellant told Ms. Engleby what workplace frustrations she had experienced to date, including her perceptions of workplace hostility.
16. During the meeting, which Appellant believes lasted roughly one hour, Appellant gave specific problems and examples to Ms. Engleby that Appellant felt were beyond a reasonable expectation that any employee in a new position would need supervisor assistance and guidance on; and that she felt were impacting Appellant's ability to do her assigned work; and that she felt were resulting from hostility from unknown origins. Appellant prefaced her

remarks to Ms. Engleby specifically by asking “what is going on here,” and whether Appellant’s Coast Guard affiliation, reserve obligations, marital status or age were issues for Ms. Engleby, or Appellant’s co-workers, or Appellant’s additional supervisors, Ms. Zoodsma and Ms. Horstman. Ms. Engleby initially stated, and then restated at the end of the discussion that Appellant’s work was “great,” with “no problems”, and that Appellant’s affiliations, duty, marital status and/ or age were no factors whatsoever in office dynamics.

17. Specific issues Appellant raised with Ms. Engleby during the meeting included the following:

17.1. Appellant was being held accountable for factors that were beyond her control to the point where she was set up for failure by Ms. Zoodsma, Ms. Horstman, Ms. Engleby and Mr. Bernhart. Questions that Appellant specifically posed to Ms. Engleby during the meeting include:

17.1.1. How was Appellant to know which guidance or expectations to follow when she regularly received significantly conflicting guidance on and expectations for major projects between different supervisors, including Diane Boorgaard, Barb Zoodsma and Laura Engleby on ALWTRT projects; and Ms. Horstman and Ms. Engleby on BDTRT projects; all of which necessitated Appellant to redo work while appearing to one or the other supervisor at any given time as though Appellant was ignoring guidance or failing to meet expectations. Appellant gave specific examples including guidance/ expectation differences between Ms. Zoodsma, Ms. Boorgarrd and Ms. Engleby on the shark gillnet exemption; between Ms. Horstman and Ms. Engleby on BDTRT projects; and between Ms. Engleby and Mr. Bernhart on MMAP projects.

- 17.1.2. How was Appellant to establish work assignment priorities without insights into the overall workings of the Marine Mammal Branch and its interface with the NE Region? Appellant stated that it was reasonably Ms. Engleby's role to help Appellant articulate work assignment priorities across a multitude of projects requested by the four Take Reduction Team Coordinators, Ms. Engleby and Mr. Bernhart, all of whom who regularly tasked Appellant to prepare work projects; all of whom felt their project was the most important; and all of whom were frequently unaware of the scope or nature of work being assigned by others to Appellant. Appellant expressed frustration over Ms. Engleby's unavailability to help prioritize these assignments by her ongoing failure to answer Appellant's e-mails and phone calls; and, for refusing Appellant audience by saying she was too busy to talk about even the most basic questions concerning tasking and priorities. Appellant gave specific examples including a long-standing project on VMS use in the gillnet fleet, which Ms. Engleby had assigned as a high priority immediately on Appellant's hire and the shark gillnet equivalency, which Ms. Zoodsma had as her top priority; recently-assigned lengthy papers for Ms. Engleby on the shrimp trawl fishery in the Gulf of Mexico and the Atlantic Menhaden Fishery and a recently-assigned lengthy paper for Ms. Horstman on the NC gillnet fisheries, etc. Appellant pointed out that priorities conflicted between and within projects.
- 17.1.3. Why was Appellant being held accountable for information only held in supervisor's and/or co-worker's computer files and/or Agency or other databases

