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

Via FOIAonline

June 12, 2020

Attn: Richard Maximus Strahan
Whale Safe USA
[redacted] (b)(6)
112 Eastman Lane
Montague, MA 01351

Re: FOIA Request No. DOC-NOAA-2018-001787

Dear Mr./Ms. Strahan:

This letter responds to your Freedom of Information Act (FOIA) request entered into FOIAonline on July 19, 2018, in which you requested records as follows:

I, Whale Safe USA, and each of its members request sufficient records that detail the circumstances surrounding the recent sighting of whales. We request these records in the possession of NOAA and its agents including the Center for Coastal Studies in Massachusetts and its Canadian counterparts.
In particular We request sufficient copies of records related to the following events —
1. A Humpback Whale disentangled on or about 14 July 2018 off the Massachusetts coast by agents of the Center for Coastal Studies.
2. A Humpback Whale disentangled on or about 14 July 2018 off thecoast of Nova Scotia's Brier Island, in the Gulf of St. Lawrence.
3. A Northern Right Whale sighted on or about 13 July 18 during a surveillance flight in Canada and then several hours later, the same whale was spotted near Miscou Island, New Brunswick Canada allegedly entangled in fishing gear.
4. The sighting of any whale species off the northeast coast of the US occurring in the month of July 2018.

Pursuant to procedures established in 15 CFR, Part 4.11(k), we rely on the following factors in determining whether the statutory standard for granting a fee waiver has been met:

1. The subject of the requested records must concern identifiable operations or activities of the Federal Government.
2. The disclosable portions of the requested records must be meaningfully informative about Government operations or activities in order to be “likely to contribute” to and increase public understanding of those operations or activities.
3. The disclosure of the requested information must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester.

4. The disclosure of the requested information is likely to contribute “significantly” to the public’s understanding of Government operations or activities.
5. Whether the requester has a commercial interest that would be furthered by the requester.
6. Whether any identified commercial interest of the requester is sufficiently great, in comparison with the public interest in disclosure, such that the disclosure is not primarily in the commercial interest of the requester.

Your fee waiver justification does not satisfy the six factors contemplated in 15 CFR 4.11. The request specifically fails to identify the segment of interested individuals that would receive the records (other than the unidentified group of individuals that would visit the website you listed), your expertise in extracting, analyzing and producing any unique work that would be created following production of the records. Rather, you have simply indicated the records would be made available on the website and used for advocacy purposes. Without further explanation, you have merely indicated the records would not be for “commercial purposes”. This is not sufficient to satisfy the balancing inquiry of a fee waiver analysis. Therefore this constitutes a denial of your fee waiver request. Your request will be processed under the “Other” fee category and if applicable, a fee estimate will be sent to you. You have the right to appeal this denial of the FOIA Fee Waiver request. An appeal must be received within 90 calendar days of the date of this response letter by:

Assistant General Counsel for Employment, Litigation, and Information
U.S. Department of Commerce Room 5896
1401 Constitution Ave. NW
Washington, DC 20230

An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, or by FOIAonline, if you have an account in FOIAonline, at https://foiaonline.regulations.gov/foia/action/public/home#. The appeal should include a copy of the original request and initial denial, if any. The appeal should include a statement of the reasons why the Fee Waiver request should not be denied and why the adverse determination was in error. The appeal letter, the envelope, the e-mail subject line, should be clearly marked "Freedom of Information Act Appeal." The e-mail, FOIAonline, and Office are monitored only on working days during normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday). FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next normal business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

You also may contact the NOAA FOIA Public Liaison, Robert Swisher, at (301)-628-5755.

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

Office of Government Information Services
National Archives and Records Administration
Room 2510

8601 Adelphi Road
College Park, MD 20740-6001

Email: ogis@nara.gov

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

Additionally, you may contact the NOAA FOIA Public Liaison, Robert Swisher, at (301)-628-5755.

Sincerely,

Mr. Mark Graff
NOAA FOIA Officer