Message

**From:** Goodin, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3EAC342F280A4B9DB4079C81F66D1913-JGOODIN]
**Sent:** 11/7/2019 3:11:08 PM
**To:** John Goodin (Goodin.John@epa.gov) [Goodin.John@epa.gov]
**Subject:** DELIBERATIVE CONFIDENTIAL FW: Part 2 : Cooling Water Intake Rule - ESA
**Attachments:** Response to 404(g) ESA White Paper (072319).docx; OW to ECOS-ASWM 404 Assumption final.pdf; State Assumption of 404 permitting authority and ESA consulation.pdf; rgl83-06.pdf; NMFS comments re EPA 404 ESA position.pdf; USFWS comments on EPA 404 ESA position.pdf; Corps Materials on ESA.pdf; KWeinerESAconsultationAnalysis.pdf; NJexperienceESA-94chronology.pdf; SilvaRsp4-5.pdf; ECOS wkgp summary to NS re 404 assumption 7-11.pdf; ECOS incoming Letter on 404 Assumption and ESA.pdf

DELIBERATIVE CONFIDENTIAL

Dave—thanks for the conversation yesterday afternoon on the status of the potential "FL approach" to ESA under CWA 404g. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Let me know how you'd like to proceed.
Thanks,
John

**From:** Goodin, John
**Sent:** Tuesday, October 08, 2019 6:46 PM
**To:** Ross, David P <ross.davidp@epa.gov>
**Cc:** Steven Neugeboren <Neugeboren.Steven@epa.gov>; Sawyers, Andrew <Sawyers.Andrew@epa.gov>; Nagle, Deborah <Nagle.Deborah@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Wildeman, Anna <wildeman.anna@epa.gov>; Aguirre, Janita <Aguirre.Janita@epa.gov>
**Subject:** FW: Part 2 : Cooling Water Intake Rule - ESA

DELIBERATIVE

Dave—here is part 2 of 2 of your request, plus additional material that may be relevant—shout out to Steve and to Kathy H. for the additional background documents (including the 1983 take on consultation for assumption of the CWA 404 program).

1) Letter from Pete Silva to ECOS addressing ESA in context of 404 program assumption
2) Incoming letters from ECOS – first is request to assist on workgroup, second is request for clarity on ESA to Silva (which while general was based upon discussions of an ECOS convened workgroup), and third is summary of issues (letter to N. Stoner)
3) Legal analysis that OGC prepared at that time of the letters, Ex. 5 Attorney Client (AC)

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4) Legal analysis from July of this year regarding Florida's white paper
5) Responses from the NMFS and USFWS regarding EPA's proposed position on programmatic consultation at the time of the ECOS letters (we met with them several times too)
6) Corps reg excerpt on ESA
7) Chronology of the ESA consultation in NJ (potentially of note given NJ has fewer listed species than FL or AZ and that consultation was not finalized within the 120 days)

8) 1983 Legal Analysis

Thanks,
John

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**From:** Ross, David P <ross.davidp@epa.gov>
**Sent:** Monday, October 7, 2019 8:41 AM
**To:** Goodin, John <Goodin.John@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>
**Cc:** Fotouhi, David <Fotouhi.David@epa.gov>
**Subject:** Fwd: Cooling Water Intake Rule - ESA

John,

Could you also send me a copy of the Pete Silva memo and the ECOS letter that triggered it? And are you aware of any OGC analysis that was done in support of the Silva memo? Thanks.

Dave

Sent from my iPad

Begin forwarded message:

**From:** "Ross, David P" <ross.davidp@epa.gov>
**Date:** October 7, 2019 at 8:39:09 AM EDT
**To:** "Fotouhi, David" <Fotouhi.David@epa.gov>, "Sawyers, Andrew" <Sawyers.Andrew@epa.gov>, "Goodin, John" <Goodin.John@epa.gov>, "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>
**Cc:** "Leopold, Matt (OGC)" <Leopold.Matt@epa.gov>, "Forsgren, Lee" <Forsgren.Lee@epa.gov>, "Aguirre, Janita" <Aguirre.Janita@epa.gov>, "Wildeman, Anna" <wildeman.anna@epa.gov>
**Subject: Re: Cooling Water Intake Rule - ESA**

Adding Steve.

Sent from my iPad

On Oct 7, 2019, at 8:38 AM, Ross, David P <ross.davidp@epa.gov> wrote:

Confidential; Deliberative

I'm currently evaluating a 404(g) state assumption proposal from Florida and Arizona and how to address ESA issues in state-assumed permitting. The proposal mentions the ESA process for the cooling water intake rule as a potential model. Could someone pull together the ESA-based components of that rulemaking for me, such as targeted discussion in the preamble, RTC, Bi-Op, etc. I'm not sure if this is an OGC or OWM assignment, so please work together to figure out the most efficient way to get a packet together.

Thanks!

Dave

Sent from my iPad