to which Appellant was denied access; and/ or were not known to Appellant (and in no way could be known to exist); and/or, further, not accessible to the Appellant? Appellant stated she was being set up for failure by Ms Engleby, Ms. Zoodsma and Ms. Horstman in these regards. Appellant gave specific examples, including Ms. Engleby's insistence that Appellant use Level A Harassment data from the Marine Mammal Stranding Network and the SEFSC, although when Appellant asked Ms. Fougères how to get access, Ms. Fougères stated Appellant could not do so; Ms. Zoodsma's insistence that sea surface temperature data and right whale calving ground sightings be correlated and included in the shark gillnet equivalency document but only Ms. Zoodsma held the data and she specifically told Appellant to not attempt to obtain the data from state, GIS or other files; and Ms. Horstman's insistence that Tursiops data of various kinds be included in ongoing projects, although only Ms. Horstman had access to the data, based in her personal Excel spreadsheets. The latter case was particularly perplexing to Appellant as she had discussed this issue at length with Ms. Horstman on several occasions, to no relief. Appellant suggested to Ms. Engleby that these types of actions were done to humiliate and/or cause Appellant to fail.

- 17.1.4. Appellant requested Ms. Engleby provide guidance on how to approach clearly senior project reviewers when deadlines for which Appellant would be held accountable, were pressing and/or had already past? Appellant stated that this reflected poorly on her work and expressed concern over these perceptions and

Appellant's shame, after a long career of holding herself to high standards, at consistently missing deadlines. Appellant cited specific examples including Ms. Zoodsma's excessive holding of draft shark gillnet project, which Appellant had completed in late January; TRT coordinators' excessive holding for review the proposed 2010 LOF, which Appellant had provided weeks earlier and remained in hold with Ms. Horstman and Ms. Engleby; and Mr. Bernhart's holding, since mid-December, of Marine Mammal Authorization Program outreach materials which Ms. Engleby had directed be completed and uploaded prior to the publication of the 01 Jan 2009 LOF and which Mr. Bernhart still had for review.

- 17.1.5. Appellant asked how she was to know about portions of projects for which even the most knowledgeable individual would require additional guidance in this position during their first months on the job. Appellant cited several examples, including the lack of a standardized style guide for document preparation, including memos; lack of a standardized routing guide for internal use; lack of an organized filing system in the Protected Resources Division that resulted in some documents in various common drive, loosely organized, files, some documents in print version in loosely organized paper files scattered throughout employee bookshelves, and some documents apparently non-existent; unfamiliarity with relationships between divisions (e.g., sustainable fisheries and the PRD). Appellant specifically cited Ms. Engleby and Ms. Zoodsma's ongoing failure to provide even the most rudimentary guidance about expectations on Appellant concerning her upcoming attendance the ALWTRT

Northeast Subgroup Meeting as the SER sole representative, on April 2-3, and for which repeated requests for any information had been ignored. Appellant stated she thought this was very unusual; that no person in her position would have the faintest idea of what SER expectations were, that she understood it was a highly political meeting, and that she was uncomfortable proceeding without any insights about her role.

17.1.6. Appellant spoke to Ms. Engleby about her perceptions of workplace hostility, including what she felt were brush-offs by Ms. Engleby and Ms. Horstman; and particular hostility from Ms. Zoodsma. Appellant specifically asked Ms. Engleby whether she or Ms. Zoodsma had issues with her Coast Guard affiliation that stemmed from Ms. Zoodsma's personal loss of friends and colleagues in a 2006 or 2007 crash of a NOAA observer aircraft and maritime distress call that Ms. Zoodsma had stated to Appellant was compounded by the US Coast Guard's failure to launch a search aircraft in a timely fashion. Appellant additionally asked Ms. Engleby about whether Appellant's marital status was at issue, her age, or other.

17.1.7. In response to Appellant's concerns during this meeting, Ms. Engleby wrote herself notes on a single 3-inch square Post-it note and told Appellant that she (Ms. Engleby) would "try to do better" and that she would talk with Ms. Horstman and Ms. Zoodsma in support of Appellant. She stated she would answer e-mails and questions in a timely fashion. Ms. Engleby vehemently denied any hostility or prejudice toward Appellant. She stated that Appellant

was “doing a great job!” Ms. Engleby directed Appellant to submit a 6-month list of accomplishments and to schedule a performance review session with Ms. Engleby on the Oracle calendar, to occur in April. Ms. Engleby provided no derogatory or negative feedback to Appellant about her performance and indicated Appellant was performing at or above expected levels.

18. Ms. Engleby’s first choice of hire was Ms. Jessica Powell, according to documents contained in Agency’s Responses to Appellant’s First Request for Production of Documents.
19. Appellant performed military service as noted in Interrogatory 11, in support of the USCG Sector St. Petersburg, Florida Response and Preventions Departments. Project supervisors included CDR Timothy Haws, LT Todd Cannarella, LTjg William Sanders and LCDR Christopher Murray. For periods leading up to Super Bowl security operations, Appellant acted as a USCG liaison between the CG active duty component, CG reserve contingency force and federal/state interagency partners in the Tampa Bay and Miami areas and commands. Because she had been on active duty with the Sector from 21 Jan 2008 through 22 Sep 2008, and because the Sector had an unfilled, key Law Enforcement Officer position, her presence was often required during normal working hours, which she explained to Ms. Engleby and Mr. Bernhart before and after her hire. Because of Appellant’s CG law enforcement intelligence background and familiarity with inter-agency operations, including extensive contacts in the area law enforcement and intelligence community, she was scheduled to coordinate Coast Guard intelligence watch-standers before and during the Super Bowl security event, although she requested the Coast Guard cancel her orders due to Ms. Engleby’s apparent disapproval of her participation. Appellant explained to Ms. Engleby

when the orders were cancelled that she was still obligated to serve those days. The Coast Guard asked Appellant to return to duty in late March/ April of 2009 to help coordinate enforcement and intelligence operations for a joint DHS-DOD operation for which she had written Sector St. Petersburg's operational plans and was the only mid-level officer in the Response or Intelligence departments with experience in the specific, complicated, inter-agency real-time operations that were concurrently being run with a test of the DHS Southeastern Task Force command structure in Miami. Appellant explained this to Ms. Engleby and Mr. Bernhart, as soon as she received notification that she would need to participate.

20. To the best of her recollection, only the following individuals have discussed with Appellant the facts and/or circumstances of her case outside of official communications, as noted below.

20.1. Sarah Heiberling, on or about 14 March, 2009, when Appellant and Ms. Heiberling traveled together to NMFS-sponsored Section 7 training in Shepherdstown, West Virginia. Appellant expressed job-related frustrations to Ms. Heiberling, on the two-hour drive from the DC airport. Specifically, Appellant discussed Ms. Zoodsma, Ms. Horstman and Ms. Engleby's ongoing hostility and actions that, to the Appellant, appeared designed to shed a negative light on Appellant and/or her work. Ms. Heiberling shared with Appellant that she (Heiberling) had befriended Appellant's predecessor, Nancy Young. Appellant recalls that Ms. Heiberling thought that Nancy was related to Ms. Engleby. Appellant asked Ms. Heiberling her opinion on approaching Ms. Engleby and/or Mr. Bernhart with her concerns. Ms. Heiberling

opined that it would be best to talk with Ms. Engleby. As a result of that conversation, Appellant prepared a partial list of concerns to address with Ms. Engleby on Appellant's return from Shepherdstown. Ms. Heiberling also contacted Appellant by e-mail on 12 November, 2010, with a newsy update on Ms. Heiberling's personal life. Appellant replied in the same vein without mentioning the MSPB pending action.

- 20.2. Calusa Horn, various times during Appellant's employment, including several weeks before Appellant's termination and immediately after her termination. Appellant shared concerns with Ms. Horn, in her office on several occasions, that she felt Ms. Engleby, Ms. Horstman and Ms. Zoodsma were making things artificially difficult and confusing for Appellant. Appellant discussed Ms. Engleby's absolute hostility toward Appellant, including Ms. Engleby's failure to answer her phone or e-mail, Ms. Engleby's constantly, "too busy" to help Appellant or answer questions, etc. Ms. Horn stated that Ms. Engleby had done exactly the same thing to her toward the end of Ms. Horn's tenure under Ms. Engleby's supervision. Ms. Horn emphatically stated to Appellant that Appellant should talk with Mr. Bernhart and tell him Appellant needed to be moved to the ESA branch to exclusively work on Section 7 consultations. Appellant attempted to take Ms. Horn's advice by approaching Mr. Bernhart for a "career counseling" discussion after Ms. Engleby was on travel, in late July 2009. Mr. Bernhart told Appellant to schedule a meeting with him in Oracle, which Appellant did twice and had cancelled twice. By the time Appellant could request a transfer to ESA, Ms. Engleby had returned to SER and Appellant was too apprehensive about Ms. Engleby's proximity to raise the issue with Mr. Bernhart. Immediately following

Appellant's termination, Ms. Horn (and Ms. Schotts, see below) accompanied Appellant to her car. Ms. Horn again stated that Ms. Engleby had it out for Appellant and that Appellant should have requested transfer to the ESA Branch.

20.3. Kelly Schotts, various times during Appellant's employment. Ms. Schotts and Appellant shared company both at work and during off time, including visiting each other's homes for dinners, and dining out. Ms. Schotts mentored Appellant through several Section 7 consultations that Appellant was assigned to prepare and generally befriended Appellant. As such, Appellant often shared her fears and anxieties about her supervisors, particularly Ms. Engleby, Ms. Zoodsma and Ms. Horstman. Ms. Schotts sympathized and repeatedly stated that Appellant did good work. She indicated to Appellant that Ms. Engleby was known to play favorites in the Marine Mammal Branch. Immediately after her termination, Appellant went to Ms. Schotts' office. Ms. Schotts expressed disbelief that Appellant had been terminated. Ms. Schotts and Appellant remained in e-mail contact during Oct-Nov, 2009, although Appellant finally stopped in an effort to keep Ms. Schotts from being in a compromising position with the SER. Ms. Schotts also e-mailed Appellant to say that two other NMFS employees, with whom Appellant had developed a friendly relationship (SF employees Nick and Karla), were worried about Appellant and wanted to know what had happened to her.

20.4. Mary Hartshorn, USACOE employee on professional exchange at the SER in the summer of 2009. Ms. Hartshorn and Appellant struck it off well and, together with Ms. Schotts, shared dinner at Appellant's home, Ms. Schott's home and dining out. As

such, Ms. Hartshorn heard Appellant's concerns over Ms. Engleby, Ms. Horstman and Ms. Zoodsma. Ms. Hartshorn stated that her observation was that Ms. Engleby was generally stand-offish and curt with Appellant as well as herself.

- 20.5. Cheryl Bonnes on 08 October 2009, who called to query why Appellant had quit her job, as announced by Ms. Engleby the afternoon of Appellant's termination. Ms. Bonnes stated to Appellant during that phone call that Ms. Engleby had called an emergency meeting of the MMB to announce that Appellant and Ms. Engleby had agreed that Appellant was not a good fit for the MMB and that she had quit her job. Ms. Bonnes has texted Appellant and called her phone several times since Appellant's termination; however, Appellant has not replied, feeling that to do so would place Ms. Bonnes in a compromising position.
- 20.6. Jennifer Lee on 08 October 2009, who called Appellant to query the circumstances of Appellant's termination. During the conversation, Ms. Lee made statements to Appellant, the essence of which was that Ms. Engleby granted highly preferential treatment to Ms. Horstman. Ms. Lee suggested that Appellant appeal to Mr. Sutter for review, which Appellant did to no avail.
- 20.7. Coast Guard officials who were notified as a professional courtesy that Appellant had been terminated at NMFS and expected to file an EEO complaint and/or complaint to the MSPB, to include: LT Todd Cannarella, CDR Chad Jacoby, CDR Tim Haws, CDR Awylyn Young, CAPT Tim Close, LCDR Joann Burdian, LCDR Chris Murray, CWO (retired) Kevin Coyne, and CGIS Special Agent Elson Irizzarry, all of whom

have direct dealings with Appellant and/or the NMFS SER OLE in the ongoing course of operations.

- 20.8. Eric Hawk, SER PRD Section 7 Supervisor, during and after Appellant's employment at the SER. Appellant and Mr. Hawk developed friendship based on common interests of going to sea (Mr. Hawk is a retired NOAA corps officer), swimming and freelance journalism. Mr. Hawk and his date, Linda, also a NMFS SER employee that the Appellant had not yet met, attended Appellant's USCG retirement ceremony in May, 2010. Mr. Hawk e-mailed Appellant on 09 Nov, coincidentally the day before the MSPB remanded Appellant's case for adjudication. Appellant subsequently e-mailed several times to Mr. Hawk on purely personal issues (i.e., sharing stories the two had written or had in progress). On 08 December, Appellant e-mailed Mr. Hawk to say she considered him a friend, but felt that further communications would likely place him or Linda in a compromising position. He replied briefly, stating that he did not at the time, or now, understand why Appellant was terminated. He asked at the time and was told only that Employee was not a good fit. Appellant notes that she had done work for his section, although clearly he was not consulted prior to her termination (e.g., Section 7 consultations).
- 20.9. Hiring authorities at St. Petersburg College and Eckerd College, to include only that Appellant disputed the circumstances of her termination
- 20.10. Appellant's husband Peter Ney
- 20.11. Appellant's therapist, Mr. Robert Green, LCSW

21. Deny. Compensatory damages cannot be calculated/estimated until the appeal process has been decided or the agency begins settlement discussions. Notwithstanding, Appellant notes that two of her primary job skill sets, as a biologist and as an intelligence analyst, were essentially rendered null within the two area communities most likely to afford her employment, specifically, the significant local marine scientific community, including the Florida FWCC; and the federal-state law enforcement/ intelligence complex. Appellant's Coast Guard experience would have allowed her to move into an advertised GS-12 Coast Guard LE intelligence job immediately from NMFS had her termination not resulted in broken communications and mistrust with one of the Coast Guard's primary enforcement partners in the fisheries-heavy USCG Sector St. Petersburg (i.e., NMFS OLE).
22. Deny. Cannot be calculated/estimated until the appeal process has been decided or the agency begins settlement discussions. Notwithstanding, Appellant has suffered great personal humiliation throughout her community of professional contacts, including across local federal agencies; and post-traumatic stress as she copes with the Agency's ongoing failure to acknowledge or even address underlying issues pursuant to her wrongful termination; as well as by having Mr. Sutter's daughter Rebecca as a student during Appellant's first post-termination employment as adjunct faculty at St. Petersburg College, a time of turmoil in Appellant's professional life.
23. Deny. Question would require violation of Appellant's rights privacy and will be answered in future when appropriate in the appeal process.
24. To the best of Appellant's recollection, the following emotional, spiritual or financial events have affected Appellant in the last five years.

- 24.1. No friend or family member has died
- 24.2. No automobile accident or catastrophic act of nature has caused Appellant, family member or close friend physical injury, trauma, loss of property or other similar consequence
- 24.3. No family member or close friend has served in the military (excepting Appellant's usual military contacts)
- 24.4. Appellant was diagnosed with systemic lupus erythematosus, in April 2009; Appellant's sister has severe fibromyalgia and suffered accidental narcotics overdose (under her currently-prescribed medication; i.e., she was not self-prescribing or self-dosing) in July 2009
- 24.5. No divorce, separation, breakup or other serious problems within a marital or significant relationship involving Appellant, a family member or close personal friend
- 24.6. No arrest or conviction of any crime involving Appellant, a family member or close personal friend
- 24.7. Appellant has not been the victim of a crime
- 24.8. No loss of any job, demotion, or any other serious event affecting Appellant's livelihood or career, or that of her spouse or family member (other than not being selected for the position at issue in this case);
- 24.9. Appellant has no lawsuits filed by or against her, her spouse or any member of her family
- 24.10. No academic or learning problems suffered by Appellant or her family

- 24.11. No trouble, misconduct, fights, altercations, truancy, accusations of cheating or disciplinary problems at school by Appellant or her family
- 24.12. No physical or emotional abuse perpetrated by or against Appellant or any member of her family
- 24.13. No other traumatic or serious event that has affected Appellant financially, emotionally, or spiritually during the past five years.
25. Deny. Cannot be known until time of settlement. Notwithstanding, Appellant notes that she has placed a retainer with legal counsel on a consult-as-needed basis; and has consulted with attorneys although is not currently represented by one. She has incurred administrative charges to include but not limited to postage and copies.
26. Appellant does not presently intend to call any expert witnesses at hearing.
27. Comments: Following Appellant's period of service in April, 2009, her perception is that Ms. Engleby's hostility increased to the point where Appellant was intimidated and extremely anxious every time she had to get any clarification or guidance whatsoever. Appellant felt certain that her job was at risk and made a conscious effort to excel at whatever task she was assigned as well as to rigorously track project guidance, assignment and due dates, and to follow up with supervisors and/or TRT coordinators at every step to ensure that her work was as-expected. Appellant stated to Ms. Horn and Ms. Schotts that her goal was to become promoted to GS-11 so that she could pursue other federal employment options without the appearance that she "walked out on" her 13-month minimum obligation. The Appellant appeared for her 1 year performance review with expectations of a good review and even a promotion to GS-11. Although Mr. Bernhart and Ms. Engleby had given

non-verbal cues that Appellant was not wanted in the Marine Mammal Branch, Appellant felt certain that her work record, mid-term marks and continued hard work would result in promotion, not termination. In short, the Agency permitted Mr. Bernhart and Ms. Engelby to exercise discriminatory practices, prohibited personnel practices, USERRA and VEOA violations without any oversight or questioning from human resource advisors. Mr. Bernhart only once questioned Appellant on Ms. Engleby's allegations of poor performance. Specifically, he questioned Appellant verbally in passing on 30 September, 2009, if the 2010 LOF responses to comments were due at HQ on 14 September. The Appellant stated, "yes". Mr. Bernhart thanked her, then turned around and walked away. Mr. Sutter nor the NOAA WFMO nor any other person in a position of influence questioned Ms. Engleby's assertions. The Agency did not protect the Appellant's rights and willfully aided in violating her rights. The Agency continues to protect and support those employees who have clearly violated policy and law.

DOCUMENTS

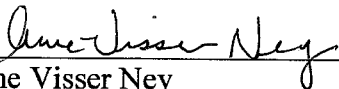
1. All personal notes in Appellant's possession pertinent to facts presented here.
2. Additional notes referenced in Additional Discovery Procedures dated December 3, 2010.
3. through 7: Deny. Pertinent documents contained in Appellant's First Request for Production of Documents, but which Agency did not produce; and/or are contained within Agency files.
4. Deny as information not pertinent to allegations.
5. U.S. Coast Guard Leave and Earnings Statements provided from Oct 2008 - Oct 2009; and information on retirement waiver and extension of duty provided

6. Deny. Documents pertaining to Appellant's duty are contained on Coast Guard information systems and can no longer be accessed by her.
7. through 17. Deny. Pertinent documents contained in Appellant's First Request for Production of Documents, but which Agency did not produce; and/or are contained within Agency files.
8. Deny. Information not pertinent to allegations.
9. Deny. Deposition has not occurred.
10. through 27. Deny. Information is not pertinent to allegations.

CERTIFICATION BY APPELLANT

YOU MUST SIGN BELOW AND RETURN THIS PAGE WITH YOUR RESPONSES

Your signature below constitutes a certification that the information provided is true to the best of the your knowledge, information, and belief, formed after reasonable inquiry, the responses to discovery or objections are made in good faith and are complete and correct as of the date it is made and are being made under the laws of perjury.



Anne Visser Ney

1/2/2010 2011 (MS)
Date